

5QS Terms of Engagement

Revision: July 2023

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 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 and to any subsequent Services performed following the completion of the Services set out in the Services Proposal or other initial engagement, where a further Agreement has not been entered into by the parties.
- 1.3 In the interpretation of this Agreement, no rule of construction applies to the disadvantage of one party on the basis that it put forward this Agreement or any part of it.

2 Definitions and General Matters

- 2.1 In this 5QS Terms of Engagement:
 - Agreement** means this 5QS Terms of Engagement and the Services Proposal or any other written offer issued by 5QS and accepted by the Client, as varied in writing from time to time.
 - We, Us, Our, Ourselves, 5QS**, means the company identified in the Services Proposal.
 - Client, You, Your, Yourself** means the party to whom 5QS is contracted to provide the Services, the subject of this Agreement and who is ultimately responsible for payment. The Client may be represented by an agent who acts with the authority of the Client 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 5QS to the Client.
 - Acceptance of Services Proposal** means the form signed by or on behalf of 5QS and the Client or other written communication referred to in Clauses 3.1 (b) and (c) which identifies the documents that comprise the Agreement.
 - Services** means the Services to be provided to the Client as detailed in the Services Proposal.

3 Agreement

- 3.1 This Agreement shall become effective when:
 - (a) the Acceptance of Services Proposal form attached to the Services Proposal has been signed by both parties or their agents, or
 - (b) 5QS has received a written notice issued by the Client or on the Client's behalf indicating acceptance of the Services Proposal issued by 5QS to provide Services
 - (c) in the absence of 5QS receiving (a) or (b), 5QS is otherwise instructed to commence the performance of the Services, that are the subject of the Services Proposal, by the Client or by a party that 5QS can reasonably assume to be acting as the Client's agent.
- 3.2 The Services Proposal issued by 5QS, 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.

4 Professional Services

- 4.1 **Role of 5QS**
 - 4.1.1 We will:
 - (a) provide the Services in accordance with the Agreement.
 - (b) perform the Services to the standard of reasonable care and skill to be expected of consultants who regularly act in the capacity in which We are engaged and who possess the knowledge, skill and experience of a consultant to act in that capacity.
 - (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.

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.

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.

5 Professional Fees

- 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 5.2.
- 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	\$ 242.00
Draughter	\$ 198.00
Technical Assistant	\$ 165.00
Clerical	\$ 99.00
Vehicle travel (per kilometre)	\$ 1.65
Disbursements	at cost <u>plus</u> 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 or obligation under this 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 set out in the Agreement.
- 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.

8 Limit of Liability

- 8.1 We, Our employees, agents and sub-consultants shall be deemed to have been discharged from all liability whatsoever in respect of the Services, whether under the law of contract, tort or otherwise, at the expiration of one year from the completion of the Services unless otherwise provided in the Agreement and You shall not be entitled to commence any action against Us in respect to the Services after that date.
- 8.2 If the Services include giving You an estimate of the likely costs for the project for which Services that are the subject of this Agreement are provided, We warrant only that We exercise reasonable skill, care and diligence in the preparation of Our opinion of those costs.
- 8.3 We do not give any warranty nor accept any liability in relation to the performance of the Services except to the extent, if any, required by law or specifically provided for in this Agreement. If apart from this clause any warranty would be applied, whether by law, custom or otherwise, that warranty is to the full extent permitted by law hereby excluded.
- 8.4 Should We be liable for a breach of a condition or warranty implied by the Competition and Consumer Act 2010 then Our liability for a breach of any such condition or warranty shall be limited, at Our option, to either:
- the supply of the Services again; or
 - payment of the cost of having the Services supplied again by a provider of Our choice.
- 8.5 Our liability to You arising out of the performance, non-performance or non-compliance of the Services whether under law of contract, tort or otherwise shall be limited to the following amounts:
- the fee paid by You or \$20,000 whichever is the lesser; or
 - any other amount pre-agreed in writing between You and Us.
- 8.6 We shall only be liable for any economic or consequential loss where the basis for determining, and the maximum liability for, an economic or consequential loss was specified in writing in the Agreement.
- 8.7 Where We successfully defend a claim, demand or action arising out of the Services that are the subject of this Agreement, You shall be liable to pay Us for Our staff's time based fees incurred in defending any claim, Our legal defence costs associated with the successful defence, or part thereof, of the claim, demand or action. Our staff's time-based fees payable to Us shall be calculated in accordance with the Schedule of Rates in 5.2 for the applicable personnel and shall be paid in accordance with the requirements of 5.3.
- 8.8 You will indemnify Us for Our hourly rate fees for Our staff's time incurred in defending any claim, Our legal defence costs and any damages awarded and hold Us harmless against all claims, and demands by third parties in respect of any matter arising out of the Services.
- 8.9 The quantum of field investigations included in the Services Proposal are based on Our best estimate of work required at the time of submission of Our Services proposal. You acknowledge that as the investigation work proceeds, different site conditions from those estimated may be discovered resulting in a required change and/ or increase in site investigation work. You acknowledge that increases in costs and fees may result from such site conditions and You shall indemnify Us in respect of all

