

Australian Standard[®]

**General Conditions of Contract for
Consultants**



This Australian Standard® was prepared by Committee LL-001, General Conditions of Contract for Consultants. It was approved on behalf of the Council of Standards Australia on 15 October 2010.

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The following are represented on Committee LL-001:

- Association of Consulting Architects Australia
 - Australasian Procurement and Construction Council
 - Australian Constructors Association
 - Australian Institute of Architects
 - Consult Australia
 - Master Builders Australia
-

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Australian Standard[®]

General Conditions of Contract for Consultants

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Preface

This Standard was prepared by the Standards Australia Committee LL-001, General Conditions of Contract for Consultants, to supersede AS 4122—2000, *General conditions of contract for engagement of consultants*. The previous edition of this Standard was developed and published by Standards Australia Committee OB-010, Construction Industry Practice.

It is anticipated that the Standard will generate net benefit to the Australian community by providing greater access to a standard form of contract to purchasers and providers of services, particularly in the building and construction industry, by:

- providing fair, reasonable, commercial terms to facilitate widespread utilisation of the Standard by all stakeholders;
- reducing time and resources spent negotiating contractual terms and conditions of engagement;
- streamlining the process of engagement of consultants;
- improving clarity and certainty of contractual terms and conditions between clients and consultants; and
- reducing disputes between clients and consultants based on contractual terms.

Users of this Standard are advised of the importance of completing the Annexures, as in some cases completion of the *Item* is necessary for the operation of the corresponding clause.

The following warnings should be noted:

- (i) This Standard has not been developed specifically for use:
- in a design and construct context; and/or
 - where the *Client* intends to novate this *Contract* with the *Consultant* to another party.

Parties intending to use this Standard in those circumstances should seek advice as to when an alternative contract such as AS 4904—2009, *Consultants agreement—Design and Construct*, may be used.

- (ii) Legislation has come into force in some jurisdictions dealing with security of payments. Parties intending to use this Standard should seek expert advice as to their rights and obligations under such legislation.

This Standard incorporates Amendment No. 1 (Month Year). The changes required by the Amendment are indicated in the text by a marginal bar and amendment number against the clause, note, table, figure or part thereof affected.

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NOTES

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

A1		In this <i>Contract</i> , except where the context otherwise requires:
	Approvals	means certificates, licences, consents, permits, approvals and requirements made or authorised by a Commonwealth, State, Territory or local government, or by a <i>Legislative Requirement</i> ;
	Business Day	means calendar day but excludes public holidays as defined by the governing law of this <i>Contract</i> and weekends;
	Client	means the person identified in <i>Item 1</i> ;
	Client Information	means all information supplied to the <i>Consultant</i> in a <i>Document</i> for the purposes of this <i>Contract</i> ;
	Consultant	means the person identified in <i>Item 2</i> ;
A1	Contract	means the agreement recorded in the <i>Contract Documents</i> ;
	Contract Documents	means the <i>Documents</i> listed in <i>Item 3</i> ;
	Deliverables	means those <i>Documents</i> and things required under this <i>Contract</i> to be handed over to the <i>Client</i> by the <i>Consultant</i> ;
	Direction	means any agreement, approval, assessment, authorisation, decision, determination, explanation, instruction, order, permission, rejection, request or requirement given or made by the <i>Client</i> ;
	Documents	includes information stored by electronic and other means;
	Fee	means the money payable under this <i>Contract</i> for the performance of the <i>Services</i> as adjusted in accordance with this <i>Contract</i> (excluding disbursements) and includes any amount payable stated in <i>Item 20</i> ;
	Force Majeure	means an event or circumstance which: <ul style="list-style-type: none">(a) is beyond the reasonable control of either party;(b) is not caused by either party;(c) can occur with or without human intervention; and(d) was not reasonably foreseeable by the parties at the time of entering into this <i>Contract</i>, the consequences of which could not have been reasonably prevented by the party affected;
	GST	means the tax payable on a taxable supply under <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and any related legislation;

Intellectual Property Right	means any statutory and 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;
Insolvency Event	means any of the events set out in clause 31;
Item	means an <i>Item</i> in Annexure Part A;
Legislative Requirements	means legislation and subordinate legislation of the Commonwealth of Australia or the State or Territory applicable to the <i>Services</i> , and any instruments made under such legislation or subordinate legislation;
Moral Right	means the rights defined as 'Moral Rights' in the <i>Copyright Act 1968</i> (Cth);
Scope	is described in <i>Item 4</i> (as varied from time to time in accordance with this <i>Contract</i>);
Services	means the <i>Services</i> described in or reasonably inferred from the <i>Scope</i> , including the supply of the <i>Deliverables</i> ;
Variation	means a change to the <i>Services</i> whether or not it is a change to the <i>Scope</i> .

