

5QS Terms of Engagement

1 Introduction

- 1.1 This 5QS Terms of Engagement applies to the Services carried out by the company identified in the Services Proposal, hereafter referred to as 5QS (and We, Us, Our, Ourselves) and should be read in conjunction with the Services Proposal and any other correspondence establishing the scope or basis of Services to be provided.
- 1.2 This 5QS Terms of Engagement applies to any variations that may be requested by either party (subject to Clause 9).
- 1.3 In the interpretation of a provision of this Agreement, a construction adverse to a party must not be preferred solely on the ground that:
 - (a) the party was responsible for the preparation of the Agreement or that provision; or
 - (b) the Agreement or that provision favours the party relying upon that provision.
- 1.4 In the interpretation of a provision of this Agreement, a construction that would promote the purpose or object underlying the provision (whether that purpose or object is stated in the provision or not) is to be preferred to a construction that would not promote that purpose or object.

2 Definitions

- 2.1 Unless the context otherwise requires, then in these Terms of Engagement:

Agreement means this 5QS Terms of Engagement and the Services Proposal or any other written offer issued by Us and accepted by You, as varied in writing from time to time.

We, Us, Our, Ourselves, 5QS, means the company identified in the Services Proposal.

Client, You, Your, Yourselves means the party to whom We are contracted to provide the Services, the subject of this Agreement and who is ultimately responsible for payment. You may be represented by an agent who acts with Your authority and arranges for or directs the Services to be provided.

Intellectual Property Right means any patent, registered design, trademark or name, copyright or other protected right.

Services Proposal means the written offer for the provision of Services provided by Us to You.

Acceptance of Services Proposal means the Services Proposal form executed by or on behalf of Us and You.

Services means the Services to be provided to You as detailed in the Services Proposal.

Documentation means drawings, reports, specifications, bills of quantities, calculations and other documents produced or provided by Us for the purpose of delivering the Services.

Fee means the cost of the Services as agreed between Us and You subject to clause 5 of this Agreement.

Site means the project site described in the Services Proposal.

Project means the project described in the Services Proposal.

Notice of Variation means a written variation document which sets out in detail the increase or change to the scope of Our Services, the amended fee for performing the variation, the estimated time to undertake the variation, the likely delay to the provision of the Services (if any) and therefore the Extension of Time to the date for completion of the Services (if any).

Notice of Dispute means a written notice which sets out in detail the nature of the dispute between the parties pursuant to the Agreement.

Notice of Suspension means a written notice from Us to You that We are suspending the carrying out of all or part of the Services.

Notice of Breach means a written notice from Us to You that You are in breach of the conditions of the Agreement or a written notice from You to Us that We are in substantial breach of the conditions of the Agreement.

Notice of Termination means a written notice from either party terminating the other party's obligations under the Agreement effective immediately.

3 Acceptance

- 3.1 The Client named in this Agreement agrees to enter into this Agreement with Us on the terms set out in this Agreement and is taken to have exclusively accepted and is immediately bound, jointly and severally, by these Terms of Engagement if the Client executes the Acceptance of Services Proposal, or places an order for, or accepts the Services provided by Us.
- 3.2 The Services Proposal issued by Us, and this 5QS Terms of Engagement record the entire agreement between the parties and may only be varied by the written agreement of both parties.

- 3.3 This Agreement is formed in the suburb of the 5QS office offering to undertake the Services and is governed by the laws of the State of in which the office is located.
- 3.4 The person named in this Agreement as the party's representative is authorised to exercise all rights, powers, authority and functions of the party it represents under this Agreement. Either party may, at any time, replace its nominated representative and must notify the other party of any such replacement.

