

## 1 DEFINITIONS

**Agreement** means the agreement between the Company and the Client for the provision of services and which incorporate these Terms and Conditions, the Proposal, Purchase Order and any other document annexed to or incorporated in by reference to the Agreement.

**Business Day** means a day which is not a Saturday, Sunday or public holiday in Brisbane, Queensland.

**Claim** includes, in relation to a person, a demand, claim, action, dispute or proceeding made or brought by or against the person, however arising and whether present, unascertained, immediate, future or contingent.

**Client** means the party contracting the Services and its permitted successors, assigns, agents, employees and at the option of the Company and includes related bodies corporate as defined in the Corporations Act.

**Confidential Information** means

- a. any information which is designated by the Discloser as confidential or which the Recipient knows or ought reasonably to know is intended to be confidential, such as specifications, processes, designs, statements, reports, business plans and strategies, formulae, trade secrets, computer code or data (and copies and extracts made of or from that information and data);
- b. all financial or other business information about the Discloser, including its the past, current and projected performance and business plans;
- c. the names of distributors, customers, suppliers, financiers, clients and contacts of the Discloser; and
- d. all information that is personal information for the purposes of the Privacy Act 1988 (Cth).

**Company** means **Waterline Projects Pty Ltd** and its successors, assigns, agents, employees, related bodies corporate (as defined in the Corporations Act) and subcontractors.

**Confidential Information** means all information, including (without limitation) any Intellectual Property, whether oral, graphic, electronic, written or in any other form, that is not generally available to the public at the time of disclosure other than by reason of a breach of this Agreement or that is in fact, or should reasonably be regarded as, confidential to the party to whom it belongs or relates.

**Corporations Act** means the Corporations Act 2001 (Cth).

**Defect or Defective** means:

- a. any error, deficiency, omission, non-conformity, fault, irregularity or defect in the Services; or
- b. any aspect or attribute of the Services that is not in accordance with the requirements of the Agreement.

**Discloser** means the party providing Confidential Information to the Recipient.

**Fee** means the fees payable for the Services as set out in the Proposal.

**GST** has the same meaning given to that term in the GST Act.

**GST Act** means A New Tax System (Goods and Services Tax) Act 1999 (Cth) as amended from time to time.

**Intellectual Property** means all present and future intellectual and industrial property whether conferred by statute, at common law or in equity and wherever existing, including (without limitation) patents, designs, copyright, rights in circuit layouts, trademarks, know how, brand names, domain names, inventions, product names, trade secrets, any other rights subsisting in the results of intellectual effort in any field and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967, whether registered or not or capable of being registered, and includes any application or right to apply for registration of any of these rights.

**Liability** includes liabilities, duties and obligations of any nature affecting the person concerned, however arising, including penalties, fines and interests, and including those which are prospective or contingent and the amount of which for the time being is not ascertained or ascertainable.

**Loss** means a damage, loss, cost, expense or Liability incurred by the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

**Project** means the project or projects in respect of which the Services are provided under the Agreement or any Purchase Order.

**Proposal** means the document(s) submitted to the Client labelled as Proposal.

**Purchase Order** means the purchase order for Services issued by the Client to the Company from time to time containing amongst other matters, a description of the Services, the Project and the price.

**Recipient** means the party to whom the Confidential Information is disclosed.

**Representative** means in relation to a person, an employee, agent, officer, director, auditor, advisor, researcher, partner, consultant, contractor, sub-contractor, related body corporate, or other related entity (as defined in the Corporations Act) of the person.

**Services** means the consultancy services the Company has been engaged by the Client to provide under the Agreement or any Purchase Order.

**Terms and Conditions** means this terms and conditions document.

The following order of precedence (in descending order) applies to resolve any conflict, ambiguity or discrepancy in the documents forming the Agreement to the extent necessary to resolve the conflict, ambiguity or discrepancy: (1) Terms and Conditions, (2) Proposal, (3) the Purchase Order, (4) any other document annexed to or incorporated in by reference to the Agreement and (5) the Agreement.