1.2 Interpretation

In this *Contract*, except where the context otherwise requires,

- (a) 'person' includes an individual, the estate of an individual, a body politic, a corporation, a statutory or other authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (b) 'includes' is not a word of limitation;
- (c) a reference to *Legislative Requirements* includes all amendments, re-enactments and replacements to *Legislative Requirements*;
- (d) if a word is defined, another part of speech or grammatical form of that word has a corresponding meaning; and
- (e) words in the singular include the plural and words in the plural include the singular, according to the requirements of the context.

1.3 Contra Proferentem

In the interpretation of this *Contract*, no rule of construction applies to the disadvantage of one party on the basis that the party put forward or drafted this *Contract* or any provision in it.

1.4 Joint and Several

To the extent permitted by law, if either party consists of one or more persons, this *Contract* binds such persons and their respective executors, administrators, successors and permitted assigns jointly and severally and this *Contract* must be read and construed accordingly.

- 1.5 Headings and guidance notes are provided for information or convenience and do not form part of this *Contract*.

2 CONSULTANT TO PERFORM SERVICES

The *Consultant* must perform the *Services* in accordance with this *Contract*.

3 CLIENT TO PAY

The *Client* must pay the *Consultant* in accordance with this *Contract*.

4 STANDARD OF CARE

The *Consultant* must perform the *Services* to the standard of skill, care and diligence expected of a skilled and competent professional practising in the particular fields relevant to the *Services*, or such higher standard as the *Consultant* has represented in writing to the *Client* in relation to this *Contract*.

5 SCOPE

- 5.1 The *Consultant*, exercising skill, care and diligence to the standard of care required in clause 4, has examined the *Scope* and agrees that the *Services* will be suitable, appropriate and adequate for the purpose stated in *Item 5*, except to the extent that, prior to commencement of work on the *Deliverables*:
- (a) the *Consultant* notified the *Client* in writing of any ambiguity, error, omission, discrepancy, insufficiency or inconsistency in the *Scope* which would prevent the *Services* from being suitable, appropriate and adequate for the purpose stated in *Item 5*, and its proposed solution; and
 - (b) the *Client* has not amended the *Scope* to the extent necessary, if at all, to address the concern notified under clause 5.1(a).
- 5.2 After commencement of work on the *Deliverables*, the *Consultant* must promptly notify the *Client* if and to the extent the *Consultant* becomes aware that any *Client Information* contains an ambiguity, error, omission, discrepancy, insufficiency or inconsistency or is otherwise insufficient to enable the *Consultant* to perform the *Services*.
- 5.3 If the *Consultant* gives notice under clause 5.2, the *Client* must either:
- (a) direct an appropriate amendment to the *Scope*; or
 - (b) direct the *Consultant* to proceed notwithstanding its advice.

- A1 | 5.4 The *Consultant* is entitled to an adjustment to the *Fee* and/or time for performing the *Services* in relation to a *Direction* under clause 5.3:
- (a) where the *Consultant* has given notice under clause 5.2; and
 - (b) it was not reasonably practicable for the *Consultant* to identify any ambiguity, error, omission, discrepancy, insufficiency or inconsistency necessitating amendment to the *Scope* prior to commencement of work on the *Deliverables*.

6 CLIENT'S REPRESENTATIVE AND CONSULTANT'S REPRESENTATIVE

- 6.1 The *Client* appoints the person named in *Item 6* to act as the *Client's* representative to exercise the *Client's* functions under this *Contract*.
- 6.2 The *Consultant* appoints the person named in *Item 7* to act as the *Consultant's* representative to exercise the *Consultant's* functions under this *Contract*.
- 6.3 Either party may terminate the appointment of its representative by notice in writing to the other party. The notice must identify and provide contact details for the party's new representative.
- 6.4 Unless the *Client* objects to the *Consultant's* proposed representative on reasonable grounds in writing, within 3 *Business Days*, or as otherwise agreed in writing, the termination and new appointment will take effect 4 *Business Days* after service of the notice.

7 INFORMATION

The *Client* must promptly provide the *Consultant* with *Client Information* sufficient to enable the *Consultant* to perform the *Services*.