4 Professional Services by 5QS

- 4.1 **Role of 5QS**
 - 4.1.1 We will:
 - (a) provide the Services in accordance with the Agreement;
 - (b) exercise reasonable skill, care and diligence in the performance of the Services expected of a competent professional consultant experienced in carrying out services of a similar nature to the Services;
 - (c) carry out the Services on the basis of information available to Us at the time when We carry out the Services. We will not take any responsibility, nor accept any liability, for damage arising out of matters relevant to the Services that arise due to circumstances that are revealed after completion of the Services;
 - (d) not be responsible for damage or consequential loss, resulting from damage to any utility or service that was not identified to Our field personnel prior to them undertaking any excavation work or other subsurface investigation work;
 - (e) inform You if we require further assistance or information or other particulars from You if the information available to Us is insufficient to enable Us to perform the Services in accordance with the Agreement. You must then, as soon as reasonably practicable, provide Us with such further assistance, information or other particulars as is necessary in the circumstances;
 - (f) give You notice as soon as reasonably practicable if We become aware of any matter which will change or which has changed the scope or timing of the Services and the notice will contain, to the extent possible, particulars of the change.
- 4.2 **Role of Client**
 - 4.2.1 You shall:
 - (a) Pay Us in accordance with the Agreement.
 - (b) Provide Us with information, documents and other particulars sufficient to enable Us to carry out the Services.
 - (c) Provide Us access to the premises or sites as reasonably necessary to enable Us to provide the Services.
 - (d) Make available to Us the equipment and facilities specified in the Services Proposal at the agreed time and place.
 - (e) Unless expressly provided in this Agreement, obtain all approvals, authorities, licenses and permits which are required for the performance of the Services.
 - (f) Identify to Us all utilities and services on Site prior to Us commencing any excavation work or other subsurface investigative work.
 - (g) Co-operate with Us and shall not interfere with or obstruct the proper performance of the Services.
- 4.3 **The Client Acknowledges**
 - 4.3.1 You acknowledge that:
 - (a) We are responsible for exercising reasonable care when giving directions to others carrying out work, but We are not responsible for the manner in which the directions are carried out by others;
 - (b) You will not supply an extract from or an incomplete copy of a document or report prepared by Us to a third party;
 - (c) contaminated soil samples collected by Us during the conduct of the Services shall remain Your property until properly disposed of according to Your instructions and at Your cost;
 - (d) where advice, including; verbal advice, construction diagrams or approval, is given by Our site personnel, such advice is given in good faith but We will only accept responsibility for such advice, when it is has been subsequently confirmed to You in writing after the site attendance;
 - (e) the scope of Our Services does not include any services which are properly carried out by other professions and, if other such professional services are required, You shall obtain these services at Your own cost.
- 4A **Delivery of Services**
 - 4A.1 Delivery of Services to a third party directed by You is deemed to be delivery to You for the purposes of the Agreement.

- 4A.2 We are entitled to deliver the Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in the Agreement.
- 4A.3 Any time specified by Us for delivery of the Services is an estimate only and We will not be liable for any loss or damage incurred by You because of delivery of Services being late.
- 4A.4 Both parties agree that they shall make every endeavour to enable the Services to be supplied at the time and place as was arranged between both parties.
- 4A.5 We will perform the Services in a timely manner to the effect that it is within Our control to do so.

5 Payment to 5QS for Services

5.1 Basis of fees

- 5.1.1 The fees shall be as set out in the Services Proposal and as subsequently varied in writing by Us in accordance with the Terms of Engagement.
- 5.1.2 Where Services have not been identified in the Services Proposal and are required to be performed, then in the absence of a specific agreed fee, the Services shall be provided on a Schedule of Rates basis, where the applicable rates shall be the rates set out in the Services Proposal.
- 5.1.3 In exchange for delivering the Services, You must pay to Us:
- the Fee; plus
 - all adjustments to the Fee as determined in accordance with this Agreement; plus
 - disbursements (if applicable).

5.2 Schedule of Rates Fees

- 5.2.1 Any variations to the Services, where a specific lump sum fee has not been agreed in writing by the parties, or where the item in the Services Proposal has been specified as being undertaken on a Schedule of Rates basis, shall be priced using the following rates, where alternate rates have not been provided in the Services Proposal:

Schedule of Rates (per hour - UNO)

| | |
|---|-----------|
| Principal | \$ 495.00 |
| Senior Engineer | \$ 385.00 |
| Experienced Engineer | \$ 330.00 |
| Engineer/Building Consultant | \$ 250.00 |
| Draughter | \$ 195.00 |
| Technical Assistant | \$ 165.00 |
| Clerical | \$ 100.00 |
| Vehicle travel (per kilometre) | \$ 1.65 |
| Disbursements at cost plus 15% handling fee | |

- 5.2.2 Time occupied travelling will be charged at the above rates applicable to the personnel.
- 5.2.3 Where services are associated with legal proceedings, including preparation of reports, attending conferences, conclaves or hearings and a separate Agreement has not been executed, then a 25% loading will be added to the above applicable rates.
- 5.2.4 The Schedule of Rates in 5.2.1 shall be current for a period of 6 months from the date of the Agreement and may be varied thereafter in line with CPI indexing, award changes, market services and statutory changes.
- 5.2.5 All rates in the Schedule of Rates include GST.

