

Consultant Terms of Business (General)

1. INTERPRETATION

1.1. In this Agreement:

"Agreement" means these general terms of business, the Proposal and special conditions (if any).

"Benchmark Rate" means a rate equivalent to 4% per annum above the cash rate published by the Australian Tax Office (ATO), applicable at the time interest is to be charged.

"Client" means the person or entity as stated on the Proposal.

"Consultant" means Geoff Craig and Associates Pty Ltd (ABN 92 086 017 745).

"Contract Documents" means any drawings, designs, reports, electronic records and other documents and concepts provided by the Consultant to the Client as part of or in connection with the Services.

"Fee" means the amount stated in the Proposal. The Fee may be adjusted in accordance with clause 3.3.

"Intellectual Property Rights" means all intellectual property rights at any time protected by statute or common law, including all and any moral rights, patents, patent applications, trade marks, service marks, trade names, registered designs, unregistered design rights, copyrights, know how, trade secrets, domain names, internet addresses, websites, rights in confidential information, and all and any other intellectual property rights, whether registered or unregistered, and including all applications and rights to apply for any of the same.

"Legislative Requirements" includes:

- a. Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the State or Territory applicable to the Services; and
- b. certificates, licenses, consent, permits, approvals and requirements of organizations having jurisdiction applicable to the Services.

"Proposal" means the Proposal provided to the Client outlining the scope of work for the Services, the Fees and other information relating to the delivery of the Services.

"Reimbursable Expenses" means the cost plus the percentage specified in the Proposal including (without limitation) all travel and accommodation, equipment use/hire, communications, printing, photocopying, third party fees and other out of pocket expenses incurred by the Consultant in the course of performing the Services. Where a percentage is not specified in the Proposal, the percentage shall be 15%.

"Services" means the services specified in the Proposal as varied in accordance with this Agreement or where not specified in the Schedule, the Services shall be as specified in the Proposal.

2. ENGAGEMENT

- 2.1. The Client engages the Consultant to provide the Services in accordance with this Agreement.
- 2.2. You confirm you agree to the terms of this Agreement by doing and one or more of the following:
 - a. signing the Proposal;
 - b. continuing to instruct us after receiving the Proposal, either verbally or in writing;
 - c. accepting the Proposal and/or these Terms of Business electronically.
- 2.3. The Consultant will endeavour to perform the Services in a timely manner and in accordance with any program for the provision of the Services or otherwise agreed in writing between the parties. For the avoidance of doubt, a delay in the delivery of the Services will not be a breach of this Agreement.
- 2.4. The Consultant will be entitled to an extension of time for the performance of the Services where it is delayed by an event beyond its reasonable control, including (without limitation) any delay caused or contributed to by the Client such as a delay in providing information, access or incorrect information.
- 2.5. In providing the Services, the Consultant will exercise the degree of skill, care and diligence normally exercised by professional consultants performing services of a similar nature.
- 2.6. The Consultant will:
 - a. take all reasonable measures to inform itself of the Client's requirements in respect of the Services;
 - b. promptly inform the Client if it:

(i) considers that it has insufficient information to enable it to satisfactorily perform the Services; or

(ii) becomes aware of any matter (including any inaccuracies in information provided to it) which may materially affect the scope of the Services.

2.7. Where the Consultant informs the Client that it requires further information to enable it to satisfactorily perform the Services, the Client must promptly provide such further information to the Consultant.

2.8. The Consultant may engage another consultant to assist it in providing the Services.

3. FEE AND SCOPE OF SERVICES

- 3.1. The Fee is based on the Services specified in the Schedule.
- 3.2. The Client may, by notice in writing and subject to clause 3.5, request a variation to the scope of the Services. The request will be considered by the Consultant and any adjustment to the Fee will be calculated by the Consultant in its sole discretion. The Consultant is not obligated to accept the variation unless the adjusted Fee is accepted.
- 3.3. If a new Legislative Requirement or a change in a Legislative Requirement after the date of the Agreement, or any other event beyond the control of the Consultant, necessitates a material change to the Services or Fee, the Consultant must provide details of the extent to which the Services need to change due to the Legislative Requirement or other event.
- 3.4. The Client must approve or reject the change to the Services or Fee within 10 days of receipt of the Consultant's notice. If the Client rejects the change the Consultant may (in its absolute discretion) terminate this Agreement immediately.
- 3.5. Where a change to the Services:
 - a. requested by the Client under clause 3.2 is one which the Consultant must give effect to; or
 - b. is approved by the Client (including pursuant to clause 3.3), the Consultant will be entitled to:
 - (i) an adjustment of the Fee by a reasonable amount reflecting the increased costs of performing the Services as a result of the change to the Services together with a reasonable amount for overheads and profit; and
 - (ii) a reasonable extension of time for providing the Services.

