

TERMS & CONDITIONS OF TRADE

1. Introduction

- 1.1. These terms and conditions apply to Services carried out by the Consultant and should be read in conjunction with any Documentation and/or Proposal. The Client is deemed to have accepted these conditions if the Consultant commences performance of the Services pursuant to its Proposal.
- 1.2. As stated in clause 3.2, these terms and conditions shall prevail over any provisions contained in any document supplied by the Client. These terms and conditions will also apply to any variation work which the Consultant may be directed to perform.

2. Definitions

- 2.1. "Contract" means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 2.2. "Consultant" means Remedia Consulting Pty Limited T/A BAAM Consulting (ACN:101 648 793), its successors and assigns or any person acting on behalf of and with the authority of Remedia Consulting Pty Limited T/A BAAM Consulting (ACN:101 648 793).
- 2.3. "Client" means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting the Consultant to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
 - a. if there is more than one Client, is a reference to each Client jointly and severally; and
 - b. if the Client is a partnership, it shall bind each partner jointly and severally; and
 - c. if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - d. includes the Client's executors, administrators, successors and permitted assigns.
- 2.4. "Documentation" means any documents, designs, drawings, plans or other documentation supplied, consumed, created or deposited by the Consultant in the course of it conducting, or supplying to the Client, any Services.
- 2.5. "Services" mean all Services supplied by the Consultant to the Client at the Client's request from time to time.
- 2.6. "Event of Insolvency" means a Client (party) becomes subject to external administration within the meaning of Chapter 5 the Corporations Act; or a Client (party) becomes, or admits in writing that it is, or is declared to be, or is deemed under any applicable law to be insolvent or unable to pay its debts.
- 2.7. "Proposal" means the Consultant's written offer to provide the Services which accompanies these Terms of Trade.
- 2.8. "Intellectual Property Right" means any patent, registered design, trademark or name, copyright or other protected right.
- 2.9. "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's

intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "Personal Information" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.

- 2.10. "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. If the Client does not wish to allow Cookies to operate in the background when using the Consultant's website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.
- 2.11. "Fee" means the price payable (plus any GST where applicable) for the Services as agreed between the Consultant and the Client in accordance with clause 8 of this Contract.
- 2.12. "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

3. Acceptance

- 3.1. The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for, or accepts Services provided by the Consultant.
- 3.2. In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 3.3. Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 3.4. Where applicable, we reserve the right to request the Client acknowledges that the supply of Services on credit shall not take effect until the Client has completed a credit application with the Consultant and it has been approved with a credit limit established for the account.
- 3.5. In the event that the supply of Services requested exceeds the Client's credit limit and/or the account exceeds the payment terms, the Consultant reserves the right to refuse delivery.
- 3.6. The Client acknowledges and accepts that:
 - a. the Services or Documentation have been prepared on the information and data available at this time (including, but not limited to, by-laws or other safety criteria, etc.). Should any of these factors change, then the Consultant cannot guarantee that the recommendations and/or estimated outcomes will still apply; and
 - b. the Consultant shall be entitled to rely on the accuracy of any drawings, specifications and other information provided by the Client or service authorities. In the event that any of this information provided by the Client is inaccurate, the Consultant accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate technical drawings, specifications or other information; and

- c. should the information supplied by the Client be inaccurate and require the Consultant to rework the content of any Documentation then all additional costs incurred by the Consultant shall be charged as a variation as per clause 8.2.

- 3.7. Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

4. Clients that are Strata Body/Owners Corporations

- 4.1. Further to clause 2.3, where the Client is an Owners Corporation, the Strata Committee warrants that the Strata Manager has the authority to enter into this agreement and agrees to execute the Acknowledgement of Engagement attached to this agreement within 7 days of accepting the agreement.
- 4.2. The Strata Committee also warrant that the funds for the costs of the Consultant are held by the Owners Corporation pursuant to Part 5 of the Strata Schemes Management Act, 2015.
- 4.3. The Owners Corporation also agrees to raise a special levy to meet any ongoing costs which arise out of the agreement should further funding not be available from levies or the capital works fund.