8 DIRECTIONS

- A1 | 8.1 The *Client* may give *Directions* to the *Consultant* at any time.
- 8.2 A *Direction* may be given orally by the *Client* except where this *Contract* otherwise provides.
- 8.3 The *Client* must give the *Consultant* *Directions* necessary for the performance of the *Services* in a timely manner.
- 8.4 The *Consultant* must comply with all *Directions* given under this *Contract*.

- 8.5 If the *Consultant* in writing requests the *Client* to confirm an oral *Direction*, the *Consultant* is not bound to comply with the *Direction* until the *Client* confirms it in writing.

9 VARIATIONS

- 9.1 The *Client* may direct the *Consultant* to perform a *Variation*. All such *Directions* must be in writing and specify that they direct a *Variation*.
- 9.2 If the *Consultant* considers any *Direction* requires a *Variation* but the *Direction* is not in writing or does not specify that it directs a *Variation*, then the *Consultant* must promptly notify the *Client* in writing setting out why the *Consultant* considers the *Direction* requires a *Variation*. In that case the *Consultant* must not comply with the *Direction* unless the *Consultant* receives a written:
- (a) *Direction* specifying a *Variation*; or
 - (b) notice that the *Client* disagrees, stating its reasons.
- If a notice is issued under clause 9.2(b), the *Consultant* must comply with the *Direction* but may, within 20 *Business Days*, dispute the *Client*'s notice under clause 9.2(b) by notice given under clause 32.
- 9.3 The *Fee* must be adjusted for each *Variation*. Unless the amount of the adjustment is agreed, the adjustment must be calculated by the *Client* on the basis of applicable rates or fees in this *Contract* or, if none, then reasonable rates or fees.
- 9.4 The *Consultant* is not obliged to perform a *Variation* that is outside the general *Scope* of the *Services*.

10 PAYMENT

- 10.1 The basis for payment to the *Consultant* is stated in *Item 8*.
- 10.2 The *Consultant* is only entitled to payment for disbursements set out in *Item 9*, and any other disbursement if approved in writing by the *Client* (such approval not to be unreasonably withheld or delayed) prior to the disbursement being incurred.
- 10.3 The *Consultant* must claim payment in writing at the times stated in *Item 10*, or if no times are stated, by the last *Business Day* of each month. If no time is stated, only one payment claim may be made each month.
- 10.4 The payment claim must:
- (a) in respect of the *Services*:
 - (i) identify the *Services* to which the payment claim relates;

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- (ii) separately identify each *Variation*;
- (iii) separately identify any other claim for payment under this *Contract* including a payment stated in *Item 20*; and
- (iv) set out the amount of the *Fee* claimed, and how that amount was determined;

(b) in respect of disbursements:

- (i) identify each disbursement claimed;
- (ii) state the amount of the disbursement claimed;
- (iii) be accompanied by relevant invoices and receipts for payment;

and

(c) be in the form of a valid tax invoice.

10.5 The *Client* must either:

- (a) pay the whole amount claimed in the payment claim; or
- (b) within 10 *Business Days* of service of a payment claim issue a statement stating the lesser amount the *Client* proposes to pay together with the reasons.

10.6 The *Client* must pay the amount specified in clause 10.5(a) or 10.5(b) within the period specified in *Item 11* or, if no period is specified, within 30 calendar days after service of the payment claim under clause 10.3.

10.7 Payment by the *Client* is on account and is not evidence of the value of work completed, an admission of liability nor evidence that the *Services* have been executed satisfactorily.

10.8 If the *Client* fails to make the payment that is due and payable in accordance with clause 10.6, the *Consultant* may notify the *Client* in writing that it will suspend performance of the *Services*, after expiry of at least 5 *Business Days* written notice to the *Client*. Unless the payment has been made, the *Consultant* may suspend performance of the *Services* any time after expiration of the notice period. The *Consultant* must promptly lift the suspension after the *Client* has made the payment.

10.9 If the *Client* fails to make the payment that is due and payable in accordance with clause 10.6, the *Consultant* may notify the *Client* in writing that interest is payable on any overdue payments at the rate stated in *Item 12* from the date of the notice. If so, the *Consultant* must promptly issue an amended tax invoice and the *Fee* must be adjusted to include the amount of interest paid.

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10.10 Nothing in this clause 10 limits the *Consultant's* rights under clause 27.