## 2 ENGAGEMENT OF COMPANY

- 2.1 The Client accepts these Terms and Conditions upon signing and returning the Proposal to the Company or by its conduct, for example by issuing a Purchase Order or work order to the Company or otherwise instructing the Company to commence or continue performing the Services in respect of the Project.
- 2.2 The Agreement commences from the date that the Client instructs the Company to commence providing the Services. If the Company provided any Services in connection with the Project prior to the date of the Agreement or which is the subject of a later issued Purchase Order, then the terms of the Agreement will also apply retrospectively to any such Services.
- 2.3 Where the Client wishes to procure Services from the Company under the Agreement, it may from time to time and at any time issue to the Supplier a completed Purchase Order.
- 2.4 Provided that the Purchase Order is consistent with the terms of the Agreement, the Company must supply the Services in accordance with the terms and conditions of the Agreement (including the Purchase Order).
- 2.5 If the Company considers that a Purchase Order issued pursuant to clause 2.4 is not consistent with the terms of the Agreement, the Company must provide, no later than two Business Days after receipt of the Purchase Order, written notice to the Client with such notice to include details of the aspects of the Purchase Order that the Company considers are not consistent with the Agreement.
- 2.6 If the Company does not provide written notice in accordance with clause 2.4 by the time specified above, the Purchase Order is deemed to have been accepted by the Company.
- 2.7 Upon acceptance or deemed acceptance of a Purchase Order, a separate agreement between the Client and the Company for the supply of Services is formed for each Purchase Order.
- 2.8 Company will use all reasonable endeavours to provide the Services during the times and by the dates specified in the Purchase Order.
- 2.9 The Agreement will continue until the Services have been completed and all amounts due and owing under the Agreement to the Company have been paid unless the Agreement is terminated earlier in accordance with clause 14 (Termination / Suspension).

## 3 PERFORMANCE OF THE SERVICES

- 3.1 The Company will perform the Services with the standard of skill and diligence as is generally considered acceptable and followed or approved by the consulting engineering profession in Australia in accordance with the Terms and Conditions of this document.

## 4 CLIENT RESPONSIBILITIES

- 4.1 The Client must provide the Company and its Representatives with:
  - a. timely instructions and all relevant documents, samples, patterns and other information concerning the Client's requirements as are necessary to enable the Company to carry out the Services; and
  - b. notice of any matter which may change the scope or timing of the Services or the Project immediately upon becoming aware of such matter.
- 4.2 Where the Company and its Representatives are required to perform the Services at a site, the Client must:
  - a. provide the Company and its Representatives with access to the site, equipment and other facilities and services as are reasonably required to perform the Services;
  - b. notify the Company and its Representatives of any site-specific requirements in advance; and
  - c. ensure that the site is safe and secure for the Company and its Representatives.

## 5 FEES AND PAYMENT

- 5.1 The Fees and disbursements payable by the Client to the Company for the performance of the Services are described in the Proposal. Unless the Proposal expressly states it is a fixed fee, the amounts described in the Proposal are estimates only and will be charged at an hourly rate based on the time spent providing the Services. The Fee is payable by the Client progressively in accordance with the remaining provisions of this clause 5.
- 5.2 Unless otherwise specified in the Proposal, all Fees and disbursements presented by the Company in respect of the Services are exclusive of GST and therefore amounts payable by the Client to the Company will be increased by the prevailing rate of GST.
- 5.3 Disbursements incurred by the Company in providing the Services will be charged in addition to the Fee, unless the Proposal expressly provides otherwise.
- 5.4 The Company will issue its invoices monthly and the Client agrees to pay the Company within 14 days of receipt of invoice unless otherwise agreed. Invoices will include amounts due for Services provided up to a specific date and amounts for any disbursements incurred by Company during the period covered by that invoice. Each invoice is a final invoice for the services referred to in that invoice.

5.5 The Company may charge interest on any amounts not paid when due calculated on daily balances from the date upon which payment became due until the date of payment of the account at the rate equivalent to the maximum overdraft rate fixed by the ANZ Banking Corporation, plus 2.5%. Such interest must be paid by the Client on demand by the Company. Notwithstanding interest being charged, the Client will not be relieved of its obligation to pay the overdue amount.