4. PAYMENT

- 4.1. The Client must pay to the Consultant the Fee and the Reimbursable Expenses.
- 4.2. The Consultant may render invoices:
 - a. prior to commencement if a deposit is required by the Proposal; and
 - b. progressively throughout the delivery of services at the Consultant's discretion; and
 - c. when the Services have been completed.
- 4.3. Unless otherwise noted in the Proposal, the Client must pay all amounts invoiced within 30 days after the date of the invoice.
- 4.4. Any amount not paid within that period will attract interest at a rate of 2% above the Benchmark Rate per annum from the date payment was due until the amount is paid in full. Payments received will be applied firstly against any interest owing under this clause and secondly against the outstanding invoice amount.
- 4.5. The Consultant has the right to not release any document, information, data or project deliverable for which an outstanding payment is due from the Client.
- 4.6. The Consultant's rights under Clause 4.5 are supplemented by any further commercial conditions or restriction applied by the Consultant in the fee Proposal.

5. INSURANCE

- 5.1. The Consultant will:
- maintain professional indemnity, public liability, motor vehicle and workers compensation insurance as required by law and the Consultant's own business requirements; and
 - if requested by the Client, provide certificates of currency evidencing such insurance.

6. OWNERSHIP, USE AND NATURE OF MATERIALS

- 6.1. The Consultant retains title to and copyright and other Intellectual Property Rights in the Contract Documents.
- 6.2. Upon receipt of the Fees in full, the Consultant grants an irrevocable, non-exclusive, royalty free licence to the Client to use the Contract Documents for the purposes for which those documents are prepared and provided to the Client. The Consultant is not required to provide the Client with an editable version of any of the Contract Documents.
- 6.3. The Client must not:
- without the prior written approval of the Consultant, alter or authorise or permit the alteration of any editable version of the Contract Documents; or
 - use (including make copies) of the Contract Documents for any purposes other than that for which they were originally prepared.
- 6.4. The licence in clause 6.2 terminates on the termination of this Agreement by the Consultant pursuant to clause 12.3 or 12.4.
- 6.5. The Client grants an irrevocable, non-exclusive, royalty free, transferable, perpetual licence to the Consultant to use, reproduce and copy all documents and materials provided to the Consultant under this Agreement for any Purpose related to the Services.
- 6.6. The Client warrants that any material provided to the Consultant by the Client does not infringe any third-party Intellectual Property Rights.
- 6.7. The licence in clause 6.5 terminates on the termination of this Agreement by the Client pursuant to clause 12.2.

7. PRIVACY AND CONFIDENTIALITY

- 7.1. The Client acknowledges that the information or data they provide may contain information which is protected under the *Privacy Act 1988* (Cth) as amended from time to time ("Privacy Act").
- 7.2. The Consultant agrees to protect and deal with the Client's information in accordance with the Privacy Act and will otherwise treat the information in its control in accordance with its privacy policy, which can be found at [<https://www.gca.net.au/privacy-policy/>]
- 7.3. Notwithstanding any other provision in this clause, the Client consents to the Consultant, on a confidential basis, providing the Client's confidential information (other than Confidential Information of a technical nature) to third parties where it considers it appropriate to perform the Services.
- 7.4. The Consultant, unless specifically instructed otherwise by the Client, is entitled to:
- refer to the Services and any related project in respect of which the Services are provided; and
 - identify the Client,
- for the purposes of promoting the services of the Consultant to third parties.

8. WARRANTIES, LIABILITY AND INDEMNITY

- 8.1. The Consultant and Client each warrant that:
- they have the capacity to enter into a contract; and
 - they are not insolvent.
- 8.2. Except as expressly provided in this Agreement and to the extent permitted by law, liability for all representations and warranties, whether implied, express or otherwise, are excluded.
- 8.3. Where any statute or law implies warranties or conditions into this Agreement, which cannot be lawfully modified or excluded under this Agreement then this Agreement will be read subject to such non-excludable condition. Where such statute or law permits, the Consultant limits its liability to the Client for breach of such non-excludable condition to re-supply of the Services, paying for the re-supply, or to an amount equivalent to the Fees (at the option of the Consultant).

- 8.4. Despite any other provision of this Agreement, the total extent of the Consultant's liability arising out of or in connection with the performance or non-performance of the Services (whether under the law of contract, tort or otherwise) is limited to the lesser of:

- the aggregate Fee for the relevant work component; or
- \$20,000.

