

STANDARD TERMS OF AGREEMENT FOR PROFESSIONAL SERVICES

PART 1 – DEFINITIONS

Unless the context otherwise requires, then in construing the Agreement:

“**Agreement**” means the entire contractual agreement between the parties and includes these Terms of Agreement, the proposal for services, and any variation

“**Date of Agreement**” means the date upon which there is an agreement to proceed between the parties or an approval to proceed document is received.

“**Consultant**” or “**Consulting Engineer**” means Structural Integrity Engineering Pty Ltd.

“**Subconsultant**” means and includes:

- a) any person, firm, group or Company engaged by the Consultant or with whom the Consultant may arrange for any work to be performed for the Client and;
- b) any person who is now or hereafter a servant, agent or subcontractor of the Subconsultant, and includes the successors of the Subconsultant.

“**Client**” means the party with whom the Consultant contracts to provide Services.

“**Project**” means the work described in the Agreement in respect of which the Client has engaged the Consultant to provide Services.

“**The Services**” means those services specifically described in the proposal prepared by the Consultant and submitted to the Client. If there is no proposal, the term means the services agreed between the Client and the Consultant to be performed.

Where the Services as Principal Consultant include contract administration and other services during construction:

- i) The Consulting Engineer is hereby authorised to act as agent of the Client to carry out those services;
- ii) All communications by the Client, the Contractor, specialist consultants or others relative to the Consulting Engineer's duties governed by this Agreement, shall be made by or through the Consulting Engineer.
- iii) The Consulting Engineer may make such decisions and issue such instructions as are in his opinion necessary for the safety of persons or property, or the proper execution of the Project;
- iv) The Consulting Engineer may make all decisions which he is empowered to make under relevant contracts, including decisions on claims made by the Contractors or the Client as required, and decisions relating to the interpretation of documents pertaining to those contracts;
- v) The Consulting Engineer may issue all certificates required or permitted by relevant contracts which he administers;
- vi) The relevant contractor alone is responsible for the proper execution of the work;
- vii) The contract administration services are not rendered for the benefit of nor does the Consulting Engineer undertake a duty of care towards any contractor;
- viii) The Consulting Engineer is not responsible to the Client for the means, methods, techniques, sequences, procedures and use of equipment, of any nature whatsoever, whether approved by the Consulting Engineer or not, which are employed by the contractor or others in executing any phases of the Project.

“**Proposal**” means the offer document or documents submitted to the client to describe the scope of work to be undertaken, the personnel and equipment proposed to be utilised, and the amount or method of calculation of the fee and reimbursable expenses.

PART 2 – ROLE OF THE CONSULTING ENGINEER

2.1 Professional Standard of Care

In performing the services, the consulting engineer shall exercise the degree of skill, care and diligence normally exercised by members of the engineering profession performing services of a similar nature, in accordance with the ethics of the engineering profession.

2.2 Professional Duty of Independent Judgement

If the Consulting Engineer is required to exercise his professional judgement between the Client and a third party with whom the Client has a contract, then he shall do so independently and as required by the terms of that contract.

2.3 Knowledge of Client Requirements

The Consulting Engineer shall use all reasonable efforts to inform himself of the Client's requirements for the Project and for that purpose he shall consult the Client throughout the performance of the Services.

2.4 Additional Information Documents and Other Particulars

If the Consulting Engineer considers that the information, documents and other particulars made available to him by the Client are not sufficient to enable the Consulting Engineer to provide the Services in accordance with this Agreement, the Consulting Engineer may advise the Client, who shall then provide such further assistance, information, or other particulars as necessary in the circumstances.

2.5 Notice of Matters Likely to Change Scope or Timing of Services

If the Consulting Engineer becomes aware of any matter which will change or which has changed the scope or timing of the Services, the he will give notice to the Client and the notice will contain, as far as practicable in the circumstances, particulars of the change.

2.6 Timely Provision of Services

The Consulting Engineer shall perform the Services in a timely manner to the extent that it is within his control to do so.

PART 3 – ROLE OF THE CLIENT

3.1 Provide Information, Documents and Other Particulars

The Client shall as soon as practicable make available to the Consulting Engineer all information, documents and other particulars relating to the Client's requirements for the Project.

3.2 Arrange Access to the Site and Other Lands

The Client shall as soon as practicable make arrangements to enable the Consulting Engineer to enter upon the Site and other lands as necessary to enable the Consulting Engineer to perform the Services.

3.3 Obtain All Necessary Approvals

Unless the parties specifically state otherwise, the Client shall as soon as practicable obtain all approvals, authorities, licenses and permits which are required from governmental, municipal or other responsible authorities for the lawful implementation and completion of the Project.