loss, damage, cost or expense resulting from such site conditions. We will endeavour to identify and notify You of such changes and increases in fees and costs and as soon as practicable after discovering such differing conditions. You shall not refuse reasonable increases in fees or costs.

- 8.10 We shall not be liable for any failure to carry out all or part of the Services under this Agreement where that failure is due to any cause beyond Our reasonable control.
- 8.11 We shall not be liable for any use by You or Your appointee or any third party, of any of the drawings, reports, specifications, calculations, computer records or any other documents We produce, for any purpose other than that for which they were prepared.
- 8.12 Nothing in this Agreement confers or purports to confer on any third party any benefit or rights to enforce any term of this Agreement.

9 Variations

- 9.1 Fees for Services may be adjusted:
- In line with changes in the CPI, award changes, market services or statutory changes periodically at any time after 6 months from the commencement of Services;
 - If We identify work that We consider will increase / change the scope of the Services in the Services Proposal,
- 9.2 We will advise you in writing (the "Notice of Variation") details of the applicable change of fees or additional fees for carrying out the additional Services. If You accept Our Notice of Variation in writing, We shall carry out the variation in accordance with the Notice of Variation.
- 9.3 If You do not provide written acceptance of the Notice of Variation within 7 days of receipt of Our Notice of Variation, then We may at Our discretion either:
- deem the Notice of Variation to be accepted in the absence of the written acceptance where instructions are received that require the Service to be performed; or
 - cease work on the project without penalty or prejudice to Our rights, until the issue is resolved.

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 has not been resolved within 7 days after receipt of a notification of a dispute by a party, then We may elect to terminate the provision of Services until such time as the dispute is resolved. Termination of Services shall be without prejudice to any claim that We may have against You with respect to any breach of the Agreement which occurred prior to the termination of Services and You shall indemnify Us against any claims for damages howsoever arising, as a result of the termination of Services.
- 11.2 Nothing herein shall prejudice Our right to institute proceedings to enforce payment due under the Agreement.

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; or
 - by Us giving You 7 days written notice of termination of the Agreement.
- 12.2 Without limiting the generality of any other clause in this Agreement, We may terminate this Agreement immediately by notice in writing if You are in breach of any term of this Agreement and the breach is not remedied within 7 days of notice by Us to rectify the breach or You cease or threaten to cease conducting Your business in the normal manner.
- 12.3 Our rights under this Agreement shall not merge at the termination of this Agreement.

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.

14 Severability

- 14.1 If any provision of this Agreement is illegal, void, invalid or unenforceable for any reason, all other provisions which are self-sustaining and capable of separate enforcement shall continue to be valid and enforceable.