

general terms and conditions

1 ROLE OF COMPANY OF WAVE INTERNATIONAL (ABN 51 105 235 167) (Referred to herein as WAVE)

- 1.1 In performing the Services, WAVE 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.
- 1.2 If WAVE is required to exercise its professional judgement between the Client and a third party with whom the client has a contract, it shall do so independently as required by the terms of that contract.
- 1.3 WAVE shall use all reasonable efforts to inform itself of the Client's requirements for the Project and for that purpose it shall consult the Client throughout the performance of the Services.
- 1.4 If WAVE considers that the information, documentation and other particulars made available to it by the Client are not sufficient to enable WAVE to provide the Services in accordance with its agreement with the Client, WAVE may advise the Client who shall then provide such further assistance, information or other particulars as necessary in the circumstances.
- 1.5 If WAVE becomes aware of any matter which will change or which has changed the scope of or the timing of the Services then it will give notice to the Client and the notice will contain as far as practicable in the circumstances, particulars of the change.
- 1.6 WAVE shall perform the Services in a timely manner to the extent that it is within its control to do so.
- 1.7 WAVE will carry out the services for the Project on the basis of information available to WAVE at the time when WAVE is carrying out the services and will not take any responsibility for, nor accept any liability for damage arising out of matters relevant to the Project that arise due to circumstances which are revealed after completion or termination of the commission.

2. ROLE OF THE CLIENT

- 2.1 The Client shall as soon as practicable make available to WAVE all information, documents and other particulars relating to the Client's requirements for the Project.
- 2.2 The Client shall as soon as practicable make arrangements to enable WAVE to enter upon the Site or other lands as necessary to enable WAVE to perform the Services.
- 2.3 Unless the agreement specifically provides 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.
- 2.4 The Client agree 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 cost.
- 2.5 The Client shall make available to WAVE the equipment and facilities specified in this agreement, at the agreed time and place.
- 2.6 The Client shall advise WAVE the name of the person appointed by the Client to act as his representative and agrees that the representative shall have the authority to act on behalf of the Client for all purposes in respect of the agreement between WAVE and the Client.
- 2.7 If the Client becomes aware of any matter, which may change the scope or timing of the Services for the Project, then the Client will give written notice to WAVE.
- 2.8 The Client shall co-operate with WAVE and shall not interfere with or obstruct the proper performance of the Services.

3. PAYMENT TO WAVE FOR SERVICES

- 3.1 In consideration of the promise by WAVE to perform the Services, the Client promises to pay WAVE the Fee and the Reimbursable Expenses as provided in the agreement at the times and in the manner agreed.
- 3.2 At or about the end of each agreed payment period which unless otherwise agreed shall be monthly, WAVE 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 fourteen (14) days of issue of the account.
- 3.3 WAVE shall be entitled to and may by notice in writing to the Client terminate the licence referred to in Clause 5.2 upon failure of the Client to make any payment on the due date and upon request by WAVE the Client will return to WAVE all WAVE drawings, specifications and other documents.

- 3.4 The Client agrees that in addition to all other rights and remedies of WAVE if the Client fails to pay all monies as and when due, WAVE shall be entitled to recover interest at the current rate payable by WAVE for overdraft or at such other rate as may be provided by WAVE for overdraft or at such other rate as may be provided in the agreement. Interest shall be calculated from the date fourteen (14) days after the date of the account.
- 3.5 If the Client disputes any portion of the amount of an account submitted by WAVE, he/she shall pay that portion of the account, which is not in dispute, and he/she shall notify WAVE in writing of the reasons for disputing the account. If the parties are unable to reach agreement within seven (7) days of the Client's notice, the dispute may be determined in accordance with these Terms of Engagement. If it is resolved that some or all of the amount in dispute ought properly to have been paid, then the Client shall pay the amount finally resolved together with interest in accordance with Clause 3.4.
- 3.6 If the performance of the Services is delayed beyond a reasonable period for any reason other than a breach of agreement by WAVE, the Client shall pay to WAVE a reasonable sum of money to cover the consequential costs and expenses suffered by WAVE 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 these Terms of Engagement.
- 3.7 If the engagement of WAVE is terminated for any reason other than a breach of agreement by WAVE, WAVE shall be entitled to pro-rata payment for the Services carried out, for the period up to the time of termination, and consequential losses incurred as a result of the termination.
- 3.8 The fee for the agreed Services 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 WAVE 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 WAVE shall be entitled to additional payment of an amount which is reasonable in the circumstances.
- 3.9 If after the date of engagement of WAVE there is any change to the laws, by-laws, regulation 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 WAVE in performing the Services then the fee and the reimbursable expenses otherwise payable to WAVE under this agreement shall be increased or decreased accordingly.

4. SCOPE OF LIABILITY

- 4.1 The liability of WAVE, its servants, agents or sub-consultants to the Client arising out of the performance or non-performance of the Services whether under lay of contract, tort or otherwise, shall be limited to the cost of re-performance of the services rendered by WAVE which are the subject of the commission.
- 4.2 The maximum liability of WAVE, its servants, agents or sub-consultants to the Client arising out of the performance or non-performance of their services, whether under the law of contract, tort or otherwise, shall be re-performance of the services equivalent to the maximum amount of the fee actually paid at the time of dispute by the client in respect to this commission to a maximum of value of \$50,000.00 AUD. The calculation of the equivalent costs shall be per the standard schedule of rates agreed for the commission. For the purposes of clause 4.1, WAVE contracts on its own behalf and on behalf of its servants, agents and sub-consultants.
- 4.3 WAVE, its servants, agents and sub-consultants shall be deemed to have been discharged from all liability whatsoever in respect of the Services, whether under the law of contract, tort or otherwise, at the expiration of one year from the completion of the Services unless otherwise provided in the agreement, and the Client (and persons claiming through or under the Client) shall not be entitled to commence any action or claim whatsoever against WAVE, its servants, agents or sub-consultants in respect of the Services after that date. For the purposes of Clause 4.2, WAVE contracts on its own behalf and on behalf of its servants, agents and sub-consultants.
- 4.4 If the Services include giving to the Client an estimate of the likely costs for the project, WAVE warrants only that it will exercise the reasonable skill, care and diligence of a Consulting Engineer in the preparation of its professional opinion of those costs. Any estimates or opinions on or relating to costs shall be verified by the client independently.
- 4.5 WAVE 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 the law or specifically provided for in this agreement. If apart from the 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 provision of Part V of the trade Practices Act 1974 (as mended) or any relevant State Act or Territorial Ordinance which by law cannot be excluded, restricted or modified.