3.4 Provide Additional Professional Services

The Client agrees that the Services do not include any services which are properly carried out by other professions such as legal or accounting and if other such professional services are required the Client shall obtain these services at his own cost.

STANDARD TERMS OF AGREEMENT FOR PROFESSIONAL SERVICES

3.5 Supply Necessary Equipment and Facilities
 The Client shall make available to the Consulting Engineer at the place and at the time specified in the Proposal the equipment and facilities specified in the Proposal.

3.6 Appoint a Representative
 The Client shall appoint a person to act as his representative and give written notice to the Consulting Engineer of the name of the person so appointed. The Client agrees that the person appointed shall have authority to act on behalf of the Client for all purposes in connection with this Agreement.

3.7 Give Notice of Matters Likely to Change Scope or Timing of Services
 If the Client becomes aware of any matter which may change the scope or timing of the Services, or the Project then the Client will give written notice to the Consulting Engineer.

3.8 Comply with Additional Special Obligations
 The Client shall carry out the additional special obligations set out in the Proposal.

3.9 Co-operate with Consulting Engineer
 The Client shall co-operate with the Consulting Engineer and shall not interfere with or obstruct the proper performance of the Services.

PART 4 – PAYMENT TO CONSULTING ENGINEER FOR SERVICES

4.1 Client to Make Payment
 In consideration of the promise by the Consulting Engineer to perform the Services, the Client promises to pay the Consulting Engineer the Fee and the Reimbursable Expenses in accordance with the Proposal and at the times and in the manner set out in this Agreement.

4.2 Amount or the Method of Calculation of Fee
 The amount or the method of calculation of the Fee for the Services is set out in the Proposal.

4.3 Reimbursable Expenses
 In addition to the payment referred to in Clause 4.2, the Client agrees to indemnify the Consulting Engineer for all costs and expenses incurred by the Consulting Engineer in connection with the matters set out in the Proposal. If no terms are identified within the proposal, reimbursable expenses shall be at cost +10%.

4.4 Timing of Payment
 At or about the end of each payment period, the Consulting Engineer will give to the Client an account for the Services performed, and for reimbursable expenses incurred, during the period. The Client shall pay the full amount owing in respect of each account within thirty (30) days of issue of the account.

4.5 Interest on Overdue Payment
 The Client agrees that in addition to all other rights and remedies of the Consulting Engineer if the Client fails to pay all monies as and when due, the Consulting Engineer shall be entitled to recover interest at the rate of 10% on all moneys which are not so paid. The interest shall be calculated on daily balances from the date thirty (30) days after the date of the account to the date of payment of the account by the Client.

4.6 Disputed Claims for Payment
 If the Client disputes the whole or any portion of the amount claimed in an account submitted by the Consultant, the Client shall pay the portion of the amount not in dispute and the Client shall notify the Consultant of the reasons of the dispute, within 14 days of the account.

If the parties are unable to resolve the dispute, the matter shall be referred to determination in accordance with this agreement.

4.7 Payment of Costs if Project Delayed
 If the performance of the Services is delayed beyond a reasonable period for any reason other than a breach of the Agreement by the Consulting Engineer, the Client shall pay to the Consulting Engineer a reasonable sum of money to cover the consequential costs, and expenses suffered by the Consulting Engineer as a result of the delay.

If the parties are unable to agree upon an appropriate additional sum, the matter shall be referred for determination in accordance with this Agreement.

4.8 Effect of Termination on Right to Payment
 If the engagement of the Consulting Engineer is terminated for any reason other than for breach of this agreement by the Consulting Engineer, the Consulting Engineer shall be entitled to pro-rata payment for the Services carried out and consequential costs and expenses incurred as a result of the termination, for the period up to and including the date of termination. For the purposes of this Clause, the Consulting Engineer may treat the date of termination of the Services as the day upon which written notification of the termination was received.

4.9 Effect of Change in Circumstances
 The Fee for the Services performed under this Agreement has been calculated on the assumption of both parties that the Services are to be provided under circumstances normally pertaining to the carrying out of the type of project in question. The parties agree that if the Consulting Engineer is required to perform the Services in circumstances other than those normally pertaining to such a project or if there is a change in the scope, timing or order of the services, then the Consulting Engineer shall be entitled to additional payment of an amount which is reasonable in the circumstances.

4.10 Changes in Laws
 If after the date of this Agreement there is any change to the laws, by-laws, regulations or ordinances of the Commonwealth of Australia or a State or Territory of Australia or any statutory authority and that change directly or indirectly increases or decreases the costs or reimbursable expenses incurred by the Consulting Engineer in performing the Services, then the fee and reimbursable expenses otherwise payable to the Consulting Engineer under this Agreement shall be increased or decreased accordingly.

