

These conditions of engagement together with any accompanying document(s) and/or any correspondence incorporating these conditions comprise the entire agreement ("Agreement") between the Client and the Consultant with respect to the Consultant's Services and supersede all prior agreements, proposals, oral and written representations and negotiations. If there is any inconsistency between these conditions and any accompanying document, these conditions shall take precedence.

### 1. Performance of the Services

The Consultant shall perform the services described in the accompanying Fee Proposal ("**the Services**") with due care, skill and diligence and in accordance with the standard of performance considered acceptable by the consulting engineering profession in Australia.

### 2. Client's Responsibility

The Client shall provide to the Consultant:

- a) adequate briefing, instructions and all relevant documents, samples, patterns and other information concerning the Client's requirements sufficient to enable the Consultant to carry out the Services.
- b) such access to premises or sites of the Client as is reasonably necessary for the Consultant to carry out the Services.
- c) notice of any matter which may change the scope or timing of the Services or the project immediately upon becoming aware of such events.

The Consultant shall not be liable for any damage or consequential costs caused by incomplete or inaccurate information supplied by the Client or its agents.

### 3. Fee / Credit Checks

- a) The Client agrees to pay the Consultant the remuneration described in the Fee Proposal for performing the Services ("**the Fee**").
- b) The Client acknowledges that the Consultant may issue its invoices immediately following the conclusion of the agreed consultancy and the Client agrees to pay the Consultant within 30 days of date of any invoice.
- c) Should the client default in the payment of any monies due under this agreement then all monies due to the Consultant shall immediately become due and payment shall be made by the client within seven (7) days of the date of demand.
- d) The Consultant shall be entitled to charge interest on overdue accounts. Interest will be calculated on daily balances from the date upon which payment became due until the date of payment of the account at the same rate as the maximum overdraft rate fixed by the Consultant's bankers plus 4% without relieving the Client of his obligation to pay the account.
- e) Any expenses, costs or disbursements incurred by the Consultant in recovering any outstanding monies from the customer, including debt collection agency fees and/or solicitors costs, shall be paid by the Client.
- f) The Consultant may at any time or from time to time without assigning any reason refuse to extend any further credit to the Client. The granting of a credit trading account does not require the Consultant to extend to the Client any particular amount of credit.
- g) The fee submission provided is valid for the period of the works provided works are commenced within 3 months of acceptance. The Consultant reserves the right to review its position in relation to fees should works not commence within this period.
- h) The Client authorises the Consultant to carry out credit checks and to obtain credit reports in respect of the Client's creditworthiness.
- i) The Client warrants that the trading entity information in the fee proposal is correct for the purposes of obtaining a credit trading account with the Consultant.

### 4. Variations to the Services

- a) The parties may vary, add or delete parts of the work comprising the Services.

- b) The Client may give a direction to vary, add or delete part of the work ("**the directions**") orally but the Client shall, as soon as practical, confirm such variation in writing.
- c) The Consultant shall not be bound to comply with the direction until the Client confirms it in writing.
- d) The fee payable by the Client for the variation shall be determined by the Consultant's hourly rates in force at the time plus any expenses, except where it is agreed between the parties that the fee or fee and expenses are to be determined as a lump sum, or as a percentage of construction costs or as otherwise agreed.
- e) Variations which Change the Scope of the Services:

The Consultant shall not be obliged to comply with a direction which would change the general scope of the Services if within 7 days of receipt of the direction the Consultant gives a written notice to the Client in accordance with this subclause.

If the Client directs a variation to the Services which the Consultant considers changes the general scope of the Services, the Consultant shall

so advise the Client in writing within 7 days, stating whether the Consultant agrees to comply with the direction and, if so, a fee proposal for carrying out the direction. If the Client accepts the Consultant's proposal, the Consultant shall effect the variation in accordance with that proposal.

If the Client either does not agree within 7 days of receipt of the Consultant's notice given under this subclause that the direction changes the general scope of the Services or does not accept the Consultant's proposal, then the dispute resolution provisions of the Agreement will apply.

### 5. GST

All fees and charges presented for services are excluding GST unless otherwise specified in the fee proposal. GST will be an additional 10%.

### 6. Delays, extensions of time and associated costs

If the Consultant is or will be delayed in carrying out the Services by a cause beyond the reasonable control of the Consultant or by an act or omission of the Client or an employee, or other consultant, contractor or agent of the Client, then the time for carrying out the Services shall be extended by the extent of the delay and the Client shall pay to the Consultant such extra costs as are necessarily incurred by the Consultant by reason of the delay.

Nothing in this clause shall (a) oblige the Client to pay extra costs for delay or disruption which have already been included in the value of a variation or any other payment under the Agreement, or (b) limit the Client's liability for damages for breach of the Agreement.

### 7. Outgoings

- a) Where costs associated with travel are to be recovered, they will be charged at cost plus 10%, except in the case of motor vehicle costs, which will be charged on a kilometre basis at the recommended Australia Taxation Office rate.
- b) Where other disbursement costs are to be recovered such as plan printing, courier fees, tender documents, they will be charged as cost plus 10% unless otherwise agreed.

### 8. Specialist Assistance

- a) If the Consultant considers it appropriate to do so, it may with the Client's prior approval, which shall not be unreasonably withheld, engage another consultant to assist in specialist areas.
- b) Unless otherwise specified the costs associated with engaging another consultant will be treated as outgoings and they will be charged at cost plus 10%.
- c) The Client agrees to indemnify and keep the Consultant indemnified in respect of any fees, costs, expense and any claim (including all reasonable legal costs and expenses) whatsoever in relation to work performed by the other consultant.
- d) By appointing a consultant, the Consultant does not assume a duty of care and gives no warranty, guarantee or representation about the professional ability or reliability of the other consultant.