5. Interpretation

- 5.1. In these Terms of Trade, unless the context otherwise requires:
 - a. words importing the singular include the plural and vice versa;
 - b. headings and underlines are for convenience only and do not affect interpretation;
 - c. a reference to a gender includes any gender and a corporation or association;
 - d. a reference to a document includes an amendment or supplement to, or replacement or notation of, that document;
 - e. a reference to a party includes that party's successors, assigns, administrators and substitutes;
 - f. day means business day, being any day other than a Saturday, Sunday or Public Holiday in the state where the services are to be provided;
 - g. an agreement on the part of two or more persons binds them jointly and severally.

6. Errors and Omissions

- 6.1. Client acknowledges and accepts that the Consultant shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
 - a. resulting from an inadvertent mistake made by the Consultant in the formation and/or administration of this Contract; and/or
 - b. contained in/omitted from any literature (hard copy and/or electronic) supplied by the Consultant in respect of the Services.
- 6.2. In the event such an error and/or omission occurs in accordance with clause 6.1, and is not attributable to the negligence and/or wilful misconduct of the Consultant; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

7. Change in Control

- 7.1. The Client shall give the Consultant not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the

Client's name, address, contact phone or fax number/s, change of trustees, or business practice). The Client shall be liable for any loss incurred by the Consultant as a result of the Client's failure to comply with this clause.

8. Fee and Payment

- 8.1. At the Consultant's sole discretion the Fee shall be either:
 - a. as indicated on any invoice provided by the Consultant to the Client; or
 - b. the Fee as at the date of delivery of the Services according to the Consultant's current price list; or
 - c. the Consultant's quoted price (subject to clause 8.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 8.2. The Consultant reserves the right to change the Fee:
 - a. if a variation to the Documentation which is to be supplied (including any applicable plans or specifications) is requested; or
 - b. where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, safety considerations, prerequisite work by any third party not being completed, inaccurate structural measurements provided by the Client, change of design, etc.) which are only discovered on commencement of the Services; or
 - c. in the event of increases to the Consultant in the costs of supply and/or production of the Services, and/or Delivery, due to circumstances beyond the reasonable control of the Consultant.
- 8.3. 8.3 Variations will be charged for on the basis of the Consultant's quotation, and will be detailed in writing, and shown as variations on the Consultant's invoice. The Client shall be required to respond to any variation submitted by the Consultant within seven (7) working days. Failure to do so will entitle the Consultant to add the cost of the variation to the Fee. Payment for all variations must be made in full at the time of their completion.
- 8.4. Time required to be spent out of hours at the Client's request will be subject to a surcharge of thirty (30%) percent.
- 8.5. At the Consultant's sole discretion a non-refundable deposit may be required.
- 8.6. Time for payment for the Services being of the essence, the Fee will be payable by the Client on the date/s determined by the Consultant, which may be:
 - a. on delivery of the Services;
 - b. before delivery of the Services;
 - c. by way of instalments/progress payments in accordance with the Consultant's payment schedule;
 - d. thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - e. the date specified on any invoice or other form as being the date for payment; or
 - f. failing any notice to the contrary, the date which is fourteen (14) days following the date of any invoice given to the Client by the Consultant.
- 8.7. Payment may be made by bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and the Consultant.
- 8.8. The Consultant may in its discretion allocate any payment received from the Client towards any invoice that the Consultant determines and may do so at the time of receipt or at any time afterwards. On any default by the Client the Consultant may re-allocate any payments previously received and allocated.
- 8.9. If the Client disputes any part of the payment claim, then a written schedule of the items disputed must be given to the Consultant within fourteen (14) days from receipt of the invoice.