PART 5 – SCOPE OF LIABILITY

5.1 Direct and Indirect Loss
 The liability of the Consulting Engineer to the Client arising out of the performance or non-performance of the services, whether under the law or contract or otherwise, shall be limited to the cost of rectifying the works which are the subject of the commission.

STANDARD TERMS OF AGREEMENT FOR PROFESSIONAL SERVICES

5.2 Maximum amount of Liability
 The maximum liability of the Consulting Engineer to the Client arising out of the performance or non-performance of the Services, whether under the law of contract, tort or otherwise, shall be the amount specified in the Proposal, or if no amount is specified, \$300,000.00.

The Client shall indemnify the Consultant from any cost, claim, demand or legal proceeding for damage which exceeds the maximum amount of liability.

5.3 Duration of Liability
 The Consulting Engineer shall be deemed to have been discharged from all liability in respect of the Services, whether under the law of contract, tort or otherwise, at the expiration of the period specified in the Proposal or if no date is specified on the expiration of one year from the completion of the Services, and the Client (and persons claiming through or under the Client) shall not be entitled to commence any action or claim whatsoever against the Consulting Engineer (or any employee of the Consulting Engineer) in respect of the Services after that date.

5.4 Estimates of Project Costs
 If the services include giving to the Client an estimate of the likely costs for the project, the Consulting Engineer warrants only that he will exercise the reasonable skill, care and diligence of a Consulting Engineer in the preparation of his professional opinion of those costs.

5.5 Extent of Warranty
 The Consulting Engineer does not give any warranty nor accept any liability in relation to the performance or non-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 implied whether by law, custom or otherwise, that warranty is to the full extent permitted by law hereby excluded.

Nothing herein, contained shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of any goods or services pursuant to this Agreement of all or any of the provisions of Part V of the Trade Practices Act 1974 (as amended) or any relevant State Act or Territorial Ordinance which by law cannot be excluded, restricted or modified.

PART 6 – COPYRIGHT AND USE OF DOCUMENTS

6.1 Copyright
 Copyright in all drawings, reports, specifications, bills of quantities, calculations and other documents provided by the Consulting Engineer in connection with the Project, shall remain vested in the Consulting Engineer.

6.2 Client's Right to use Documents
 Subject to Clause 6.3, the Client alone shall have a licence to use the documents referred to in Clause 6.1 for the purpose of completing the Project; however, the Client shall not use nor make copies of such documents in connection with any work other than work comprised in the Project unless express approval is given in advance by the Consulting Engineer.

6.3 Revocation of Licence
 Notwithstanding any other provision of the Agreement, in the event that the Client is in breach of any of the provisions of Part 4 of the Agreement, the Consulting Engineer may in his absolute discretion by notice in

writing to the Client, revoke the licence referred to in Clause 6.2, whereupon the Client shall forthwith return, or cause to be returned, to the Consulting Engineer, all documents referred to in Clause 6.1.

6.4 Publication of Articles
 The Consulting Engineer may with the consent of the Client, publish either alone, or in conjunction with others, articles, photographs and other illustrations relating to the project.

6.5 Patents and Trademarks
 a) If during the course of providing the Services, the Consulting Engineer develops, discovers, or first reduces to practice a concept, product or process which is capable of being patented, then such concept, product or process shall be and remain the property of the Consulting Engineer and the Client shall not use, infringe or otherwise appropriate the same without first obtaining the written consent of the Consulting Engineer.
 b) If, during the course of the providing the Services, the Consulting Engineer discovers, develops or first reduces to practice a concept, product or process capable of being patented, then the Client shall be entitled to a royalty free licence to use the same during the life of the works comprising the Project.

PART 7 – DISPUTE DETERMINATION

7.1 Expert Determination
 If the Client and the Consulting Engineer are in dispute regarding any matter arising out of the Agreement, then either party may by notice in writing served on the other, require that such dispute be resolved by the determination of an independent third party acceptable to both parties. The other party may accept this course of action or seek arbitration under Clause 7.2. If the parties cannot agree on any independent third party within seven (7) days of the date of service of the notice, then either party may request the President for the time being of the Institution of Engineers, Australia, to nominate the third party. The third party who has been agreed upon or appointed, shall act as an expert and not as an arbitrator and his decision shall be final and binding upon the Client and the Consulting Engineer.

7.2 Arbitration
 Disputes under or arising out of the Agreement may be referred to the arbitration of a person to be agreed between the Client and the Consulting Engineer. If the parties fail to agree, within one month of one party giving the other notice in writing of a dispute, then either party may request the President for the time being of The Institution of Engineers Australia to appoint an arbitrator and the arbitrator shall be so appointed.