5.3 Payment of Fees

- 5.3.1 Unless specified otherwise in the Services Proposal You are liable to make payment to Us within 14 days from receipt of Our tax invoice.
- 5.3.2 We will charge an interest rate of 1.50% / month or a \$25/month administration fee, whichever is the greater, calculated monthly, on any invoiced amounts and accumulated interest and/or administration fees, unpaid 7 days after the due date.
- 5.3.3 You will be liable for all costs incurred with the recovery of any unpaid invoiced amounts, interest and administration fees, as well as all legal and collection agents' fees, court costs, interest and Our hourly rate fees for Our staffs' time incurred with the recovery process.

6 Assignment and Engagement of Sub-Contractors

- 6.1 Nothing contained in this Agreement shall prevent Us from employing at Our cost, such persons or companies as We may deem appropriate to assist Us in the performance of the Services.
- 6.2 If circumstances arise that require the services of a specialist or expertise outside of Our fields of expertise, We may with Your prior written consent engage the appropriate consultant. The consultant shall be engaged on Your behalf and at Your expense. Your consent for such engagement shall not be unreasonably withheld.
- 6.3 You shall not assign or transfer any benefit, right or obligation under this Agreement without Our written consent. Unless

specifically stated to the contrary in any written consent to an assignment, no assignment shall release or discharge the assignor from any obligation under the Agreement.

7 Copyright and Use of Documents

- 7.1 We retain the Intellectual Property Rights and Moral Rights in relation to all drawings, reports, specifications, calculations, computer records and any other documents We produce in connection with the Services.
- 7.2 Provided You pay Us in full for invoiced fees and disbursements, interest and administration fees, We grant You a licence to use the Intellectual Property Rights for the purpose of completing the Project to which the Agreement relates.
- 7.3 Other than paper and pdf type electronic copies of drawings and reports You shall not be entitled to other electronic file types, draft documents, working documents or calculations.
- 7.4 We may publish, either alone or in conjunction with others, articles, photographs and other illustrations relating to the project.
- 7.5 You are not entitled to supply an extract from or an incomplete copy of any document or report prepared by Us to a third party.
- 7.6 You are the owner of any contaminated soil samples collected by Us during the conduct of its Services and shall remain Your property until properly disposed of at Your instructions and at Your cost.

8 Scope of Liability

- 8.1 To the maximum extent permitted by law, Our maximum aggregate liability to You under this Agreement (including the performance or non-performance of the Services), whether under the law of contract, in tort (including negligence or otherwise), in equity, under statute or otherwise, is limited to the lesser of an amount equal to 100% of the Fee or the limit of cover under a policy of insurance effected or maintained pursuant to this Agreement.
- 8.2 We have no liability to You in respect of the following:
- any indirect, consequential or special losses (including loss of profit, loss of business opportunity and payment of liquidated sums or damages under any other agreement);
 - acts, omissions, or default of other contractors or consultants engaged by You (including contractors or consultants engaged by Us as agent for You);
 - any changes, alterations or additions to the Services made by others without Our express approval.
- 8.3 If any of this clause is void as a result of the Australian Consumer Law, then Our liability for a breach of a condition or warranty is limited to:
- supplying the relevant Services again; or
 - the payment of the cost of having the Services supplied again by Us.

9 Variations

- 9.1 In relation to variations requested by Us:
- if We identify an increase or change to Our scope of Services, We will give You a written variation document (**Notice of Variation**) which sets out in detail the changes proposed, the amended fee for performing the variation, the estimated time to undertake the variation, the likely delay to the provision of the Services (if any) and the Extension of Time to the date for completion of the Services (if any);
 - Within 7 days of receipt of the Notice of Variation You are required to give a written response to the variation;
 - If the variation is urgent, We may proceed with the variation in accordance with a verbal direction from You. You shall then confirm the variation in writing to Us as soon as reasonably practicable;
 - If You accept the Notice of Variation (either in writing or verbally), We will carry out the variation in accordance with the Notice of Variation;
 - If You do not give a written or verbal response to the variation within 7 days of receipt of the Notice of Variation, then We will be entitled to deem the Notice of Variation to have been accepted by You and We will proceed with the variation.
- 9.2 In the event that You request a variation to the Agreement, We will give You a written variation document (**Notice of Variation**) which sets out in detail the changes You have, Our amended fee for performing the variation, Our estimate of the time to undertake the variation, Our estimate of the likely delay to the provision of the Services (if any) and therefore the Extension of Time to the date for completion of the Services (if any). You must then within 7 days respond to the Notice of Variation either in writing or verbally in order for Us to proceed with the variation.

10 Delay and Extensions of Time

- 10.1 If We are delayed in the performance of the Services, where the cause of the delay is an act or omission beyond Our control, You shall pay Us such extra costs as are necessarily incurred by Us by

reason of the delay and, where applicable, Our time to complete the Services is extended by a similar period.