- 8.10. The Client shall not be entitled to set off against, or deduct from the Fee, any sums owed or claimed to be owed to the Client by the Consultant nor to withhold payment of any invoice because part of that invoice is in dispute.
- 8.11. Unless otherwise stated the Fee does not include GST. In addition to the Fee, the Client must pay to the Consultant an amount equal to any GST the Consultant must pay for any supply by the Consultant under this or any other agreement for providing the Consultant's Services. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Fee. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Fee except where they are expressly included in the Fee.

9. Reimbursable Expenses

- 9.1. The Consultant shall be reimbursed for all expenses reasonably and properly incurred in connection with the provision of the Services, except where such expenses are specifically stated in writing by the Consultant as being non-reimbursable. All reimbursable expenses (e.g. travel, communications, couriers, etc.) will be charged at the cost involved (excluding GST) to the Consultant, plus any administration fee of eight (8%) percent.
- 9.2. If required by the client, the Consultant can provide a hardcopy of the Documentation, with colour pages (of the photographic Documentation) charged at a rate to be advised by the Consultant at the time of the request made by the Client.

10. Consultant's Responsibilities

- 10.1. The Consultant shall exercise reasonable skill, care and diligence in the performance of the Services in accordance with the ethics of the engineering profession.
- 10.2. If the Consultant is required to exercise their professional judgment 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.
- 10.3. The Consultant shall use all reasonable efforts to inform themselves, of the Client's requirements for the Documentation and for that purpose he shall consult the Client throughout the performance of the Services.
- 10.4. If the Consultant considers that the information, documents and other particulars made available to him by the Client are not sufficient to enable the Consultant to provide the Services in accordance with this Contract. The Consultant may advise the Client who shall then provide such further assistance, information, or other particulars as necessary in the circumstances.
- 10.5. If the Consultant becomes aware of any matter which will change or which has changed the scope or timing of the Services then the Consultant will give notice to the Client and the notice will contain, as far as practicable in the circumstances, particulars of the change.
- 10.6. The Consultant shall perform the Services in a timely manner to the extent that it is within his control to do so.
- 10.7. The Documentation prepared under the scope of work described above may not be suitable for use in court without further supporting documents, such as Scott Schedules.

11. Client's Responsibilities

- 11.1. The Client shall as soon as practicable make available to the Consultant all information, documents and other particulars relating to the Client's requirements for the Documentation.
- 11.2. The Client shall as soon as practicable make arrangements to enable the Consultant to enter upon the Site and other lands as necessary to enable the Consultant to perform the Services.

- 11.3. Unless the parties specifically agree 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 Services.
- 11.4. 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.
- 11.5. The Client shall make available to the Consultant at the place and at the time specified in the Quotation or Proposal, the equipment and facilities specified in the Proposal.
- 11.6. The Client may appoint a person or persons to act as their representative and shall give written notice to the Consultant of the name of the person(s) so appointed. The Client agrees that the person(s) appointed shall have full authority to act on behalf of the Client for all purposes in connection with this Contract.
- 11.7. If the Client becomes aware of any matter which may change the scope or timing of the Services or the Documentation then the Client will give written notice of same to the Consultant.
- 11.8. The Client shall carry out any additional special obligations set out in the Proposal.
- 11.9. The Client shall co-operate with the Consultant and shall not interfere with or obstruct the proper performance of the Services.
- 11.10. The Client agrees that:
- the Consultant does not supervise the work of others in the case of services undertaken by others pursuant to directions from the Consultant; and
 - the Consultant is responsible for exercising reasonable care and giving directions to others carrying out Services, but it is not responsible for the manner or schedule in which the directions are carried out by others.

12. Provision of the Services

- 12.1. At the Consultant's sole discretion delivery of the Services shall take place when:
- the Services are supplied to the Client at the Consultant's address; or
 - the Services are supplied to the Client at the Client's nominated address.
- 12.2. Subject to clause 12.3 it is the Consultant's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 12.3. The Services' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that the
- 12.4. Delivery of the Services to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this Contract.
- 12.5. The Consultant may deliver the Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 12.6. Any time specified by the Consultant for delivery of the Services is an estimate only and the Consultant will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However 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. In the event that the Consultant is unable to supply the Services as agreed solely due to any action or inaction of the Client then the Consultant shall be entitled to charge a reasonable fee for re-supplying the Services at a later time and date.

