

GENERAL TERMS AND CONDITIONS – CONSULTANCY SERVICES

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

In the Contract, except where the context otherwise requires:

Client means the person stated in the Schedule;

Consultancy Services means the services described in the Terms of Reference including the supply of Contract Material to the Client;

Consultant means STP Consultants Pty Ltd and that person's executors or successors and permitted assigns;

Consultant's Fee means the amount payable to the Consultant by the Client as stated in the Schedule and adjusted in accordance with Contract.

Contract means the agreement in writing between the Client and the Consultant including these General Conditions of Contract;

Contract Material means all material which is created in connection with or for the purposes of performing the Contract by the Consultant;

Intellectual Property Rights means any statutory or other proprietary right in respect of inventions, innovations, patents, utility models, designs, circuit layouts, mask rights, copyright (including future copyright), confidential information, trade secrets, know-how, trademarks and any other right in respect of intellectual property;

Legislative Requirement means legislation and subordinate legislation of the Commonwealth of Australia or the State or Territory applicable to the Consultancy Services and any instruments made under such legislation or subordinate legislation and includes certificates, licences, consents, permits, approvals and the requirements of organisations having jurisdiction in connection with the performance of the Consultancy Services, and fees and charges payable in connection with the foregoing;

Personal Information means as the term is defined in the *Privacy Act 1988* (Cth);

Records means all material including but not limited to books, documents, information and data stored by any means disclosed or made available by the Client to the Consultant in connection with the performance of the Contract;

Terms of Reference means the documents issued by the Client to the Consultant describing the scope of the project including its purpose and the scope of the services to be provided by the Consultant (as varied from time to time in accordance with the Contract).

1.2. Interpretation

In the Contract, except where the context otherwise requires:

- (a) references to persons include an individual, firm or a body, corporate or unincorporated;
- (b) words in the singular include the plural and words in the plural include the singular, according to the requirements of the context;
- (c) if a word is defined, another part of speech or grammatical form of that word has a corresponding meaning;
- (d) clause headings in the General Conditions of Contract do not form part of the General Conditions of Contract and are not used in the interpretation of the Contract;
- (e) where a party consists of two or more persons, their obligations and liabilities under the Contract is joint and several;
- (f) a reference to Legislative Requirements includes all amendments, re-enactments and replacements to Legislative Requirements;
- (g) no rule of construction applies to the disadvantage of a party on the basis that the party put forward the Contract or any part.

2. RESPONSIBILITIES AND OBLIGATIONS OF THE CONSULTANT

2.1. Performance

The Consultant must perform the Consultancy Services in accordance with the Contract.

In performing the Consultancy Services, the Consultant must:

- (a) comply with the directions of the Client given pursuant to a provision of the Contract;
- (b) comply with all Legislative Requirements in carrying out the Consultancy Services;
- (c) remain responsible for the provision of Consultancy Services in accordance with the Contract;
- (d) except as required by law or provided by the Contract, treat as confidential all Records and Contract Material; and
- (e) proceed with the Consultancy Services with due expedition and without delay.

2.2. Standard of Care

The Consultant must perform the Consultancy Services to the standard of skill, care and diligence expected of a skilled and competent professional practicing in the particular fields relevant to the Consultancy Services.

2.3. Subcontracting and Assignment

The Consultant may subcontract any part of the Consultancy Services with the Client's prior approval, which must not be unreasonably withheld.

Except where the Contract otherwise provides, the Consultant is liable to the Client for the acts and omissions of subcontractors and the subcontractors' employees and agents as if they were acts or omissions of the Consultant.

Neither the Client or the Consultant may assign the Contract or any payment or any other right or benefit or interest under it without the prior written approval of the other party.

3. RESPONSIBILITIES AND OBLIGATIONS OF THE CLIENT

The Client must:

- (a) pay the Consultant in accordance with the Contract;
- (b) give or cause to be given to the Consultant, timely directions, decisions, approvals and Records sufficient to facilitate the provision of the Consultancy Services by the Consultant; and
- (c) provide the Consultant with such access to premises or sites of the Client as is reasonably necessary for the Consultant to carry out the Consultancy Services.

4. PAYMENT OF FEES AND DISBURSEMENTS

The Consultant must provide the Consultancy Services for the fees and reimbursable expenses set out or referenced in the Schedule. All amounts quoted by the Consultant and accepted by the Client for the provision of the Consultancy Services will be taken to be GST exclusive amounts.