11 Dispute Resolution

- 11.1 If a dispute between the parties arises out of or in relation to this Agreement, then either party may give the other a written notice which sets out in detail the nature of the dispute (**Notice of Dispute**).
- 11.2 Despite the existence of a dispute, all parties must, subject to this clause, continue to perform this Agreement.
- 11.3 Within 7 Business Days after receiving a Notice of Dispute, the parties must confer at least once to resolve the Dispute or to agree on methods of doing so. At every such conference each party must be represented by a person having authority to agree to any resolution of the dispute or methods of resolving the dispute. All aspects of every conference held under this clause, except the fact of its occurrence, will be without prejudice.
- 11.4 If the Dispute is not resolved within the following 7 Business Days after a conference is held in accordance with clause 11.3 (or any further period as the representatives may agree is appropriate), either party may refer the dispute to any court or tribunal of competent jurisdiction.

11A Suspension

- 11.1 We may, if We consider it reasonably necessary, suspend the carrying out of all or part of the Services, provided We provide notice to You in writing (**Notice of Suspension**).
- 11.2 If the performance by Us of Services is suspended for any reason by Us, then We are entitled to payment by You of all Fees due under the Agreement up to the date that the Services are suspended and all of Our other rights and entitlements continue as though the suspension has not taken place.
- 11.3 We may at any time, elect to resume performance of Our Services, and in that case, We will in writing to You withdraw Our Notice of Suspension.

12 Termination

- 12.1 This Agreement may be terminated at any time by mutual agreement and We will confirm any such mutual agreement in writing to You.
- 12.2 We may terminate our obligations under the Agreement in the following circumstances:
- if You are in breach of the conditions of the Agreement;
 - We notify You in writing that You are in breach of the conditions of the Agreement (**Notice of Breach**);
 - You fail to remedy the breach which is the subject of the Notice of Breach within 14 days (or such longer period as 5QS may allow);
 - We may then by notice in writing to You terminate Our obligations under the Agreement effective immediately (**Notice of Termination**); and
 - if You owe any Fees to Us then You shall indemnify Us from and against all costs and disbursements incurred by Us in recovering the Fees (including but not limited to internal administration fees, legal costs, collection agency costs and any bank fees).
- 12.3 You may terminate Your obligations under the Agreement in the following circumstances:
- if We are in substantial breach of the conditions of the Agreement;
 - You notify Us in writing that We are in substantial breach of the conditions of the Agreement (**Notice of Breach**);
 - We fail to remedy the breach which is the subject of the Notice of Breach within 28 days (or such longer period as You may allow);
 - You may then by notice in writing to Us terminate Your obligations under the Agreement effective immediately (**Notice of Termination**); and
 - despite the Notice of Termination, You are still required to pay all Fees due to Us.

12A Default and Consequences of Default

- 12A.1 If You owe Us any money, You must indemnify Us from and against all costs and disbursements incurred by Us in recovering the debt (including, but not limited to, internal administration fees, legal costs, Our collection agency costs, and bank dishonour fees).

13 Death/Insolvency of Client

- 13.1 This Agreement shall survive Your death or insolvency. Your obligations shall pass to Your successors, receiver, administrator or liquidator.
- 13.2 We shall be entitled to immediately terminate Our Services and Our fees to the date of termination shall become due and payable as a "Secured Creditor" against Your tangible assets.

13A Security and Charge

- 13A.1 In consideration of Us agreeing to supply Services, You charge all of Your rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by You either now or in the future, to secure the performance by You of Your obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 13A.2 You indemnify Us from all costs and disbursements including legal costs of a solicitor incurred in exercising Our rights under this clause.

14 Severability

- 14.1 If any provision of this Agreement is illegal, void, invalid or unenforceable for any reason, all other provisions are not affected, prejudiced or impaired and shall continue to be valid and enforceable.

15 General Matters

- 15.1 You warrant that You have the power to enter into this Agreement and have obtained all necessary authorisations to allow You to do so, You are not insolvent and that this Agreement creates binding and valid legal obligations on it.
- 15.2 Where any request or notice to be given under this Agreement is to be given in writing this includes by email.
- 15.3 The applicable law of the Agreement is the law of the State or Territory in which the Agreement is located.
- 15.4 You shall not withhold, deduct or set-off from any moneys otherwise due to Us any sum which is due or payable by Us to You or any amount of any claim which You may have against Us.
- 15.5 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 15.6 Any failure by Us to enforce any provision of this Agreement shall not be treated as a waiver of that provision, nor shall it affect Our right to subsequently enforce that provision.
- 15.7 The parties agree and acknowledge that We are entitled to publicise the project to which the Services relate to including, but not limited to, marketing purposes or awards.