13. Extension of Contract Period

- 13.1. The Consultant shall as per clause 8.2 above be entitled to claim an extension to the term of the Services in the event of delays resulting from any matter whatsoever which is not entirely under the control of the Consultant. These matters shall include, but are not limited to delays caused by:
- response(s) to information request(s) made by the Consultant to the Client not being available when required;
 - approval authorities response times;
 - information from Sub-Contractor's;
 - changes to the design brief being requested by the Client;
 - any other variation to this Agreement.
- 13.2. In the event that there is a break in the continuity of Services being provided by the Consultant due to the Client's instructions or all Services are suspended by the Consultant pursuant to overdue payments, then Fees for Services completed at the time of such a break or suspension shall be the percentage due for completed Services of the current stage, plus all Fees due up to date of such a break or suspension plus all Fees, wages and expenses reasonably incurred as a result of such a break or suspension, unless otherwise agreed.

14. Insurances

- 14.1. The Consultant shall maintain standard insurance coverage as set out below:
- Workers Compensation
 - Public Liability to \$20,000,000
 - Professional Indemnity to \$1,000,000
- 14.2. Up to \$5,000,000 Professional Indemnity Insurance may be provided if requested for specific projects/Services, subject to acceptance of an additional levy.

15. Title

- 15.1. The Consultant and the Client agree that where it is intended that the ownership of Documentation is to pass to the Client that such ownership shall not pass until:
- the Client has paid the Consultant all amounts owing for the Services; and
 - the Client has met all other obligations due by the Client to the Consultant in respect of all contracts between the Consultant and the Client.
- 15.2. Receipt by the Consultant of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Consultant's ownership or rights in respect of the Incidental Items shall continue.
- 15.3. It is further agreed that, until ownership of the Incidental Items passes to the Client in accordance with clause 15.1:
- the Client is only a bailee of the Incidental Items and must return the Incidental Items to the Consultant immediately upon request by the Consultant;
 - the Client holds the benefit of the Client's insurance of the Documentation on trust for the Consultant and must pay to the Consultant the proceeds of any insurance in the event of the Incidental Items being lost, damaged or destroyed;
 - the Client must not sell, dispose, or otherwise part with possession of the Documentation. If the Client sells, disposes or parts with possession of the Documentation then the Client must hold the proceeds of sale of the Incidental Items on trust for the Consultant and must pay or deliver the proceeds to the Consultant on demand;
 - the Client should not convert or process the Documentation or intermix them with other goods, but if the Client does so then the Client holds the resulting product on trust for the benefit of the Consultant and

- must dispose of or return the resulting product to the Consultant as the Consultant so directs;
- the Client shall not charge or grant an encumbrance over the Incidental Items nor grant nor otherwise give away any interest in the Incidental Items while they remain the property of the Consultant;
 - the Client irrevocably authorises the Consultant to enter any premises where the Consultant believes the Documentation are kept and recover possession of the Documentation.

16. Personal Property Securities Act 2009 ("PPSA")

- 16.1. In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 16.2. Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all the Client's present and after acquired property being a charge, including anything in respect of which the Client has at any time a sufficient right, interest or power to grant a security interest in for the purposes of securing repayment of all monetary obligations of the Client to the Contractor for Services – that have previously been provided and that will be provided in the future by the Contractor to the Client.
- 16.3. The Client undertakes to:
- promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Consultant may reasonably require to:
 - register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - register any other document required to be registered by the PPSA; or
 - correct a defect in a statement referred to in clause 11.3(a)(i) or 11.3(a)(ii);
 - indemnify, and upon demand reimburse, the Consultant for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Services charged thereby;
 - not register a financing change statement in respect of a security interest without the prior written consent of the Consultant;
 - register, or permit to be registered, a financing statement or a financing change statement in relation to the Services in favour of a third party without the prior written consent of the Consultant.
- 16.4. The Consultant and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 16.5. The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 16.6. The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 16.7. Unless otherwise agreed to in writing by the Consultant, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 16.8. The Client must unconditionally ratify any actions taken by the Consultant under clauses 11.3 to 11.5.
- 16.9. Subject to any express provisions to the contrary (including those contained in this clause 11), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

