



GENERAL CONDITIONS

1.0 For the purpose of this Agreement, ENPRO Environmental Pis here and after referred to as ENPRO.

2.0 **APPLICABILITY**

Client's acceptance of the services which are the subject of this Agreement shall constitute Client's acceptance of the General Conditions set forth herein notwithstanding any contradictory terms and conditions which may appear on Client's forms.

3.0 **RESPONSIBILITIES OF THE CLIENT**

The Client, without cost to ENPRO shall:

3.1 Provide all available information pertinent to this Project.

3.2 Provide access and make all provisions for ENPRO to enter upon public and private domains as required to complete the Project.

3.3 Designate in writing a person to act as Client's representative with respect to this work.

3.4 Furnish all Client documentation.

4.0 **SERVICES EXCLUDED**

Services not expressly set forth in writing in this Agreement are excluded from the scope of ENPRO services, and ENPRO assumes no duty to the Client to perform such services.

5.0 **INDEPENDENT PARTY**

ENPRO is an independent contracting party and not an agent of the Client. No aspect of this Agreement, nor any activities undertaken in relation to this Agreement, are intended to establish any relationship of agency, partnership, or joint venture between ENPRO and Client.

6.0 **DISCLAIMER OF WARRANTIES**

6.1 Except as otherwise expressly set forth in this agreement, no warranty or guaranty expressed or implied, is made with respect to the goods and/or services furnished hereunder and all implied warranties are hereby disclaimed, including the implied warranties of merchantability and fitness for a particular purpose.

6.2 Without limiting the generality of the foregoing, ENPRO makes no representation or guarantee that the project site is free from environmental contamination.

7.0 **LIMITATION OF LIABILITY**

In no event shall ENPRO be liable for incidental, special, consequential or punitive damages (including without limitation commercial loss or lost profits), whether arising under contract, tort or any other legal theory or cause of action, even if client has been advised of the possibility of such damages, ENPRO's liability hereunder for any and all claims or actions regardless of how arising shall be limited to the extent of insurance coverage maintained by ENPRO or the total compensation received by ENPRO from the client pursuant to this agreement, whichever is less, and client hereby releases ENPRO from any liability above such amount. No action shall be brought against ENPRO arising out of or in connection with this agreement more than one (1) year after the occurrence of the first event giving rise thereto, except where a shorter limitation period is provided by applicable law.

8.0 **INDEMNIFICATION**

8.1 Client and ENPRO recognize and agree that ENPRO bears no responsibility whatsoever for the creation, existence, presence, transportation, handling, disposal, storage and/or other operations or activities in relation to toxic, hazardous

radioactive, infectious or other dangerous gas, vapor, smoke, fumes, soot, acid alkali, chemical, metal and/or biological fluid, liquid or solid irritant, contaminant, pollution, waste and/or other substance material or condition in relation to the work whether at the site or otherwise, all of which shall be the sole and exclusive responsibility of the Client, and further that ENPRO's compensation is in no way commensurate with the risks of personal or bodily injury, death and/or property damage or harm to the environment associated with such activities and/or substances.

8.2 Client agrees to indemnify, save harmless and defend ENPRO from and against any and all liabilities, demands, claims, penalties, damages, forfeitures, suits, and the cost and expenses incident thereto including costs of defense, settlement and reasonable attorney's fees which it may hereafter incur, become responsible for or pay out as a result of death or bodily injuries or threat thereof to any person, destruction or damage to any property, contamination of or adverse effects on the environment or any violation of state or federal laws including without limitation those that now exists or may hereafter be promulgated based on or arising in whole or in part out of ENPRO's performance under this Agreement (the "Claims"), provided however, that the Client shall not be obligated to indemnify ENPRO for any Claim that results solely from the gross negligence or willful misconduct of ENPRO or its employees or agents. The Client's obligations under this Section shall survive the termination of this Agreement.

9.0 **PERIOD OF SERVICES**

9.1 In the event that ENPRO or any of its subcontractors is delayed at any time in performing the tasks set forth herein by any act or neglect of the Client or any representative, contractor, employee or agent of the Client, or by labor disputes, fire and other casualty, unusual delay in transportation, inclement weather, act of war or governmental preemption, or any delay in the review of specific tasks set forth herein or any delay in approval by any government, federal, state or municipal agency, or any cause beyond ENPRO's control, or by delay authorized by the Client pending resolution of a dispute, or any significant modification or changes in the extent of the work to be performed by ENPRO, then the time for performance of the Project shall be extended by the same number of days as such occurrence delays such completion. ENPRO shall not be responsible for and the Client shall hold ENPRO harmless from any expenses or other consequences resulting from any such occurrences or delays.

9.2 If the Client or others require significant modifications or changes to the scope of the Project or ENPRO's services or if the Client or ENPRO's performance, the time of performance of ENPRO's services and its compensation shall be adjusted appropriately.

10.0 **CHANGES**

10.1 Unless the Proposal/Agreement provides otherwise, the proposed fees constitute ENPRO's estimate of the effort and charges required to complete the Project as ENPRO understands it to be defined. As the Project progresses, the facts developed may dictate a change in direction, additional effort or suspension in effort which may alter scope. ENPRO will use reasonable efforts to inform the client of such situations when in ENPRO's judgment negotiation of change in scope and adjustment to the time and cost of performance is appropriate.

