



Terms and Conditions

The terms and conditions stated below are part of the offer of services and/or goods ["**Proposal**"] by Verus Associates LLC ["Verus"] to the Client, and will govern all matters regarding the relationship and obligations between Verus and Client pertaining to the Proposal and related project ["**Project**"]. The Proposal and these terms and conditions shall be collectively referred to as the "**Agreement**".

1. Fees & Payment:

1.1 The amounts payable hereunder by Client to Verus shall be as set out in the Proposal. Verus's invoices will be rendered monthly and shall be due and payable by Client within 14 calendar days of receipt of the invoice unless otherwise stated in the Proposal. Interest will be charged on overdue payments at a rate of 1% per month calculated daily.

1.2 If Client fails or refuses to pay Verus in accordance with this Agreement, Verus may, after giving 3 business days written notice to Client, suspend the Services and/or the supply of Goods until Verus has been paid in full all amounts due hereunder and, if such amounts are not fully paid within 60 calendar days thereafter, Verus may terminate this Agreement.

1.3 If Client disputes the whole or any portion of Verus's invoice, Client shall pay the undisputed portion of such invoice and notify Verus in writing of the reasons for disputing the remainder of the invoice within 14 days of receipt. Any dispute will be resolved in accordance with Article 25.

1.4 All prices for Goods, if any, are based on delivery as stated in the Proposal and, unless otherwise expressly stated, do not include any charges or services such as preservation packaging, storage, insurance, brokerage fees, load out and tie down, site installation or equipment start-up.

1.5 Unless otherwise expressly stated in the Proposal, all prices are in United States dollars and do not include sales, use, or excise taxes; import or export duties; special financing fees; value added, income, or royalty taxes imposed outside the United States; withholding taxes; consular fees; special permits or licenses; or similar charges. The Client shall pay any and all such taxes and charges.

2. Change Control: Verus's scope of Services and/or supply of Goods shall be as detailed in the Proposal. Any additional services/goods shall be subject to negotiation and mutual agreement in writing ["**Change Order**"], which shall detail the agreed change in the scope of Services/supply of Goods, any increase in the Verus's price, and any impact on the date for completion of the Services and/or supply of Goods.

3. Warranty

3.1 Services: Verus will perform the services described in the Proposal including, but not limited to, training, inspection, installation, modifications, additions, software programming, engineering, start-up or repairs ["**Services**"] with the degree of care, skill and diligence ordinarily exercised by professional engineering firms for services and projects, and under circumstances, similar to that contemplated by the Proposal ["**Professional Standards**"]. Verus warrants that it will correct or re-perform any part(s) of the Services that are not performed in accordance with Professional Standards ["**Defective Services**"], and are so identified in writing by Client to Verus within 12 months from the date of Verus's final invoice hereunder.

3.2 Goods: Verus warrants that the hardware, software and/or equipment described in the Proposal ["**Goods**"], if any, upon delivery by Verus, will be free from defects in workmanship and material provided that:

- i. the Goods are installed and used in accordance with Verus's recommended procedures; and
- ii. any alleged or reported defect has not been caused by misuse by or negligence of Client or other persons for whom Verus is not responsible at law; and
- iii. any defective part or parts of the Goods, after first beneficial use or equipment capability to support such use, are returned to Verus in accordance with Verus's standard Warranty Claim Procedures, transportation charges prepaid; and
- iv. examination of such part or parts by Verus confirms the existence of such a defect ["**Defective Goods**"].

The Goods warranty set out in this Article 3.2 will be valid for a period of 12 months from date of Acceptance of Goods as defined in Article 5 below. Verus's obligations under this warranty are limited to repair or replacement (as Verus elects) of the Defective Goods, free of charge, at Verus's place of business. Repair or replacement does not extend the original warranty period.

3.3 No Other Warranties: Verus's sole liability and responsibility, and Client's sole and exclusive remedy, with respect to the warranties set out in this Article 3 shall be limited to the remedies set forth above. All such remedies will be subject to the limitations of Article 13 below. These warranties are (i) void if anyone other than Verus has modified the Services and/or Goods supplied, and (ii) are in lieu of all warranties, express or implied, including, without limitation, warranties of merchantability and fitness for a particular purpose. No other warranty is intended or shall be deemed to arise or exist in connection with the Services, Goods and/or this



Agreement.