5.6 The Client must pay on demand all costs and expenses of the Company in collecting any outstanding amounts payable to it under the Agreement, including legal fees on a solicitor client indemnity basis and expenses.

5.7 Should the Client fail to pay the Company within the agreed payment terms, the Company may at its sole discretion and without limiting any other right of the Company, suspend Client access to the Waterline solution until the outstanding payment has been received.

## 6 ADDITIONAL SERVICES (VARIATIONS)

6.1 The parties may only vary, add or delete parts of the work comprising the Services by agreement in writing.

6.2 If the requested variation affects the scope of the Services, then the fee payable by the Client for such additional services required by the variation will be determined (including any disbursements):

- a. in accordance with the rates specified in the Proposal if those rates are applicable to the nature and scope of the work required;
- b. if a rate is not so specified, at a rate which is reasonably derived from the rates specified in the Proposal; or
- c. if there is no rate from which an applicable rate can be derived, then at those rates (considering the nature and scope of the work required) that would be considered reasonable in the consulting engineering profession in Australia.

## 7 DEFECTS

7.1 If the Client believes that any Services provided under the Agreement are Defective in any way, the Client must promptly (and in any event within five Business Days after becoming aware of the Defects), notify the Company in writing, providing in or with that written notice all necessary information and documentation to substantiate the claim of Defectiveness.

7.2 Upon such notification contemplated by clause 7.1 above and if required by the Company, the Client must allow the Company, its insurer or a Representative of the Company to inspect/review the Defective Services or deliverables.

7.3 If the Company or its insurer verifies all or some of the claimed Defects, the Company's sole Liability and the Client's sole remedy will be, at the Company or its insurer's election:

- a. reperform or make good the Defective Services at the Company or its insurer's own cost; or

- b. to refund the Client any payments made to the Company by the Client in respect of the Defective Services.

7.4 Notwithstanding anything to the contrary in this clause 7, the Company is not liable for any breach of the Agreement or any Defects occurring as a result of:

- a. damage arising from changes, alterations, additions or modifications effected or attempted by a person other than the Company or any Representative of the Company; or
- b. damage arising from the act, error, fault, neglect, misuse or omission of the Client.

7.5 Where the Company has been requested to rectify any Defects and the item that was requested to be rectified is determined in the reasonable opinion of the Company not to be a Defect, then the Company is entitled to charge the Client for the costs and expenses (calculated using the rates set out in the Purchase Order), that arise out of, or in connection with, identifying and attempting to remedy the Defects.

## 8 UNFORESEEN CIRCUMSTANCES

8.1 Where the Services are delayed, or changes are required to be made to the Services as a result of:

- a. unforeseen site conditions;
- b. the acts, omissions or requirements of others outside the control of the Company; or
- c. as a result of any other event or circumstance outside the control or beyond the reasonable anticipation of the Company, then the Company will be entitled to:
  - (i) an appropriate and reasonable adjustment to the Fee to be agreed between the parties;
  - (ii) the reimbursement from the Client of any associated costs incurred by the Company as a result of the delay; and
  - (iii) a reasonable extension of time in which to deliver the Services under the Agreement.
  - (iv) invoice the Client for all outstanding fees and disbursements at the time of delay.

## 9 DISBURSEMENTS

9.1 Except where the Proposal states that disbursements are included in the Fee:

- a. costs associated with travel for all Company personnel are to be reimbursed by the Client at cost plus 15% unless otherwise agreed by the parties in writing.
- b. all other disbursements which have been paid by the Company are to be reimbursed by the Client at cost plus 15% unless otherwise agreed by the parties in writing.

## 10 SPECIALIST ASSISTANCE

10.1 Where the Proposal indicates that specialist consultant services are required to support the Services (or any variation agreed between the parties calls for specialist consultant services), the Company will engage the specialist consultant, in which case the fees of that consultant will be paid by the Client to the Company.

10.2 Whether engaged directly and paid by the Client or directly and paid by the Company, the Company has

no responsibility or Liability for or a duty of care in respect of any advice given or the services provided by any specialist consultant and gives no warranty, guarantee or representation concerning the professional qualifications, skills or experience of any such specialist.