- 8.5. To the maximum extent permitted by law, in no event will the Consultant be liable for any loss of revenue, loss of profit, loss of any contract or any other economic or consequential loss (whether direct or indirect) of the Client arising out of or in connection with the performance or non-performance of the Services (whether under the law of contract, tort or otherwise).

- 8.6. The Client:

- releases the Consultant from and against all claims, costs, expenses, losses or damages suffered or incurred by the Client arising out of or in connection with:
 - any damage, loss, deterioration or destruction of any of the Client's samples or property to be tested or analysed by the Consultant except to the extent that the damage, loss, deterioration or destruction arises due to the negligence of the Consultant;
 - any damage, loss, deterioration or destruction of the site in respect of which the Services are to be provided; or
 - any delay on the part of the Consultant in delivering the Services (howsoever arising); and
- indemnifies the Consultant from and against all claims, costs, demands, expenses, losses or damages suffered or incurred by the Consultant arising out of or in connection with any claims:
 - by a person that has contracted with the Client and for which the Services are being procured by the Client;
 - by a person using or permitting the use of the Contract Documents in a manner not authorized by this Agreement;
 - by an owner of any property adjacent to or in the vicinity of the site in respect of which the Services are being performed;
 - by an owner of any services (including water, gas, fuel, telephone, electricity, drainage, sewerage, railway, airport, industrial waste and electronic communications services);
 - relating to any loss suffered by the Consultant from reliance on material provided by the Client or the Client's assumptions about the site;
 - relating to the infringement of any third-party Intellectual Property Rights in the material provided by the Client,where such loss or damage arises out of or in connection with the performance of the Services.

9. CONSTRUCTION PROJECTS

- 9.1. Where the Services are provided in connection with a project involving the construction (including refurbishment) of works ("**construction work**") the Client must:
- require any construction contractor it engages to include the Consultant as an additional insured on its contractors all risk and public liability insurance policies in respect of the construction work; and
 - if any Legislative Requirements relating to occupational health and safety require the appointment of a person to be responsible for the overall management of safety at the site ("principal contractor") for the construction work, appoint or procure the appointment of the person responsible for the construction work as the "principal contractor" and notify the Consultant of that appointment.
- 9.2. If the Client fails to make or procure an appointment of a "principal contractor" as required by clause 9.1 the Client will be deemed to have appointed itself as the "principal contractor" for that construction work.
- 9.3. Any opinion of construction costs prepared by the Consultant (whether as part of the Services or otherwise) and provided to the Client is supplied for the general guidance of the Client only and the Consultant provides no guarantee as to the accuracy or suitability of any such opinion for any purpose.

10. SPECIAL CONDITIONS

- 10.1. Any special conditions specified in Annexure A apply.

- 10.2. The special conditions will prevail to the extent of any inconsistency with these terms of business.

11. ASSIGNMENT

- 11.1. The Client cannot assign, novate or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the Consultant.
- 11.2. The Consultant may assign any rights or benefits under this Agreement without the Client's prior written consent. The Client must do all things and sign all documents to give effect to any assignment by the Consultant.

12. TERMINATION

- 12.1. Either party may terminate this Agreement for convenience by giving 30 days prior written notice to the other party.
- 12.2. The Client may terminate this Agreement if the Consultant is in breach of this Agreement (as determined by the Consultant, acting reasonably) and that breach has not been remedied within 30 days after receipt by the Consultant of a written notice from the Client identifying the breach and requiring it to be remedied.
- 12.3. The Consultant may suspend the provision of the Services or terminate this Agreement:
- a. if any money payable to the Consultant has been outstanding for more than 14 days;
 - b. if the Client is in breach of this Agreement (as determined by the Consultant, acting reasonably) and that breach has not been remedied within 14 days after receipt by the Client of a written notice from the Consultant identifying the breach and requiring it to be remedied; or
 - c. immediately:
 - (i) if the Client becomes an "externally administered body corporate" or a person or entity is appointed as a "controller" of any of the Client's property (as those terms are defined in section 9 of the *Corporations Act 2001* (Cth));
 - (ii) if the Consultant has reason to believe that the Client is or is likely to become not able to pay its debts as and when they fall due; or
 - (iii) in the circumstances specified in clause 3.3.
- 12.4. If the Consultant suspends the provision of the Services pursuant to clause 12.3, it may at any time thereafter:
- a. if the event which entitled the Consultant to suspend the performance of the Services is remedied, recommence performance of the Services; or
 - b. otherwise terminate the Agreement at any time after commencing the suspension.

If the Consultant recommences the performance of the Services pursuant to paragraph (a) the Client must indemnify the Consultant against any costs, losses or expenses suffered or incurred by the Consultant arising out of or in connection with the suspension.