## Limitation of Liability – third party consultants and contractors

- a) The Client acknowledges and accepts that, to the extent permitted by law, the Consultant, its officers and agents shall not be liable to the Client whatsoever, whether in contract or tort (including, but not limited to, negligence), breach of statute or any other legal or equitable obligation in relation to any loss or damage or personal injury arising from any act or omission of any sub-consultant, contractor, workman, supplier, or fabricator or other third party involved in the project.
- b) The Client agrees to indemnify and keep the Consultant indemnified against liability for all loss or damage arising from the events set out in subclause (a) above.

## 10. Limitation of Liability – the Services

To the extent permitted by law:

- a) any liability of the Consultant for loss or damage, howsoever caused or arising (including, but not limited to, by the negligence of the Consultant) in connection with this Agreement:
  - i) shall be limited to the sum of \$1,000,000.00 (one million dollars) which shall be the maximum limit in respect of all claims;
  - ii) shall be reduced proportionally to the extent that any act or omission of the Client or its employees or agents may have caused or contributed to the loss, damage or liability;
- b) the Consultant is not liable for any indirect or consequential loss or damage, or loss of revenue or profits, howsoever caused or arising (including, but not limited to, by negligence of the Consultant) that may be suffered by the Client in connection with the Agreement;
- c) after the expiration of one (1) year from the date of invoice in respect of the final amount claimed by the Consultant, the Consultant shall be discharged from all liability in respect of the Services whether under the law of contract, tort or otherwise. The Client shall not be entitled to commence any action or claim whatsoever against the Consultant (or any employee, agent or sub-consultant of the Consultant) in respect of the Services after the expiration of that time.

## 11. Copyright

- a) Copyright in all drawings, reports, specifications, calculations and other documents (“**intellectual property**”) provided by the Consultant belongs to the Consultant at all times.
- b) Unless otherwise agreed between the parties, and subject to payment of the Consultant's fees and charges under this Agreement, the Client alone shall have a licence to use the Intellectual Property referred to for the purpose of completing the project, but the Client shall not use, or make copies of, such Intellectual Property in connection with any work not included in the project.
- c) If the Client uses or directly or indirectly causes the Intellectual Property to be used, the Consultant may revoke the licence referred to. The client must immediately return to the Consultant all Intellectual Property referred to (including any copies thereof) and the Client may be the subject of further action to recover monies owing and copyright damages.

## 12. Warranty and Indemnity by Client

If the Client provides the Consultant with documents, samples, patterns, plans and other information (“the material”), the Client shall indemnify and keep indemnified the Consultant, its officers, employees and agents against all harm, loss and damage arising from the Client's infringement of any third party's intellectual property right in the material.

## 13. Termination / Suspension

- a) The Agreement may be terminated or suspended at any time by mutual agreement or by the Client giving 14 days prior

written notice to the Consultant. If the Agreement is terminated or suspended, the Client shall pay the Consultant a fair and reasonable fee for the services carried out up to and including the date of termination/suspension calculated at the hourly rate set out in the Schedule together with payment of any costs and expenses reasonably incurred by the Consultant to that date, plus demobilisation costs where applicable. In the case of suspension of services and upon mutual agreement and tendering of new service fees, the Client shall give the Consultant reasonable notice to recommence carrying out those services so suspended.

- b) The Consultant may terminate the Agreement by notice in writing to the Client if the Client fails to pay the Consultant's invoices when due, or if the Client fails to remedy any other breach of the Agreement within the time specified in a written notice to remedy.

## 14. Disputes

- a) If there is any dispute with the Services or the Consultant's invoices, the Client must notify the Consultant in writing, adequately identifying and providing details of the dispute within 14 days of the dispute coming to the Client's attention or of the invoice being issued.
- b) The Client and the Consultant agree to use their best endeavours to negotiate a settlement of all disputes in good faith. The Client agrees to submit the dispute to mediation if requested by the Consultant, provided that this provision shall not prevent the Consultant from instituting legal action at any time to recover monies owing by the client to the Consultant.

## 15. Governing Law and Jurisdiction

This Agreement shall be construed and governed in accordance with the laws of the State or Territory in Australia in which the Consultant has its principal place of business, and the parties hereto submit to the non-exclusive jurisdiction of the courts of that State or Territory.

## 16. Disclaimer - Estimates of construction costs

**Where estimate of construction costs are given:** Where the Consultant expressed an opinion of the estimated costs of the project, that estimate was based on Consultant's experience as consulting engineer and not as quantity surveyors. The Client acknowledges and accepts that the estimate is merely a guideline. The Consultant does not accept any liability for these estimates.

## 17. Commencement of Agreement

This Agreement shall be deemed effective on and from the date of commencement of the services by the Consultant or the date of execution of the Agreement, whichever is earlier.

## 18. Assignment

Neither party may assign, transfer or sublet any right or obligation under this agreement without the written consent of the other. Unless stated in writing to the contrary, no assignment, transfer or subletting shall release the assignor from any obligation under this agreement.

## 19. Amendment and waiver

Except as provided at law or in equity or elsewhere in the Agreement, none of the terms of the Agreement shall be amended, waived, discharged or released unless expressly agreed in writing by the parties.

## 20. Severance

If any provision or part of this Agreement is found to be illegal, unenforceable or invalid, then that part or provision will be severed from this document so that all parts that are not, or do not become, void, unenforceable or invalid remain in full force and effect and are unaffected by that severance.