## 11 LIMIT OF LIABILITY

- 11.1 Notwithstanding anything in these Terms and Conditions or the Agreement to the contrary, the maximum aggregate amount recoverable by the Client or their Representatives from the Company in respect of all Losses and Claims under or in connection with the Agreement is an amount equal to the amount paid by the Client to the Company under the terms of the specific Proposal or Purchase Order in which the Loss or Claim arises, in the 12 months preceding the date on which the Loss or Claim arises.
- 11.2 Notwithstanding any other provision of the Agreement, the Company and its Representatives are not Liable in respect of any Claim to the extent that:
- the Loss or damage giving rise to the Claim is recovered by the Client under another Claim or is made good or otherwise compensated for by the Client without cost to the Company;
  - the Loss or damage giving rise to the Claim is consequential loss (including but not limited to any loss of revenue, loss of profit, loss of product or production, loss of opportunity, loss of goodwill, loss of business, loss of use, loss of contracts or the payment of liquidated damages under any other agreement, loss of reputation or adverse publicity);
  - the Claim arises out of anything done or omitted to be done in accordance with the terms of the Agreement or with the prior written approval of the Client;
  - the Claim, Loss or damage would not have arisen but for the enactment of any legislation or any judgment delivered after the date of the Agreement;
  - any amount the subject of a Claim is actually recovered from any third party including but not limited to under an insurance policy in favour of the Client; or
  - the completeness or any contamination of electronically transmitted data from the Company to the Client and to others involved in the Project.
- 11.3 If any part of this clause 11 is void or illegal for any reason or the Client is a consumer for the purposes of the Australian Consumer Law contained in Schedule 2 of the Competition and Consumer Act 2010 (Cth), then to the extent that the law permits the Company to limit its Liability, the Company's Liability for breach of a condition, warranty or guarantee will be limited to:
- supplying the relevant Services again; or
  - payment of the cost of having the relevant Services supplied again.
- 11.4 This clause 11 survives the termination or expiry of the Agreement.

## 12 INTELLECTUAL PROPERTY

- 12.1 Unless otherwise agreed, each party retains ownership of all Intellectual Property rights in material owned or created by that party independently of the Agreement. None of that Intellectual Property is assigned or transferred by way of the Agreement.
- 12.2 The parties acknowledge and agree that all Intellectual Property rights in the Services, any Proposal, and any other material, designs methods or content developed by the Company in providing the Services, including modifications, improvements and enhancements (**Work IP**), will automatically upon its creation vest in the Company upon creation. The Client agrees to execute or procure the execution by its Representatives of any documents reasonably necessary to give effect to this assignment, at the Company's expense.
- 12.3 During the Term, the Company grants the Client a revocable, non-exclusive, royalty-free and worldwide licence to use, for the purposes of the Agreement, the Work IP to the extent that it is contained within the Services, or is necessary to operate anything generated by the Services.
- 12.4 The Client must not:
- do, or permit, or omit to do, any act which may infringe, prejudice, invalidate or impair the Company's Intellectual Property or other rights in the Work IP;
  - make any amendments to the Company's Intellectual Property or Work IP that substantially alters the meaning or content of that Intellectual Property or Work IP; or
  - oppose or challenge any registration or application for registration of any registrable part of the New IP, including but not limited to any relevant trademark rights.
- 12.5 This clause 12 will survive the termination or expiry of the Agreement.



## 13 WARRANTY AND INDEMNITY BY CLIENT

- 13.1 The Client represents and warrants that the provision by it or on its behalf by any of its agents of any documents, samples, patterns, plans and other information to the Company must not infringe the intellectual property rights of any third party. Intellectual property rights in this clause 0 includes, without limitation, rights to any patents, copyrights, trade secrets or confidential information.
- 13.2 The Client indemnifies and keeps indemnified the Company and its Representatives against:
- all Claims (including without limitation any alleged infringement of intellectual property rights), demands, proceedings or judgements which may be asserted by anyone against the Company; and
  - any Liabilities, Losses, damages, costs and expenses suffered by the Company, in any case arising out of Company reliance on or use of any documents, samples, patterns, plans or other information provided by the Client or on its behalf to the Company.
- 13.3 This clause 0 will survive the termination or expiry of the Agreement.