4. Delivery: Verus will use commercially reasonable efforts to meet delivery dates noted in the Proposal. Delivery dates are conditional upon prompt delivery by Client to Verus of all information reasonably required or requested by Verus for purposes of an efficient performance of Verus's Services and/or delivery of the Goods.

5. Acceptance of Goods: Client's Acceptance of Goods occurs upon the earlier of: (i) date of completion of site acceptance testing or, if the Proposal does not include site acceptance testing or Client declines site acceptance testing, date of first use or operation by Client; (ii) the date which is 3 months from the date Verus notifies Client of readiness of Goods for delivery; or (iii) written approval or acceptance by Client or its agent.

6. Factory Acceptance Test: Unless expressly otherwise stated in the Proposal or mutually agreed in writing, a Factory Acceptance Test (FAT) will be conducted at Verus's facilities prior to shipment. Client's representatives may witness tests. Unless explicitly stated in the Proposal, Verus's standard test procedure will be the basis of the test.

7. Title; Risk of Loss: Verus warrants title to all Services and Goods hereunder and that their transfer is rightful and free from any security interest of third parties, other lien, or encumbrance. Except as otherwise expressly agreed in writing by Verus, title to the Services and Goods shall pass to the Client upon receipt by Verus of full payment under Article 1 hereof. Client shall be responsible for all reasonable insurance, including transit, storage and shipping insurance, for the Goods. Risk of loss shall pass to the Client upon delivery by Verus to Client of notification of readiness of Goods for delivery.

8. Non-Applicability of U.N. Convention: This Agreement shall not be subject to the U.N. Convention on Contracts for the International Sale of Goods.

9. On-Site Services: In the event the Services include any on-site activity by Verus including, but not limited to, inspection, technical representation, installation, start-up, or other services by Verus, the Client shall:

- i. provide reasonable security and protection for all persons, property, and equipment employed or used by Verus in the performance of the Services;
- ii. make available to Verus free of charge the use of any required utilities; including electrical power, transport and water;
- iii. assist Verus in obtaining access to the job site, roads, pumping stations, electrical services, power lines, pipelines, and the like necessary in the performance of the Services; and
- iv. assist Verus in obtaining any necessary permits, licenses, or authorizations if required to be obtained by Verus under this Agreement.

In the event Verus's agents, subcontractors, employees, or other representatives are to perform Services or attend outside the United States, Client shall provide assistance to facilitate their entry, movement within, or exit from any country where performance is rendered; including assisting Verus in obtaining necessary work permits.

10. Client's Obligations:

10.1 Client shall give timely consideration to enquiries and drawings, specifications and other documents from Verus, and inform Verus promptly in writing of Client's decisions, to facilitate progress of the Services and/or supply of Goods.

10.2 Client will make available to Verus all relevant information reasonably required or requested by Verus to plan or carry out the Services and/or supply the Goods in accordance with the Proposal. Verus shall be entitled to rely upon the accuracy and completeness of such information furnished by Client or Client's agents, contractors, suppliers and other consultants.

11. Hazardous Materials: Client agrees to fully disclose in writing to Verus (and hereby warrants it has or will so disclose) the nature, identity and quality of all surface and subsurface hazardous or toxic substances that may be encountered at, under or near Client's Project site or in connection with the Project. As reasonably necessary or required by law, Client shall arrange for the timely handling, transportation, storage and disposal of all samples of soil and materials taken from, and all hazardous materials and toxic substances encountered at, under or near the Project site or in connection with the Project.

12. Opinions on Capital Costs: Consultant's estimates of capital costs or project schedules will be professional opinions, based on Professional Standards. However, actual costs and schedules are dependent upon factors over which Verus has no control (including the cost and availability of labour and materials and other market conditions) and, therefore, Verus cannot and does not guarantee or warrant that actual capital costs, project schedules, contractors or suppliers' bids, etc., will not vary from Consultant's opinions.

