



CONDITIONS OF ENGAGEMENT

CONSULTING SERVICES

2021

PERITAS CONSULTING PTY LTD

CONDITIONS OF ENGAGEMENT FOR CONSULTING SERVICES

These conditions of engagement (**General Conditions**) govern the provision of the services described in the Fee Proposal (**Services**) for the Project and together with the Fee Proposal form the contract between the Client and Peritas Consulting Pty Ltd (**Peritas**). The Client accepts the terms and conditions set out below upon signing and returning the Fee Proposal to Peritas or by its conduct, for example by issuing a purchase order or work order to Peritas or otherwise instructing Peritas to commence or continue performing services in respect of the Project.

1. COMMENCEMENT AND TERM OF CONTRACT

1.1 The Contract shall commence from the date that the Client instructs Peritas to commence providing the Services, but the terms herein will also apply to any services provided by Peritas in connection with the Project before these General Conditions were accepted by the Client.

1.2 The Contract will continue until the Services have been completed and all amounts due and owing under the Contract to Peritas have been paid unless the Contract shall be sooner terminated in accordance with clause 12 (*Termination / Suspension*).

2. PERFORMANCE OF THE SERVICES

Peritas shall perform the Services with the standard of skill and diligence as is generally considered acceptable by the consulting engineering profession in Australia.

3. CLIENT'S RESPONSIBILITIES

The Client shall provide Peritas with:

- (a) timely instructions and all relevant documents, samples, patterns and other information concerning the Client's requirements as are necessary to enable Peritas to carry out the Services;
- (b) access to the premises or sites of the Client for Peritas to carry out the Services; and
- (c) notice of any matter which may change the scope or timing of the Services or the Project immediately upon becoming aware of such matter.

4. FEE

4.1 The total consideration payable by the Client to Peritas for the performance of the Services is described in the Fee Proposal, which amount is allocated to specific Services as shown in item 4 of the Fee Proposal (**Fee**). The Fee may be adjusted in accordance with clause 5 (*Additional Services (Variations)*) or clause 6 (*Unforeseen Circumstances*) of these General Conditions. The Fee is payable by the Client progressively in accordance with the remaining provisions of this clause 4.

4.2 Unless otherwise specified in the Fee Proposal, all fees and disbursements presented by Peritas under the Contract shall be exclusive of GST and therefore amounts payable by the Client to Peritas will be increased by the prevailing rate of GST.

4.3 The Fee does not include disbursements, unless the Fee Proposal expressly provides otherwise. All disbursements will be subject to a 10% administration and management charge.

4.4 Peritas may issue its invoices monthly and the Client agrees to pay Peritas within 14 days of the date of any invoice from Peritas. Invoices will include amounts due for Services provided up to the day before the date of the invoice and amounts for any disbursements incurred by Peritas during the period covered by that invoice. Each invoice is a final invoice for the services referred to in that invoice.

4.5 Peritas may charge interest on any amounts due under an invoice that are not paid within the 14 day period calculated on daily balances from the date upon which payment became due until the date of payment of the account at the rate of 15% per annum. Such interest must be paid by the Client on demand by Peritas. Notwithstanding interest may be charged, the Client shall not be relieved of its obligation to pay the overdue amount.

4.6 The Client must pay on demand all costs and expenses of Peritas in collecting any outstanding amounts payable to it under the Contract, including legal fees on a solicitor and client and an indemnity basis and expenses.

5. ADDITIONAL SERVICES (VARIATIONS)

5.1 The parties may only vary, add or delete parts of the work comprising the Services by agreement in writing. Accordingly, the Client may give a direction to vary, add or delete part of the work but the Client shall, as soon as practical, confirm such variation in writing.

5.2 If the requested variation affects the scope of the Services, then the fee payable by the Client for such additional services required by the variation shall be determined by the hourly rates (as specified in the Fee Proposal) plus any disbursements, except where it is agreed between the parties that the additional fee or fee and disbursements are to be determined as a lump sum. These rates are subject to adjustment by Peritas on an annual basis

6. UNFORESEEN CIRCUMSTANCES

Where the Services are delayed, or changes are required to be made to the Services as a result of:

- (d) unforeseen site conditions;
- (e) the acts, omissions or requirements of others outside the control of Peritas; or
- (f) as a result of any other event or circumstance outside the control or beyond the reasonable anticipation of Peritas,

then Peritas shall be entitled to:

- (g) an appropriate and reasonable adjustment to the Fee;

- (h) the reimbursement from the Client of any associated costs; and
- (i) a reasonable extension of time in which to deliver the Services.