11 GST

If the *Fee* is stated to be *GST* exclusive, the *Client* must pay the *Fee* plus the applicable *GST*.

12 TIME

- 12.1 Subject to clause 12.2, the *Consultant* must complete the *Services* by the time stated in *Item 13*.
- 12.2 The *Client* must grant the *Consultant* a reasonable extension of time for any delay to completion of the *Services* caused by:
- (a) an act or omission of the *Client* or its officers, employees, agents or other consultants or contractors (including a *Variation* directed by the *Client*);
 - (b) a *Force Majeure*;
 - (c) any event or circumstance set out in *Item 14*; or
 - (d) any event or circumstance for which another provision of this *Contract* provides that the *Consultant* may be entitled to an extension of time,
- provided that the *Consultant* notifies the *Client* of the delay and its cause promptly after the *Consultant* becomes aware of the delay or its cause, and provides reasonable evidence of the cause and duration of the delay.
- 12.3 The *Client* must pay the *Consultant's* reasonable costs of and incidental to delay (valued as a *Variation*) caused by any of the following events for which an extension of time has been granted under clause 12.2:
- (a) any breach of this *Contract* or negligent or unlawful act or omission of the *Client* or its officers, employees, agents or other consultants or contractors;
 - (b) a *Variation* directed by the *Client*;
 - (c) any event or circumstance set out in *Item 14*; or
 - (d) any event or circumstance that occurs for which another provision of this *Contract* provides that the *Consultant* may be entitled to an extension of time with costs.

13 LAW AND APPROVALS

- 13.1 The *Consultant* must comply with all *Legislative Requirements* and *Approvals* in carrying out the *Services*.
- 13.2 The *Consultant* must obtain the *Approvals*, if any, stated in *Item 15*.
- 13.3 If a new *Legislative Requirement* or *Approval*, or a change in a *Legislative Requirement* or *Approval*:
- (a) occurs after agreement of the *Fee*;
 - (b) causes the *Consultant* to incur more or less cost or time than otherwise would have been incurred or expended; and

- (c) could not have been reasonably anticipated by the *Consultant* exercising the standard of care in clause 4 as at the date the *Fee* was submitted to the *Client* (or, if the *Fee* was amended after it was submitted, the date of that amendment) prior to the 15th *Business Day* before agreement of the *Fee*,

then the difference in cost will be valued as a *Variation* and an extension of time may be granted in accordance with clause 12.

14 CONSULTATION AND MEETINGS

The *Consultant* must consult regularly with the *Client* and attend meetings and briefings reasonably required by the *Client* in connection with the *Services*.

15 REVIEW AND ACCEPTANCE

- 15.1 The *Consultant* must allow the *Client* to review and discuss the *Documents* and *Deliverables* (whether complete or in progress) produced by the *Consultant* in performing the *Services*.
- 15.2 The *Consultant* remains responsible for the *Services* despite any review or acceptance of any of the *Services* by the *Client*.

16 ADVERSE EVENT

Each party must, as soon as practicable after becoming aware of any matter or circumstance (including any change in *Legislative Requirement* or *Approval*) which may adversely affect or has adversely affected the performance of the *Services*, notify the other party. The notice must include reasonable detail describing the matter or circumstances and its anticipated effect on the *Services*.

17 COOPERATION WITH OTHERS

The *Consultant* must use reasonable endeavours to liaise, cooperate and confer with contractors and other consultants of the *Client* in order to coordinate its *Services* with the services of those contractors and consultants to produce the *Deliverables*.

18 KEY PERSONNEL

The *Consultant* must provide the key personnel (if any) stated in *Item 16* to perform the *Services* stated in *Item 16*. If any key person is not available due to circumstances beyond the reasonable control of the *Consultant*, the *Consultant* must promptly notify the *Client* and arrange a replacement approved by the *Client* (such approval not to be unreasonably withheld or delayed).

19 CONFLICT OF INTEREST

- 19.1 A conflict of interest in connection with this *Contract* includes a conflict between a duty owed by the *Consultant* to a person and a duty owed by the *Consultant* to the *Client*.
- 19.2 The *Consultant* represents that to the extent reasonably ascertainable at commencement of this *Contract*, after making all reasonable enquiries, no conflict of interest exists or is likely to arise except as set out in *Item 17*.
- 19.3 The *Consultant* must monitor and, unless the *Client* gives prior written consent to the conflict of interest, avoid the occurrence of any conflict of interest.
- 19.4 The *Consultant* must notify the *Client* immediately on becoming aware of a conflict of interest or a significant risk of a conflict.
- 19.5 Where a conflict of interest arises or is likely to arise, the *Client* may proceed under clause 27.