13. Liability Limitations: Consultant's total and aggregate legal liability to Client for any and all complaints, claims, losses, causes of action (including, but not limited to, negligence, professional errors or omissions, strict liability and breach of contract or express or implied warranty), costs or damages ["Claims"] whatsoever arising out of or in any way related to the Services, the Goods, the Project



or this Agreement shall be limited to the following:

- a) the re-performance of Services by Verus to rectify any Defective Services in accordance with Article 3.1 hereof, at Verus's cost, up to, and not exceeding, the amount equal to the total sum paid to and received by Verus from Client for the Services under this Agreement; and
- b) the repair or replacement by Verus of any Defective Goods in accordance with Article 3.2 hereof, at Verus's cost, up to, and not exceeding, the amount equal to the total sum paid to and received by Verus from Client for Goods under this Agreement; and
- c) in respect of all other Claims, the amount equal to 10% of the total sum paid to and received by the Verus from Client under this Agreement.

14. Consequential Damages: *Neither Party shall be liable to the other Party under any cause of action (including, but not limited to, those listed in Article 13 above) for: (i) damages in connection with loss of revenue or of profits, business interruption, loss of use of property, loss of business opportunity, increased operating costs or increased financing costs; (ii) any type or amount of indirect, special or consequential damages howsoever characterized or calculated; or (iii) punitive or exemplary damages.*

15. Claims: Neither Party shall commence any legal proceedings nor initiate or pursue any Claims for legal damages against the other regarding the Services and/or Goods after 12 months from the date of Verus's final invoice hereunder.

16. Applicable Law: This Agreement and the obligations of the Parties hereunder shall be interpreted, construed and enforced in accordance with the substantive laws (excluding choice of law rules) of the jurisdiction from which Verus has issued the Proposal. All legal proceedings, suits and actions shall be heard exclusively (except for appeals duly taken) in the Courts of that jurisdiction.

17. Severability and Survival: If any provision (or part thereof) of these terms and conditions is held at law to be void or unenforceable, then: (i) that provision, or part thereof, shall be deemed to be stricken; (ii) the remainder of this Agreement shall continue to be valid and binding; and (iii) this Agreement shall thereupon be reformed with the Court's assistance, in order to replace such stricken provision or part thereof with a provision which is valid and enforceable at law and as similar as possible in its language and effect to fulfil the Parties' intention in respect of the stricken provision. Also, all limitation of liability provisions of this Agreement shall survive completion of the Services and/or the supply of Goods and the termination or expiration of this Agreement.

18. Amendment: No amendment to this Agreement shall be valid unless agreed in writing by the Parties.

19. Assignment: Neither Party may assign this Agreement without the prior consent in writing of the other, provided that Verus shall be entitled to subcontract the Services and/or supply of Goods or a portion thereof to its corporate affiliates or subsidiaries without the consent of Client.

20. Force Majeure: Neither Party shall be in default of the performance of its obligations hereunder if such performance is prevented or delayed because of force majeure, being Acts of God, effect of law, Court Order, regulation or demand or failure to act of any governmental authority, revolution, riot, civil commotion, native or environmental or other special interest or political pressure groups, malicious acts, theft, labor disputes, tornado, fire, explosion, floods, earthquake, contagious disease, risk of exposure to pollutant(s) or any other occurrence similar to the foregoing which was reasonably unforeseeable to and beyond the control of the Party declaring force majeure.

21. Confidentiality: Verus and Client shall treat as strictly confidential all information, concepts, ideas, business data, models, technical processes and data (in any and all forms and media) ["**Confidential Data**"] which either Party obtains from the other for purposes connected with this Agreement and shall use such Confidential Data solely for the purposes as intended by the disclosing Party, and for no other purpose, or project or benefit. No disclosure or contribution by a Party of Confidential Data to the other hereunder is intended or shall be deemed to pass proprietary rights or to grant licence or other rights to the receiving Party, except as expressly agreed in a separate license instrument/contract (Confidential Data shall not include technical information which is in the public domain or was already in the receiving Party's possession and not acquired directly or primarily from the other Party).