17. Security and Charge

- 17.1. In consideration of the Consultant agreeing to supply Services, the Client charges all of its rights, title and interest

(whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

- 17.2. The Client indemnifies the Consultant from and against all the Consultant's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Consultant's rights under this clause.
- 17.3. The Client irrevocably appoints the Consultant and each director of the Consultant as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 17 including, but not limited to, signing any document on the Client's behalf.

18. Defects, Warranties and the Competition and Consumer Act 2010 ("CCA")

- 18.1. The Client must inspect the Consultant's Services on completion of the Services and must within seven (7) days notify the Consultant in writing of any evident defect in the Services or Documentation provided (including the Consultant's workmanship) or of any other failure by the Consultant to comply with the description of, or quote for, the Services which the Consultant was to supply. The Client must notify any other alleged defect in the Consultant's Services or Documentation as soon as is reasonably possible after any such defect becomes evident. Upon such notification the Client must allow the Consultant to review the Services or Documentation that were provided.
- 18.2. Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).
- 18.3. The Consultant acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 18.4. Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Consultant makes no warranties or other representations under these terms and conditions including, but not limited to, the quality or suitability of the Services. The Consultant's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 18.5. If the Client is a consumer within the meaning of the CCA, the Consultant's liability is limited to the extent permitted by section 64A of Schedule 2.
- 18.6. If the Consultant is required to rectify, re-supply, or pay the cost of re-supplying the Services under this clause or the CCA, but is unable to do so, then the Consultant may refund any money the Client has paid for the Services but only to the extent that such refund shall take into account the value of Services and Documentation which have been provided to the Client which were not defective.
- 18.7. If the Client is not a consumer within the meaning of the CCA, the Consultant's liability for any defective Services or Documentation is:
 - a. limited to the value of any express warranty or warranty card provided to the Client by the Consultant at the Consultant's sole discretion;
 - b. otherwise negated absolutely.
- 18.8. Notwithstanding clauses 18.1 to 18.7 but subject to the CCA, the Consultant shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
 - a. the Client failing to properly maintain or store any Documentation;
 - b. the Client using the Documentation for any purpose other than that for which they were designed;

- c. the Client continuing to use any Documentation after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
- d. interference with the Services by the Client or any third party without the Consultant's prior approval;
- e. the Client failing to follow any instructions or guidelines provided by the Consultant;
- f. fair wear and tear, any accident, or act of God.

19. Limitation of liability

- 19.1. Further to the above clause 18, to the extent permitted by law all implied conditions, warranties and undertakings are expressly excluded from this Contract.
- 19.2. Should the Consultant be liable for a breach of a condition or warranty implied by the Competition & Consumer Act 2010 then its liability for a breach of any such condition or warranty shall be limited as per clause 18.6, at its option, to any one or more of the following:
 - a. the supplying of the Services again; or
 - b. the payment of the reasonable cost of having the Services supplied again.
- 19.3. The Consultant's liability to the Client arising out of performance or non-compliance of the Services whether under law of contract, negligence, tort, breach of statutory warranty or otherwise other than in respect of personal injury or death shall be limited to the following amounts:
 - a. the fee paid by the Client or \$20,000 whichever is the lesser; or
 - b. any other amount agreed in writing between the Client and the Consultant.