## 14 TERMINATION / SUSPENSION

- 14.1 The Agreement for Services may be terminated or suspended at any time by mutual agreement.
- 14.2 Either party may, by notice in writing served on the other party, immediately terminate the Agreement if:
- a party commits a material breach of the Agreement which cannot be remedied;
  - A party commits a material breach of the Agreement that is capable of remedy and the party in default fails to remedy that breach within 30 days following receipt of notice requiring it to do so; or
  - a party becomes an insolvent under administration or insolvent (each as defined in the Corporations Act);

## 15 EFFECT OF TERMINATION

- 15.1 If the Agreement is terminated or suspended for any reason prior to the completion of the Services, the Client must pay to the Company immediately and within five Business Days of the suspension or termination:
- all amounts due and owing to the Company at the date of suspension or termination;
  - a fair and reasonable fee for all Services carried out up to and including the date of termination or suspension calculated at the hourly rate set out in the Proposal; and
  - any costs and expenses reasonably incurred by the Company up to that date that could not be avoided and any associated costs resulting from the suspension or early termination.

- 15.2 In the case of suspension of Services by the Client and upon mutual agreement the Client will give the Company reasonable notice to recommence carrying out those Services so suspended.

## 16 EFFECT OF TERMINATION

- 16.1 Termination of the Agreement does not affect a party's accrued rights and obligations and the parties will continue to be bound by those provisions of the Agreement that are expressly provided to survive termination or that reasonably require some action or forbearance after such termination.

## 17 DISPUTES ON INVOICES

- 17.1 If there is any dispute in respect of the Services or any invoice, the Client must promptly notify the Company 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. The dispute over Services of invoices is then to be resolved in accordance with the provisions of clause 21.
- 17.2 Undisputed portions of any invoice must be paid by the Client to the Company by their due date for payment.
- 17.3 The balance of any invoice that was the subject of the dispute must be paid to the Company promptly and by no later than 5 Business Days once and if it is determined or agreed that the Company was entitled to receive such amount and interest will accrue and be payable on that outstanding amount in accordance with clause 0 calculated from the date that the overdue amount was initially due until the date on which that amount is paid.

## 18 DISCLAIMER - ESTIMATES

- 18.1 Where an estimate of the time of delivery or completion of the Services is given by the Company to the Client, that estimate is based on the Client providing or procuring the delivery of all information and documentation necessary for the Company to provide the Services in a timely manner and according to the schedule proposed. Provided that the Client will co-operate with the Company and deliver such information and documents to ensure the efficient progress through the different phases of the Project, the Company will use reasonable endeavours to deliver the Services according to the schedule of time estimates in the Proposal or as that schedule may be revised in accordance with the Agreement.

**19 CONFIDENTIALITY**

- 19.1 **Treatment of Confidential Information:** Each party acknowledges that the Confidential Information of the other party is valuable to the other party. Each party undertakes to keep the Confidential Information of the other party secret and to protect and preserve the confidential nature and secrecy of the Confidential Information of the other party.
- 19.2 **Use of Confidential Information:** A Recipient may only use the Confidential Information of the Discloser for the purposes of performing the Recipient's obligations or exercising the Recipient's rights under the Agreement.
- 19.3 **Disclosure of Confidential Information:** A Recipient may not disclose Confidential Information of the Discloser to any person except:
- Representatives of the Recipient who require it for the purposes of the Agreement;
  - with the prior written consent of the Discloser;
  - if the Recipient is required to do so by law or a stock exchange; or
  - if the Recipient is required to do so in connection with legal proceedings relating to the Agreement.
- 19.4 **Disclosure by Recipient:** A Recipient disclosing information under clause 19.3a or 19.3b must use all reasonable endeavours to ensure that persons receiving Confidential Information from it do not disclose the information except in the circumstances permitted in clause 19.3.
- 19.5 **Return of Confidential Information:**
- On the Discloser's request, the Recipient must:
    - immediately cease and ensure its Representatives cease) use of and/or access to the Confidential Information;
    - permanently delete, destroy or return (and ensure its Representatives permanently delete, destroy or return) all Confidential Information to the Discloser; and
    - provide to the Discloser a declaration from a duly authorised senior officer of the Recipient that, to their personal knowledge, having made reasonable inquiries, it and its Representatives have complied with clauses 19.5a(i) and 19.5a(ii).
  - The obligations in clause 19.5 do not apply to Confidential Information that has been automatically stored electronically for the purposes of a data back-up and/or archiving system, provided such Confidential Information is kept secure, confidential and encrypted, or will otherwise be purged and fully deleted pursuant to Recipient's normal records retention and destruction protocols.
  - Despite clause 19.5b above, the Recipient may retain one copy of any document (in any form) containing Confidential Information if the document:
    - must be retained to comply with the Recipient's insurance, corporate governance or professional standards obligations; and
    - is kept confidential and secure in accordance with the terms of this Agreement.