- 4.6 The Client will indemnify and hold WAVE harmless against all claims, costs and demand by third parties in respect of the services concerned.
- 4.7 The presence or provision of services by WAVE representatives or personnel at any site at which the Project is being carried out, does not constitute acceptance of responsibility or liability by WAVE for the performance of the Project by any other party (including the Client and its consultants and contractors) and those other parties are not relieved of their obligations, duties and responsibilities by the presence of WAVE representatives or personnel on site.
- 4.8 Where WAVE is not engaged to carry out geotechnical work during construction and site conditions exposed in any area of the project works during construction are different from those previously identified to WAVE or reasonably expected by WAVE, the Client shall indemnify and hold harmless WAVE in respect of all loss, damage, cost or expense or any nature whatsoever resulting from such differing conditions and WAVE shall be paid any additional costs for additional investigation and redesign required to be carried out by WAVE.
- 4.9 The quantum of field investigations included in the proposal is based on the best estimate of work required at the time of submission of WAVE proposal for engagement. The Client acknowledges that as the investigation work proceeds, different site conditions from these estimated may be discovered resulting in a required change and / or increase in site investigation work. The Client acknowledges that increases in costs and fees may result from such site conditions and the Client shall indemnify and hold harmless WAVE in respect of all loss, damage, cost or expense resulting from such site conditions. WAVE will endeavour to identify such changes and increases in the required investigation work and such increases in costs and fees and as soon as practicable after discovering such differing conditions WAVE will advise the Client of such changes or increases. All reasonable increases in fees or costs shall not be refused by the Client except where it is agreed between the parties to terminate the investigation work.

5 COPYRIGHT AND USE OF DOCUMENTS

- 5.1 Copyright, in all drawings, reports, specifications, bills of quantities, calculations, computer programs and other documents provided by WAVE in connection with the Project shall remain vested in WAVE.
- 5.2 The Client shall have a licence to use the documents referred to in Clause 5.1 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 approval is given in advance by WAVE.
- 5.3 WAVE may with the consent of the Client publish either alone or in conjunction with others, articles, photographs and other illustrations relating to the Project.
- 5.4
- (1) If during the course of providing the Services, WAVE develops, discovers or first reduces to practice a concept, product or process which is capable of being patented, then such concept or process shall be and remain the property of WAVE and the Client shall not use, infringe or otherwise appropriate the same without first obtaining the written consent of WAVE.
 - (2) If during the course of providing the Services, WAVE 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.

6 DISPUTE DETERMINATION

- 6.1 If the Client and WAVE 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. If the parties cannot agree on an independent third party within seven (7) days of the date of service of 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 an arbitrator and his decision shall be final and binding upon the Client and WAVE.

7 TERMINATION OF SERVICES

- 7.1 The Client may by notice in writing served on WAVE terminate the Client's obligations under his agreement with WAVE.

- (1) If WAVE is in breach of the terms of the 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 Client on WAVE of a notice requiring the breach to be remedied; or
- (2) If the Client serves on WAVE a notice requiring that the agreement be terminated on a date specified in the notice being not less than sixty (60) days after the date of issue of the notice.

7.2 WAVE may by notice in writing served on the Client terminate WAVE obligations under this agreement with the Client:

- (1) If the Client is in breach of the conditions of Part 3 of these Terms of Engagement; or
- (2) If the Client is in breach of the provisions of any other Part of these Terms of Engagement and the breach has not been remedied within twenty-eight (28) days (or such longer period as WAVE may allow) of the service by WAVE on the Client of a notice requiring the breach to be remedied; or
- (3) If WAVE 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 after the date of the notice.

If termination under Clause 7.2 (1) or (2) occurs, the licence referred to in Clause 5.2 of these Terms of Engagement will forthwith terminate and cease and upon request by WAVE the Client will return all WAVE drawings, specifications and other documents.

Termination 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.

8 GENERAL MATTERS AND DEFINITIONS

8.1

- (1) WAVE and the Client each binds itself and its partners, successors, executors, administrators, assigns and legal representatives to the other party to his 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.
- (2) Neither WAVE 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
- (3) Nothing contained in this Clause shall prevent WAVE from employing within this fee such persons or companies as it may deem appropriate to assist it in the performance of the agreement.

8.2 If circumstances arise which require the services of a specialist or expertise outside the field of WAVE, WAVE 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.

8.3 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 mail, facsimile or electronic mail or personal delivery for which a receipt is obtained.

8.4 Unless the context otherwise requires, then in construing the agreement.

“Agreement” means the entire contractual agreement between the Client and WAVE.

WAVE means WAVE INTERNATIONAL or any group or Joint Venture which incorporates WAVE INTERNATIONAL, which has agreed with the Client to provide the Services.

“Project” means the work described in the agreement in respect of which the Client has engaged WAVE to provide the Services.

“The Services” means those professional services included in the agreement between the Client and WAVE and defined in correspondence or the Engagement Form or in the Schedule hereto.