20. Intellectual Property Right

- 20.1. The Consultant retains the Intellectual Property Right in relation to all drawings, reports, specifications, calculations, computer records and any other documents produced by the Consultant.
- 20.2. The Consultant grants to the Client an irrevocable licence to use the Intellectual Property Rights for the purpose which the Services are provided including any subsequent repairs, maintenance or servicing, the supply of replacement parts, additions or alterations.
- 20.3. If the Client is in breach of any obligation to make payment to the Consultant, the Consultant may revoke this licence at its discretion and upon receiving written notice the Client shall return to the Consultant all material in its possession within 7 days.
- 20.4. The Client must not alter or amend any material produced by the Consultant and must acknowledge the Consultant's work in all material incorporated into larger documents or reports.

21. Default and Consequences of Default

- 21.1. Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Consultant's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 21.2. If the Client owes the Consultant any money the Client shall indemnify the Consultant from and against all costs and disbursements incurred by the Consultant in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Consultant's contract default fee, and bank dishonour fees).
- 21.3. Further to any other rights or remedies the Consultant may have under this Contract, if a Client has made payment to the Consultant, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the

Consultant under this clause 21 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.

- 21.4. Without prejudice to the Consultant's other remedies at law the Consultant shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Consultant shall, whether or not due for payment, become immediately payable if:
- any money payable to the Consultant becomes overdue, or in the Consultant's opinion the Client will be unable to make a payment when it falls due;
 - the Client has exceeded any applicable credit limit provided by the Consultant;
 - the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

22. Cancellation

- 22.1. Without prejudice to any other remedies the Consultant may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Consultant may suspend or terminate the supply of Services to the Client. The Consultant will not be liable to the Client for any loss or damage the Client suffers because the Consultant has exercised its rights under this clause.
- 22.2. The Consultant may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are commenced by giving written notice to the Client. On giving such notice the Consultant shall repay to the Client any money paid by the Client for the Services. The Consultant shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 22.3. In the event that the Client cancels delivery of the Services the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Consultant as a direct result of the cancellation (including, but not limited to, any loss of profits).

23. Privacy Policy

- 23.1. All emails, documents, images or other recorded information held or used by the Consultant is Personal Information, as defined and referred to in clause 23.3, and therefore considered Confidential Information. The Consultant acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). The Consultant acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by the Consultant that may result in serious harm to the Client, the Consultant will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 23.2. Notwithstanding clause 23.1, privacy limitations will extend to the Consultant in respect of Cookies where the Client utilises the Consultant's website to make enquiries. The Consultant agrees to display reference to such Cookies and/or similar

tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:

- IP address, browser, email client type and other similar details;
- tracking website usage and traffic; and
- reports are available to the Consultant when the Consultant sends an email to the Client, so the Consultant may collect and review that information ("collectively Personal Information")

If the Client consents to the Consultant's use of Cookies on the Consultant's website and later wishes to withdraw that consent, the Client may manage and control the Consultant's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.

- 23.3. The Client agrees for the Consultant to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Client in relation to credit provided by the Consultant.
- 23.4. The Client agrees that the Consultant may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- to assess an application by the Client; and/or
 - to notify other credit providers of a default by the Client; and/or
 - to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 23.5. The Client consents to the Consultant being given a consumer credit report to collect overdue payment on commercial credit.
- 23.6. The Client agrees that personal credit information provided may be used and retained by the Consultant for the following purposes (and for other agreed purposes or required by):
- the provision of Services; and/or
 - analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Services; and/or
 - processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - enabling the collection of amounts outstanding in relation to the Services.
- 23.7. The Consultant may give information about the Client to a CRB for the following purposes:
- to obtain a consumer credit report;
 - allow the CRB to create or maintain a credit information file about the Client including credit history.
- 23.8. The information given to the CRB may include:
- Personal Information as outlined in 23.3 above;
 - name of the credit provider and that the Consultant is a current credit provider to the Client;
 - whether the credit provider is a licensee;
 - type of consumer credit;
 - details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - advice of consumer credit defaults (provided the Consultant is a member of an approved QAIC External Disputes Resolution Scheme), overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that

the Client no longer has any overdue accounts and the Consultant has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);

- g. information that, in the opinion of the Consultant, the Client has committed a serious credit infringement;
 - h. advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 23.9. The Client shall have the right to request (by e-mail) from the Consultant:
- a. a copy of the Personal Information about the Client retained by the Consultant and the right to request that the Consultant correct any incorrect Personal Information; and
 - b. that the Consultant does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 23.10. The Consultant will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 23.11. The Client can make a privacy complaint by contacting the Consultant via e-mail. The Consultant will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.