**20 GENERAL PROVISION**

- 20.1 **Entire Agreement:** The Agreement and any variations made in accordance with clause 6 of these Terms and Conditions constitute the entire agreement between the Company and the Client in respect of the Project. Any terms and conditions of the Client will not form part of the Agreement and are excluded to the extent that they have not been expressly agreed in writing by the Company. All prior representations, understandings or agreements, whether written or oral, not expressly incorporated herein, are superseded and no changes in or additions to the Agreement are or recognised unless and until made in writing and signed by the Company and the Client.
- 20.2 **Status:** In performing the Services and other obligations under the Agreement, the Company is an independent contractor and not the agent, partner or employee of the Client. It is expressly agreed that it is not the purpose or the intention of the parties to create any partnership or joint venture between the Client and the Company.
- 20.3 **No assignment:** No party may transfer, assign or otherwise deal with its rights under the Agreement without the prior written consent of the other party.
- 20.4 **Severance:** If at any time any provision of the Agreement is or becomes invalid or illegal in any respect such provision will be deemed to be severed from the Agreement but the validity, legality and enforceability of the remaining provisions of the Agreement will not be affected or impaired thereby.

**21 DISPUTE RESOLUTION:**

- If any dispute arises between the Company and the Client relating to or arising out of the Agreement, including its construction, effect, the rights and obligations of the parties, the performance, breach, rescission or termination of the Agreement, the entitlement of any party to damages or compensation (whether for breach of Agreement, tort or any other cause of action) or the amount of that entitlement (Dispute), the party claiming that a Dispute has arisen must deliver to the other a notice in writing containing particulars of the Dispute (**Dispute Notice**).
- During the period of 10 Business Days after delivery of the Dispute Notice, or any longer period agreed in writing by the Company and the Client (**Initial Period**), each of those parties must use its reasonable endeavours and act in good faith to resolve the Dispute by discussion and negotiation.
- If the parties have been unable to resolve the Dispute within the Initial Period, the Dispute must be referred to their respective managing directors (or equivalent senior executive) or their nominees. The Company and the Client must ensure that their respective managing directors (or equivalent senior executive) or their nominees:
  - have the authority to negotiate and, if appropriate, enter into a binding agreement on behalf of the relevant party;

- (ii) meet promptly (and in any event within 5 Business Days) after the matter is referred to them; and
    - (iii) use their reasonable endeavours and act in good faith in an attempt to resolve the Dispute.
  - d. If the managing directors (or equivalent senior executives) or their nominees have been unable to resolve the Dispute within 10 Business Days of the matter being referred to them in accordance with this clause 21c, then the parties may submit the Dispute to a mediator for consideration in accordance with the Mediation Rules of the Resolution Institute. As those rules may be amended or replaced from time to time, which Rules are taken to be incorporated into this Agreement. Neither party may commence court proceedings in respect of a Dispute unless it has complied with subclauses (a) to (d) of this clause 21 and until the procedures in those subclauses have been followed in full, except where:
    - (i) a party seeks injunctive relief in relation to the Dispute from an appropriate court where failure to obtain such relief would cause irreparable damage to the party concerned; or
  - e. following those procedures would mean that a limitation period for a cause of action relevant to the issues in dispute will expire.
- 21.1 **Governing law:** The laws of the State of Queensland, Australia govern the Agreement. Each of the parties hereby submits to the non-exclusive jurisdiction of courts with jurisdiction in Queensland.