22. Intellectual Property: The Services and the Goods are, wholly or in part, based upon and incorporate particular Verus know-how, pre-existing intellectual property and business secrets of Verus ["**Pre-Existing Know-How**"]. The Services and related documents, information, methodology, systems, models, processes, CAD files, concepts, products and designs originated by Verus ["**Materials**"] incorporate Pre-Existing Know-How and/or particular business assets and technical expertise of Verus, and so are instruments of Verus's professional services; they are not "goods" or "products" or "works for hire". No ownership transfer or alienation from Verus of Pre-Existing Know-How is intended, or shall be deemed to occur, under this Agreement; however, Verus shall grant to Client a non-exclusive, non-transferable and royalty-free license to use the Pre-existing Know-How that is specifically furnished to Client hereunder, for the life and purpose of the Project. Client shall not create derivative works from, reverse engineer, disassemble, decompile, or otherwise derive the source code of (i) Pre-Existing IP, and/or (ii) any other software provided or delivered by Verus hereunder.



23. Use of Services and Materials: The Services, Goods and Materials are intended only for the Project, and not for modification or use for any other purpose or project, or by any other party. Any such modification or use without Verus's prior written validation and consent shall be at Client's sole risk and Client shall indemnify and hold harmless Verus for and against all claims, damages, losses and liabilities whatsoever (including lawyers' fees and related expenses) arising or resulting therefrom. Unless stated otherwise in the Agreement, the Materials shall be provided to Client in "pdf" format. However, if the Services require the delivery of Materials to Client in "native" or CAD format, Verus's hard or original record copy shall be the control or governing record of such Materials.

24. Termination:

- a) **Termination for Extended Delay:** If by reason of any matter referred to in Article 20, performance of this Agreement by either or both Parties is delayed or prevented by force majeure or the other Party's acts for an aggregate of sixty (60) calendar days (whether or not consecutive) in any six month period, either Party shall have the right to terminate the Agreement by giving the other Party thirty (30) calendar days' notice in writing of its intention to do so.
- b) **Termination for Default:** If either Party breaches any provision (other than Article 1) of this Agreement, the other Party shall serve timely written notice upon the defaulting Party specifying with reasonable detail, and requesting remedy of, such breach and, if the defaulting Party shall fail or neglect to commence in good faith a remedy of such breach within three (3) business days after receipt of such notice and to continue appropriate measures to cure such breach within a reasonable time thereafter, the other Party may, subject to Article 17 hereof, terminate this Agreement.
- c) **Termination for Insolvency or Dissolution:** Either Party shall have the right by written notice to the other to terminate this Agreement immediately if the other Party becomes insolvent, ceases to carry on its ordinary course of business, or under applicable insolvency or bankruptcy law, have a receiver or receiver-manager appointed for it, make an assignment or proposal or have a petition filed or other proceeding threatened or commenced against it, or for its winding up, liquidation or dissolution (whether voluntary or involuntary).
- d) **Termination Costs:** If this Agreement is terminated, Client shall pay Verus: (i) all amounts payable hereunder for Services performed and Goods supplied to the date of termination; (ii) costs of terminating subconsultant and/or supplier contracts; and (iii) reasonable expenses and costs incurred to wind down the Services and disband Verus's work force.

25. Dispute Resolution Procedure: In event of a dispute concerning this Agreement, the Parties shall in good faith attempt a negotiated resolution, by reference of the dispute matter to their respective senior management for a period of 30 days. Subject to mutual written agreement, the Parties may thereafter refer the dispute for resolution, by non-binding mediation.

26. No Solicitation of Employees: In consideration of the Services and/or Goods provided pursuant to this Agreement, Client agrees that for a period of one (1) year from the date of this Agreement, it shall not solicit or induce, directly or indirectly, any employee or contractor of Verus who has had contact the Services or Goods relevant to this Agreement, to terminate his or her employment or consulting relationship with Verus.

27. Entire Agreement: This Agreement constitutes the sole and entire agreement between Client and Verus, and supersedes and revokes any and all prior and contemporaneous representations, assurances and agreements (whether oral, written or by conduct) between them, relating to the Project; no other terms, conditions or warranties, whether express or implied, form a part of this Agreement.