24. Service of Notices

- 24.1. Any written notice given under this Contract shall be deemed to have been given and received:
- a. by handing the notice to the other party, in person;
 - b. by leaving it at the address of the other party as stated in this Contract;
 - c. by sending it by registered post to the address of the other party as stated in this Contract;
 - d. if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
 - e. if sent by email to the other party's last known email address.
- 24.2. Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

25. Trusts

- 25.1. If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Consultant may have notice of the Trust, the Client covenants with the Consultant as follows:
- a. the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - b. the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - c. the Client will not without consent in writing of the Consultant (the Consultant will not unreasonably

withhold consent), cause, permit, or suffer to happen any of the following events:

- i. the removal, replacement or retirement of the Client as trustee of the Trust;
- ii. any alteration to or variation of the terms of the Trust;
- iii. any advancement or distribution of capital of the Trust; or
- iv. any resettlement of the trust property.

26. Building and Construction Industry Security of Payments Act 1999

- 26.1. At the Consultant's sole discretion, if there are any disputes or claims for unpaid Services then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.
- 26.2. Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.

27. Dispute Resolution

- 27.1. If a dispute arises between the parties, then either party shall give the other party a written notice of dispute adequately identifying and providing details of the dispute.
- 27.2. Notwithstanding the existence of a dispute, the parties shall continue to perform the works under the agreement.
- 27.3. Within fourteen (14) days after receiving a notice of dispute, the parties shall confer at least once to resolve the dispute or agree on methods of doing so.
- 27.4. At every such conference, each party shall 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 shall be privileged.
- 27.5. If a dispute has not been resolved within twenty eight (28) days from service of a notice of dispute, then that dispute shall be referred to arbitration or expert determination.
- 27.6. If the dispute is referred to arbitration and the parties have not agreed upon an arbitrator within 14 days, the arbitrator shall be appointed by the president of the Institution of Engineers Australia. The arbitration shall be conducted in accordance with the Commercial Arbitration Act NSW 2010.
- 27.7. If the dispute is referred to expert determination and the parties have not agreed upon an expert within 14 days, the expert shall be nominated by the Institution of Engineers Australia. The expert determination shall be conducted in accordance with the guidelines for expert determination of the Australian Commercial Dispute Centre.
- 27.8. Except where the parties otherwise agree in writing, or the guidelines of expert determination of the Australian Commercial Dispute Centre otherwise provide:
- 27.9. Each party shall bear its own costs and pay one half of the expert's fees and expenses;
- 27.10. The expert shall not act as an arbitrator; and the determination of the expert shall be final and binding on the parties.
- 27.11. Nothing herein shall prejudice the right of a party to institute proceedings to enforce payment due under the agreement or to seek injunctive or urgent declaratory relief.

28. General

- 28.1. The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the

remaining provisions shall not be affected, prejudiced or impaired.

- 28.2. These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales in which the Consultant has its principal place of business, and are subject to the jurisdiction of the Gosford Courts, New South Wales.
- 28.3. The Consultant may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Consultant's sub-contractors without the authority of the Consultant.
- 28.4. Rights arising out of or under this agreement are not assignable by one party without prior written consent of the other party. A party must not unreasonably withhold its consent.
- 28.5. The Client agrees that the Consultant may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for the Consultant to provide Services to the Client.
- 28.6. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc, ("Force Majeure") or other event beyond the reasonable control of either party.
- 28.7. Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.