7.3 Costs of Arbitration
 The costs of any arbitration proceedings shall be borne as the arbitrator may direct.

PART 8 – TERMINATION AND SUSPENSION OF SERVICES

8.1 Termination by Client
 The Client may by notice in writing served on the Consulting Engineer, terminate the Client's obligations under this Agreement:-
 a) If the Consulting Engineer is in breach of the terms of this Agreement and the breach has not been remedied within twenty-eight (28) days (or longer period as the Client may allow) of the service by the

STANDARD TERMS OF AGREEMENT FOR PROFESSIONAL SERVICES

Client on the Consulting Engineer of a notice requiring the breach to be remedied; or

- b) If the Client serves on the Consulting Engineer a notice requiring that this Agreement be terminated on a date specified in the notice being not less than sixty (60) days after from the date of issue of the notice.

8.2 Termination by Consulting Engineer

The Consulting Engineer may by notice in writing served on the Client, terminate the Consulting Engineer's obligations under the Agreement:-

- a) If the Client is in breach of the conditions of Part 4 of the Agreement; or
- b) If the Client is in breach of the provisions of any other part of the Agreement and the breach has not been remedied within twenty-eight (28) days (or such longer period as the Consulting Engineer may allow) of the service by the Consulting Engineer on the Client of a notice requiring the breach to be remedied; or
- c) If the Consulting Engineer serves on the Client a notice requiring that the Agreement be terminated on a date specified in the notice being not less than sixty (60) days distant from the date of the notice.

8.3 Suspension by Consulting Engineer

The Consulting Engineer may by notice in writing served on the Client suspend the Consulting Engineer's obligations under the Agreement:

- a) If the Client is in breach of the provisions of Part 4 of the Agreement; or
- b) If the Client is in breach of the provisions of any other Part of the Agreement and the breach has not been remedied within twenty-eight (28) days (or such longer period as the Consulting Engineer may allow) of the service by the Consulting Engineer on the Client of a notice requiring the breach to be remedied.

Suspension by the Consulting Engineer pursuant to this clause of his obligations under the Agreement shall not under any circumstances, unless the Consulting Engineer shall in writing specifically so elect, amount in law to an affirmation of the Agreement or in any way prejudice such rights as the Consulting Engineer may have under Clauses 8.2.

8.4 Termination or Suspension Not to Affect Rights in Respect of Prior Breaches

Termination or suspension shall be without prejudice to any claim which either party may have against the other in respect of any breach of the terms of the Agreement which occurred prior to the date of determination.

PART 9 – GENERAL MATTERS

9.1 Transfer and Assignment

- a) The Consulting Engineer and the Client each binds himself and his partners, successors, executors, administrators, assigns and legal representatives to the other party to this Agreement and to the partners, successors, executors, administrators, assigns and legal representatives of the other party in respect to all covenants and obligations of this Agreement.

- b) Neither the Consulting Engineer nor the Client shall assign, sublet or transfer any right or obligation under the Agreement without the written consent of the other party. 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.

- c) The Consulting Engineer may at any time change the structure of the practice. In such case the present Agreement shall be deemed to have been replaced by an identical agreement between the Client and the Consulting Engineer's practice in its new form.

- d) Nothing contained in this Clause shall prevent the Consulting Engineer from employing within this fee such persons or companies as he may deem appropriate to assist him in the performance of the Agreement.

9.2 Consultants

If circumstances arise which require the services of a specialist or expertise outside the field of the Consulting Engineer, the Consulting Engineer may with the prior approval of the Client, engage the appropriate consultant. The Consultant shall be engaged at the Client's expense and on his behalf. The Client's approval shall not be unreasonably withheld.

9.3 Indemnities

The Client indemnifies and holds harmless the Consulting Engineer in respect of any claim against the Consulting Engineer caused by or arising out of any act or thing done by the Consulting Engineer in good faith and purportedly pursuant to a right granted to the Consulting Engineer under the provisions of the Agreement.

9.4 Notices

A notice purported to be served under this Agreement shall be deemed to have been properly served if the same is in writing and is sent to the usual business address of the recipient by certified mail, telegram or telex message or personal delivery for which a receipt is obtained.

9.5 Moneys

All reference to moneys in the Agreement shall be deemed to be references to Australian currency and all moneys to be paid shall be paid to the relevant party in places he may reasonably nominate in writing.

9.6 Governing Law

The Agreement and all arbitrations arising out of it is governed by the laws of the State of Western Australia and the parties submit to the jurisdiction of courts of that State.

9.7 Headings

Headings have been inserted for guidance only and do not form part of the Agreement.