7. DISBURSEMENTS

Except where the Fee Proposal states that disbursements are included in the Fee:

- (j) costs associated with travel for all Peritas personnel are to be reimbursed by the Client at cost plus 10%, except in the case of motor vehicle costs which will be charged on a per kilometre basis at the rate recommended by the Australia Taxation Office; and
- (k) other disbursements (including without limitation, plan printing, courier fees, tender documents) which shall have been paid by Peritas are to be reimbursed by the Client at cost plus 10% unless otherwise agreed by the parties in writing.

8. SPECIALIST ASSISTANCE

8.1 Where the Fee Proposal indicates that specialist consultant services are required to support the Services (or any variation agreed between the parties calls for specialist consultant services), then those specialist consultants are to be engaged and paid directly by the Client, unless the parties shall agree that Peritas shall engage the specialist consultant, in which case the fees of that consultant will be paid by the Client to Peritas in addition to the Fee as a disbursement at cost plus 10%.

8.2 Any specialist consultants will only be engaged with the prior written consent of the Client. Whether engaged directly and paid by the Client or directly and paid by Peritas, Peritas shall have no responsibility for or a duty of care in respect of any advice given or the services provided by any specialist consultant and gives no warranty, guarantee or representation concerning the professional qualifications, skills or experience of any such specialist.

9. LIMIT OF LIABILITY

9.1 To the maximum extent permitted by law, Peritas' total liability (or that of its officers, employees, agents or sub-contractors) to the Client under or in connection with the Contract or the Services, whether in contract or tort (including, without limitation, negligence), under statute or otherwise, is limited to the insurance available or where such insurance does not respond or is unavailable to the fee payable to the consultant under this Agreement (excluding reimbursable expenses and variations) to a maximum value of \$100,000 is the lesser. The limit on liability provided in this clause is an aggregate limit for all claims, damages and losses arising under or in connection with the Contract, but such limit shall not apply if the claim, damage or loss arises out of fraud or wilful misconduct by Peritas, or any of its officers, employees, agents or sub-contractors.

9.2 Notwithstanding any other provision of the Contract, Peritas (including its officers, employees, agents and sub-contractors) shall have no liability to the Client in respect of:

- (i) any indirect or consequential damages or economic losses (including loss of profit, or the payment of liquidated damages under any other agreement) even if Peritas knows such loss or damage is possible or foreseeable; or
- (ii) the completeness or any contamination of electronically transmitted data from Peritas to the Client and to others involved in the Project.

9.3 To the extent permitted by law, after the expiration of one (1) year from the date the last invoice is issued by Peritas to the Client in respect of the final amount claimed by Peritas for the Services, Peritas shall have no liability to the Client under or in connection with the Contract or the Services whether under the law of contract, tort (including, without limitation, negligence), under statute or otherwise. The Client shall not be entitled to commence any action or claim whatsoever against Peritas (or any officer, employee, agent or sub-consultant of Peritas) under or in connection with the Contract or the Services after that date.

9.4 If any of this clause 9 is void or illegal for any reason or the Client is a consumer for the purposes of the Australian Consumer Law contained in Schedule 2 of the *Competition and Consumer Act 2010* (Cth), then to the extent that the law permits Peritas to limit its liability, then Peritas' liability for breach of a condition, warranty or guarantee will be limited to:

- (iii) supplying the relevant Services again; or
- (iv) payment of the cost of having the relevant Services supplied again.

9.5 This clause 9 shall survive the termination or expiry of the Contract.

10. COPYRIGHT

10.1 Copyright in all concepts, drawings, reports, specifications, calculations and other documents provided by Peritas belongs to Peritas at all times.

10.2 Peritas grants to the Client an express but revocable licence to use the documents provided by Peritas under the Contract for the purpose of completing the Project on the site for which it was intended, subject to the conditions that:

- (l) no licence is granted or implied under the Contract other than the express licence referred to above; and
- (m) the licence may be revoked by Peritas in writing if payment on any invoice issued by Peritas in accordance with the Contract is overdue, in which case the licence granted in this clause 10.2 will be reinstated automatically on receipt by Peritas from the Client of all overdue amounts.

10.3 On completion of all Services under the Contract and on receipt of full payment of all invoices issued by Peritas under and in accordance with the Contract, the licence granted under clause 10.2 will become irrevocable.

11. WARRANTY AND INDEMNITY BY CLIENT

11.1 The Client represents and warrants that the provision by it or on its behalf by any of its agents of any documents, samples, patterns, plans and other information to Peritas shall not infringe the intellectual property rights of any third party. *Intellectual property rights* in this clause 11 shall include, without limitation, rights to any patents, copyright, trade secret or confidential information.

11.2 The Client shall indemnify Peritas and keep Peritas, its officers, employees and agents indemnified against:

- (n) all claims (including without limitation any alleged infringement of intellectual property rights), demands, proceedings or judgements which may be asserted by anyone against Peritas; and

(o) any liabilities, losses, damages, costs and expenses suffered by Peritas, in any case arising out of Peritas' reliance on or use of any documents, samples, patterns, plans or other information provided by the Client or on its behalf to Peritas.