- 12.5. Upon termination of this Agreement the Consultant is:
- a. immediately entitled to payment of that portion of the Fee and Reimbursable Expenses in respect of Services performed up to and including the date of termination, any expenses sufficiently connected to the Service that are not immediately recoverable, and any interest payable on that amount; and
 - b. where the Consultant has terminated the Agreement pursuant to clause 12.3 or 12.4, the Consultant is entitled to recover any costs, losses and damages suffered or incurred by it arising out of or in connection with any breach of contract by the Client or the termination of the Agreement.

13. DISPUTES

- 13.1. If a difference or dispute (together called a "dispute") between the parties arises in connection with the subject matter of the Agreement, then either party may, by hand or by registered post, give the other party a written notice of dispute adequately identifying and providing details of the dispute.
- 13.2. Within 14 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 will be represented by a person having authority to agree to such resolution or methods of resolution. All aspects of every such conference except the fact of occurrence will be privileged.

- 13.3. If the dispute has not been resolved within 28 days of service of the notice of dispute, the parties agree to endeavour to settle the dispute by mediation administered by the Australian Commercial Disputes Centre ("ACDC") before having recourse to litigation. The mediation shall be conducted in accordance with the ACDC Guidelines for Commercial Mediation ("Guidelines") which are operating at the time the matter is referred to ACDC.

- 13.4. The Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved.

- 13.5. Nothing in this clause 13. will prejudice the right of a party to institute proceedings to enforce any payment due under the Agreement or to seek injunctive or urgent declaratory relief.

14. GST

- 14.1. The parties acknowledge and agree that:

- a. except where the context suggests otherwise, terms used in this clause 14. have the meanings given to those terms by the A New Tax System (Goods and Services Tax) Act 1999 (as amended from time to time).
- b. any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 14. ; and
- c. any amount payable by the Client to the Consultant under or by reason of this Agreement is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 14. or additional amount payable under clause 14.3.

- 14.2. Any payment or reimbursement required to be made under this Agreement that is calculated by reference to a cost, expense, or other amount paid or incurred by the Consultant will be limited to the total cost, expense or amount less the amount of any input tax credit to which the Consultant is entitled for the acquisition to which the cost, expense or amount relates.

- 14.3. If GST is payable in relation to any supply made under or by reason of this Agreement:

- a. the Client must pay to the Consultant an additional amount equal to the amount of that GST at the same time as any other consideration is to be first provided for that supply. Any additional amounts will not be refundable in any circumstance; and
- b. the Consultant will provide a tax invoice to the Client no later than 14 days after the day on which any consideration is to be first provided for that supply.

- 14.4. If the GST payable in relation to a supply made under or in connection with this Agreement varies from the additional amount paid by the Client under clause 14.3 such that a further amount of GST is payable in relation to the supply, then the Consultant will be entitled to receive from the Client, and the Client will promptly pay, the amount of that variation. Any payment under this clause 14.4 is deemed to be a payment of the additional amount payable under clause 14.3.

- 14.5. Clause 14. will not merge on completion of this Agreement.

15. GENERAL

- 15.1. The word "includes" in any form is not a term of limitation.

- 15.2. This Agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to its subject matter. No addition to or modification of any provision of this Agreement will be binding upon the parties unless made by written instrument signed by a duly authorised representative of both parties.

- 15.3. Should any part of this Agreement be or become invalid, that part will be severed from this Agreement. Such invalidity will not affect the validity of the remaining provisions of the Agreement.

- 15.4. No forbearance, delay, or indulgence by the Consultant or Client in enforcing the provisions of this Agreement will prejudice or restrict the rights of either, nor will any waiver of those rights operate as a waiver of any subsequent breach.

- 15.5. Without limiting any other provision which as a matter of interpretation may survive the termination of this Agreement, the provisions of clauses 4. , 6. , 8. and 13. survive termination of this Agreement.



- 15.6. The date of this Agreement is the date specified in the Proposal. Where a date is not specified in the Proposal, the date of this Agreement is the date that the Client provides written confirmation for the Consultant to proceed with provision of the Services covered by the Agreement.
- 15.7. This Agreement may only be varied by a document signed by or on behalf of each of the Consultant and Client.
- 15.8. To the extent permitted by law, in relation to its subject matter, this Agreement and the Consultant's Proposal to the Client in respect of the Services ("the Proposal"):
- a. embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
 - b. supersedes any prior written or other agreement of the parties.
- 15.9. In the event of any inconsistency between this Agreement (including the Schedule) and the Proposal, the terms of the Proposal shall prevail.
- 15.10. The Agreement is subject to and is to be construed in accordance with the laws of the State or Territory referred to in the Proposal or where no State or Territory is stated, New South Wales.

Annexure A - Special Conditions (clause 10.)

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