10.2 In the event ENPRO performs additional work, including but not limited to work due to change in codes or regulations issued by any regulatory agency after execution of this Agreement or performs other services not included herein, additional compensation shall be paid to ENPRO. In the



event that changes are not specified in writing, and ENPRO nevertheless performs the changes based upon Client's verbal instructions, then ENPRO shall nonetheless be entitled to an equitable adjustment in price and time of completion.

11.0 SUSPENSION; INTEREST

11.1 Failure by Client to make timely payments of ENPRO's invoice shall entitle ENPRO to suspend performance of services under this Agreement. Unless payment in full is received by ENPRO within seven (7) days of the date notice of the suspension is mailed to the Client by ENPRO, the suspension shall take effect without further notice. ENPRO shall not be liable for any damages or delays caused by such suspension.

11.2 All invoices not paid when due shall bear interest at the rate of one percent (1%) per month until paid.

12.0 TERMINATION

ENPRO may terminate this Agreement in whole or in part at its election upon seven (7) days written notice to the Client upon one or more of the following events: (1) invoices for services remain unpaid for over thirty (30) days, (2) any failure by the Client to perform its obligations under this Agreement, or (3) an "unexpected contingency" occurs which shall include (a) strikes, lockouts, riots, unavoidable accidents, acts of God or of public enemy, or unavailability of transportation; (b) any lawful order issued by a United States governmental authority; or (c) any other cause beyond ENPRO's reasonable control which adversely affects ENPRO's ability to carry out its obligation herein.

Upon termination of this Agreement by ENPRO under this section, ENPRO shall be compensated for its services performed prior to the date of such termination and for other expenses reasonably or necessarily incurred in connection with such termination.

13.0 CONFIDENTIALITY

Client acknowledges that the technical and pricing information contained in this Agreement is considered confidential and proprietary to ENPRO and client will not disclose or otherwise make such information available to third parties without the express written consent of ENPRO.

14.0 OWNERSHIP AND REUSE OF DOCUMENTS

All documents, including original drawings, estimates, specifications, field notes and other data prepared by ENPRO pursuant to this Agreement are and remain the property of ENPRO as instruments of services in respect to the Project. They are not intended or represented to be suitable for reuse by the Client or others on extensions of the Project or on any other project. Any reuse without written verification or adaptation by ENPRO for the specific purpose intended will be at Client's sole risk and without liability or legal exposure to ENPRO; and the Client shall indemnify and hold harmless ENPRO from all claims, damages, losses and expenses including attorney's fees arising out of or resulting therefrom. Any such verification or adaptation will entitle ENPRO to further compensation at rates to be agreed upon by Client and ENPRO.

15.0 ASSIGNMENT

The obligations of this Agreement shall be binding upon the successors, assigns, executors, administrators, and the legal representatives of both ENPRO and the Client. Neither Client nor ENPRO shall assign or transfer any rights or obligations under, or interest in this Agreement, without the written consent of the other, except that ENPRO may assign this Agreement to its subsidiaries and affiliates.

16.0 THIRD PARTY BENEFICIARIES

Nothing contained in this Agreement shall be construed to create any rights or benefits in this Agreement to any one other than Client and ENPRO without the specific advance written consent and approval of both. Nothing in this Agreement is intended to, nor shall this Agreement create a contractual relationship with or a cause of action in favor of any third person or entity against Client or ENPRO.

17.0 INTEGRATION; AMENDMENTS; MODIFICATIONS

This Agreement represents the entire and integrated agreement between the Client and ENPRO and supersedes all prior negotiations, representations or agreements, either written or oral.

18.0 NOTICE

Notices from either party to the other shall be in writing and deemed given upon delivery by hand or upon receipt by certified mail, return receipt requested.

19.0 LAWS

This Agreement, and all rights and obligations of the parties thereunder, and any disputes thereunder, shall be construed and governed by the laws of the State of Hawaii.

20.0 ORDER OF PRECEDENCE AND PARTIAL INVALIDITY

To the extent they are inconsistent or contradictory, express terms of this Agreement and attachments thereto take precedence over these General Conditions. To the extent that any provision herein is held invalid, then that provision shall be deemed to be deleted and the remaining provisions shall remain in full force and effect.

21.0 ARBITRATION

The parties hereto shall submit to binding arbitration by a single arbitrator any disputed question or controversy arising under this Agreement. Any such arbitration shall be conducted in Honolulu, Hawaii. The arbitrator shall be appointed promptly upon written application of the initiating party, and shall be selected in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") or Dispute Prevention and Resolution, Inc. ("DPR"). The arbitrator appointed hereunder shall conduct the arbitration pursuant to the Commercial Arbitration Rules of the AAA or DPR then in effect, except as such rules may be modified for the purpose of the arbitration proceeding by mutual written agreement of the parties to this Agreement. The award of the arbitrator shall be final and binding upon the parties hereto and judgment thereon may be entered in any court having jurisdiction, pursuant to Chapter 658 of the Hawaii Revised Statutes. The arbitrator shall award reasonable attorneys' fees and costs to the prevailing party. Except as set forth above concerning awards to the prevailing party, each party shall bear its own expenses in connection with preparation for the presentation of its case at the arbitration proceedings.

22.0 WAIVER

The failure of any party to enforce at any time any provisions of this Agreement shall not constitute a waiver of the right thereafter to enforce the same or any other provision hereof.