11.3 This clause 11 shall survive the termination or expiry of the Contract.

12. TERMINATION / SUSPENSION

12.1 The Contract may be terminated or suspended at any time by mutual agreement or by either party giving to the other at least 14 days prior written notice.

12.2 In the event that any money payable to Peritas under the Contract becomes overdue, then without prejudice to any other rights and remedies that may be available to it, Peritas may immediately suspend or cancel all or any part of the Services.

12.3 If the Contract is terminated or suspended for any reason prior to the completion of the Services, the Client shall pay to Peritas forthwith:

- (p) all amounts due and owing to Peritas at the date of suspension or termination;
- (q) a fair and reasonable fee for all Services carried out up to and including the date of termination or suspension calculated at the hourly rate set out in the Fee Proposal; and
- (r) any costs and expenses reasonably incurred by Peritas up to that date that could not be avoided and any associated costs resulting from the suspension or early termination.

12.4 In the case of suspension of Services by the Client and upon mutual agreement the Client shall give Peritas reasonable notice to recommence carrying out those Services so suspended.

13. EFFECT OF TERMINATION

Termination of the Contract does not affect a party's accrued rights and obligations and the parties shall continue to be bound by those provisions of the Contract that are expressly provided to survive termination or that reasonably require some action or forbearance after such termination.

14. DISPUTES

14.1 If there is any dispute in respect of the Services or any invoice, the Client must promptly notify Peritas in writing adequately identifying and providing details of the dispute within 14 days of the dispute coming to the Client's attention or of the invoice being issued.

14.2 Undisputed portions of any invoice must be paid by the Client to Peritas by their due date for payment.

14.3 The balance of any invoice that was the subject of the dispute must be paid to Peritas forthwith once and if it is determined or agreed that Peritas was entitled to receive such amount and interest will accrue and be payable on that outstanding amount in accordance with clause 4.5 calculated from the date that the overdue amount was initially due until the date on which that amount is paid.

15. DISCLAIMER - ESTIMATES

15.1 Where an estimate of any construction costs associated with the Services shall have been given by Peritas to the Client, that estimate shall have been based on Peritas' experience as a structural engineer. However, Peritas is not a quantity surveyor, and accordingly, the Client acknowledges and accepts that any such estimate is not a guarantee of the actual construction costs, nor a quote or tender and was not intended to be, nor should it be, relied upon by the Client. Peritas does not accept any liability for any estimates concerning construction costs.

15.2 Where an estimate of the time of delivery or completion of the Services shall have been given by Peritas to the Client, that estimate is based on the Client providing or procuring the delivery of all information and documentation necessary for Peritas to provide the Services in a timely manner and according to the schedule proposed. Provided that the Client shall co-operate with Peritas and deliver such information and documents to ensure the efficient progress through the different phases of the Project, Peritas will use reasonable endeavours to deliver the Services according to the schedule of time estimates in the Fee Proposal or as that schedule may be revised in accordance with the Contract.

16. GENERAL PROVISIONS

16.1 **Priority:** The provisions of these General Conditions prevail over the Fee Proposal and any other document provided by any party to the other or any other agreement between them, unless that agreement is in writing and states that it takes priority over these General Conditions, in which case, that agreement will take priority over these General Conditions only to the extent necessary to remove any inconsistency.

16.2 **Entire Agreement:** These General Conditions together with the Fee Proposal and any variations made in accordance with clause 5 of these General Conditions constitute the entire agreement between Peritas and the Client in respect of the Project. Any terms and conditions of the Client will not form part of the Contract and are excluded to the extent that they have not been agreed in writing by Peritas. All prior representations, understandings or agreements, whether written or oral, not expressly incorporated herein, are superseded and no changes in or additions to the Contract shall be incorporated herein or recognised unless and until made in writing and signed by Peritas and the Client.

16.3 **Status:** In performing the Services and other obligations under the Contract, Peritas shall be an independent contractor and not the agent, partner or employee of the Client. It is expressly agreed that it is not the purpose or the intention of the parties to create any partnership or joint venture between the Client and Peritas.

16.4 **No assignment:** No party may assign or otherwise deal with its rights under the Contract without the prior written consent of the other party.

16.5 **Severance:** If at any time any provision of the Contract is or becomes invalid or illegal in any respect such provision shall be deemed to be severed from the Contract but the validity, legality and enforceability of the remaining provisions of the Contract shall not be affected or impaired thereby.

16.6 **Governing Law:** The Contract shall be construed and governed in accordance with the laws of Western Australia and the Client and Peritas submit to the non-exclusive jurisdiction of the courts of that place.