In the case of expenses not described in the Schedule, such expenses will be reimbursed by the Client to the Consultant if the Client's approval has been obtained prior to the expense being incurred.

The Consultant may submit payment claims to the Client at times stated in the Schedule or if no times are stated, on a monthly basis, in the form of a tax invoice that complies with the provisions of *A New Tax System (Goods and Services Tax) Act 1999* (Cth). The Consultant must provide sufficient detail to enable the Client to assess that the amount claimed is due and payable including the provision of any additional information reasonably requested by the Client.

The Consultant's monthly payment claim is a payment claim for the purposes of the *Building Industry Fairness (Security of Payment) Act 2017* (Qld) and the "reference date" for the making of its payment claim will be the date of each month stated in the Schedule.

The Client is only required to pay for Consultancy Services carried out to the date of the claim for payment and in accordance with the Contract.

The Client must pay the amount claimed or such other amount it reasonably determines is due and payable, within 21 business days of receipt of a payment claim. If the full amount claimed is not determined to be payable, the Client must provide reasons for determining such other amount.

5. INTEREST AND RECOVERY COSTS

If the client fails to make full payment within the required time:

- (a) the entire amount of the client's outstanding debt will become due and payable immediately to the consultant without any need for the consultant to make written demand of such payment;

- (b) the Consultant will charge interest compounding monthly on the outstanding amount of 1% per month until the unpaid amount from the due date is paid in full;
- (c) recover all reasonable legal costs

6. INTELLECTUAL PROPERTY

Title to and ownership of Intellectual Property Rights in all Contract Material vests in the Client upon payment of the Consultant's Fee.

The Consultant retains the Intellectual Property Rights in any original ideas, equipment, processes or systems created outside the terms of the Contract and used in carrying out the Consultancy Services. The Consultant grants to the Client a royalty free non-exclusive irrevocable license to use such Intellectual Property Rights for the purpose for which the Consultancy Services are provided, but the Client shall not use, or make copies of, such documents in connection with any work not included in the Terms of Reference.

The Client grants to the Consultant a paid up, non-exclusive, irrevocable license to use the Intellectual Property Rights in Contract Material vested in the Client pursuant to this clause.

The Consultant must not infringe any Intellectual Property Rights in performing the Consultancy Services.

7. DISCLOSURE OF INFORMATION, RECORDS AND CONTRACT MATERIAL

The Consultant must not use Records for any purpose other than in the performance of the Consultancy Services and must not allow unauthorised persons to have access to the Records while in the Consultant's possession or control during or after the completion of the Consultancy Services.

8. VARIATIONS

The Consultant must not vary the Consultancy Services except as directed by the Client either in writing or verbally.

If any such direction causes a change to the fees for Consultancy Services, the Client and the Consultant shall agree in writing the value of the variation and its impact, if any, on the timing of the provision of the Consultancy Services.

9. SUSPENSION, DEFAULT, TERMINATION

9.1. Suspension

The Client may, after giving the Consultant a minimum of seven (7) days written notice, suspend the carrying out of the Consultancy Services or any part thereof. The Client will not be liable for payment to the Consultant for any compensation for loss of profits, however if the Consultant incurs additional cost or expense as a result of the suspension, the additional cost or expense shall be added to the Consultant's Fee.

The Consultant must recommence the Consultancy Services when reasonably directed to by the Client.

If the Client fails to make a payment that is due and payable under the Contract, the Consultant may suspend the carrying out of the Consultancy Services or any part thereof after the expiry of seven (7) days following a written notice to suspend the Consultancy Services by the Consultant to the Client. The Consultant must lift the suspension after the Client has made the payment.

9.2. Termination due to Default

If either party commits a substantial breach of Contract, then the non-defaulting party may give to the defaulting party a written notice to show cause.

If, by the time specified in the notice to show cause, which shall not be less than fourteen (14) days after the notice is given, the defaulting party fails to show reasonable cause to the reasonable satisfaction of the non-defaulting party, then the non-defaulting party may, by further written notice, terminate the Contract.

9.3. Termination without Cause

In addition to any other right available under the Contract, either party may terminate the Contract for any reason by giving fourteen (14) days written notice to the other party.

Fees and reimbursable expenses reasonably incurred by the Consultant up to the date of termination, together with any costs and expenses reasonably incurred by reason of the termination, provided the Consultant has acted reasonably to mitigate any costs and expenses it incurs by reason of the termination, may be claimed by the Consultant in connection with termination pursuant to this clause 8.3. But the Client will not be liable to the Consultant for any other compensation, including for loss of profits.

9.4. Insolvency

If either the Consultant or the Client:

- (a) becomes insolvent or bankrupt, or being a company goes into liquidation, or takes or has instituted against it any action or proceedings which has as an object or may result in bankruptcy or liquidation; or
- (b) enters into a debt agreement, a deed of assignment or a deed of arrangement under the *Bankruptcy Act 1966* (Cth), or, being a company, enters into a deed of company arrangement with its creditors, or an administrator or controller is appointed; or
- (c) has a receiver or a receiver and manager appointed or a mortgagee goes into possession of any of its assets,

then the party not subject to any of the events in paragraph (a) to (c) inclusive in this subclause may, notwithstanding that there has been no breach of the Contract and in addition to any other rights, terminate the Contract without giving prior notice, but only when and to the extent that there is no restriction on enforcing that right under the Part 5.1, Part 5.2, or Division 17 of Part 5.3A *Corporations Act 2001* (Cth).

9.5. Rights on Termination

If the Contract is terminated pursuant to subclauses 8.2 or 8.4, the rights and liabilities of the parties are the same as they would have been at common law had the defaulting party repudiated the Contract and the non-defaulting party had elected to treat the Contract as at an end and recover damages.

10. RISK AND INDEMNITY

To the minimum extent permissible by law, the Consultant indemnifies the Client from and against:

- (a) loss of or damage to any property of the Client including the Contract Material; and
- (b) claims and demands whatsoever and howsoever arising which may be brought or made against the Client by any person in respect of personal injury or death or loss of or damage to any other property,

to the extent caused or contributed to by a negligent act or omission of the Consultant, its employees, agents or subcontractors, arising out of the performance (or attempted or purported performance or non-performance) of the Consultancy Services, but the Consultant's liability to indemnify the Client is reduced proportionally to the extent that an act or omission of the Client or the employees, agents or other contractors of the Client contributed to the loss, damage, death or injury.

With the exception of claims which may be brought against the Principal for personal injury or death, the Consultant's liability to the Client under the Contract is limited per claim and in the aggregate, to the Consultant's Fee.

Neither party is liable to one another for any consequential loss.

11. INSURANCE

The Consultant must effect and maintain the following insurances in connection with the provision of Consultancy Services:

- (a) public liability insurance;
- (b) workers' compensation insurance; and
- (c) professional indemnity insurance.

The public liability insurance must be for an amount not less than that set out in the Schedule and must be maintained for the entire duration of the Contract.

The workers' compensation insurance must be for an unlimited amount, must include liability under statute and at common law and must be maintained for the entire duration of the Contract.

The professional indemnity insurance must be for an amount not less than that set out in the Schedule and must be maintained for not less than the period set out in the Schedule.

12. GOVERNING LAW

The Contract is governed by and construed in accordance with the law of Queensland and the parties submit to the exclusive jurisdiction of the Courts of Queensland.

13. INFORMATION PRIVACY ACT

If the Consultant collects or has access to Personal Information in order to carry out work under the Contract, the Consultant must:

- (a) ensure that Personal Information is protected against loss and unauthorised access, use, modification, disclosure or other misuse;
- (b) not use Personal Information other than in connection with carrying out work under the Contract, unless required or authorised by law;
- (c) not disclose, or transfer outside of Australia, Personal Information without the prior written approval of the Client, unless required or authorised by law;
- (d) ensure that its officers, employees, agents and sub-consultants do not access, use or disclose Personal Information other than in connection with carrying out work under the Contract;
- (e) ensure that its sub-consultants who have access to Personal Information comply with obligations the same as those imposed on the Consultant under this clause;
- (f) fully co-operate with the Client to enable the Client to respond to applications for access to, or amendment of a document containing an individual's Personal Information and to privacy complaints; and
- (g) comply with such other privacy and security measures as the Client may reasonably require from time to time.

The Consultant must immediately notify the Client on becoming aware of any breach of clause 12.

14. DISPUTE RESOLUTION

Notwithstanding the existence of a dispute in relation to any matter other than the exercise of a right to terminate the Contract, the parties must continue to perform the Contract unless otherwise permitted to suspend its performance.

If the parties are unable to resolve a dispute, the parties may commence legal proceedings or, if agreed in writing by the parties, commence alternative dispute resolution proceedings.

15. SURVIVAL

Clauses 5, 6, 9, 10, 11, 12, 13 will survive the termination or expiry of the Contract.