20 SUBCONTRACTING AND ASSIGNMENT

- 20.1 Subject to clause 20.2 neither party may, without the prior written approval of the other (which must not be unreasonably withheld or delayed), transfer any of its rights or obligations under this *Contract*.
- 20.2 The *Client* may assign its rights under this *Contract* without notice to the *Consultant*.
- 20.3 The *Consultant* must not subcontract any part of the *Services* without the prior written approval of the *Client* (which must not be unreasonably withheld or delayed). In granting the approval the *Client* may impose reasonable conditions.
- 20.4 Subcontracting does not relieve the *Consultant* of any obligation under this *Contract*.

21 COPYRIGHT AND OTHER INTELLECTUAL PROPERTY RIGHTS

21.1 The *Client* licenses to the *Consultant* such *Intellectual Property Rights* in *Client Information* as are necessary to enable the *Consultant* to perform the *Services* in accordance with this *Contract*.

21.2 The *Consultant* retains the *Intellectual Property Rights* created outside the terms of this *Contract* and used in performing the *Services*. Subject to clause 21.4, the *Consultant* grants to the *Client* a royalty-free non-exclusive irrevocable licence to use such *Intellectual Property Rights* for any purpose for which the *Services* are provided.

21.3 The Alternative stated in *Item 18* applies.

Alternative 1

Subject to clause 21.4, on creation the *Consultant* grants to the *Client* an irrevocable, royalty-free licence to use, adapt, reproduce, amend, publish and sublicense on the same terms, the *Deliverables* created by the *Consultant* for any purpose for which the *Services* are provided, including any subsequent repairs, maintenance or servicing.

Alternative 2

Subject to clause 21.4, on creation all *Intellectual Property Rights* in the *Deliverables* created by or for the *Consultant* vest in the *Client*.

The *Client* grants to the *Consultant* an irrevocable, royalty-free licence to use, adapt, reproduce, amend, publish and sublicense those *Intellectual Property Rights*.

To the extent the *Intellectual Property Rights* in or relating to the *Deliverables* are not capable of being vested in the *Client* because the *Consultant* does not own the *Intellectual Property Rights*, the *Consultant* must obtain an irrevocable licence for the *Client* to use those *Intellectual Property Rights*, except for those rights stated in *Item 19*.

21.4 The rights created by clause 21.3 are revocable by the *Consultant* if the *Client* does not pay the amount payable under this *Contract* including the amount stated in *Item 20*, within 40 *Business Days* after completion of the *Services*, termination of this *Contract* or determination of any dispute regarding the *Consultant's* entitlement to payment.

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

21.6 The *Client* must not infringe any *Intellectual Property Rights* in providing *Client Information*.

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22 MORAL RIGHTS*

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- 22.1 This clause applies if *Item 21* states that it applies.
- 22.2 The *Consultant* has or must obtain a consent from each of its officers and employees and use its best endeavours to obtain such consent from its agents, subconsultants and subcontractors (and their respective employees) in connection with the *Services* in substantially the same form as the consent set out in Annexure Part C, or such other form as is acceptable to the *Client*.
- 22.3 In relation to the *Services*:
- (a) the *Consultant* must be attributed as the author of the physical product of the *Services* as stated in *Item 21* when the *Client* considers it reasonable and practicable, or as otherwise agreed in writing;
 - (b) the *Client* need not advise the *Consultant* of any intended alteration to or demolition of any project, building or structure related to the *Services* unless otherwise agreed in writing;
 - (c) the *Consultant* has the right to give consent on behalf of its employees and its consultants (if any); and
 - (d) where requested, the *Consultant* must provide the *Client* with copies of all relevant consents in the form of Annexure Part C, or another form as agreed, within a reasonable time.

23 CONFIDENTIALITY

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- 23.1 The parties must treat as confidential:
- (a) the information stated in *Item 22*; and
 - (b) all other information which of its nature is confidential or which the parties ought reasonably to know is confidential.
- 23.2 The obligation of confidentiality does not apply to the extent:
- (a) that the information is in the public domain otherwise than as a result of a breach of this *Contract*;
 - (b) disclosure is required by law;
 - (c) disclosure is necessary to procure goods or services in connection with the *Services*, provided that the recipient of the information is also subject to an obligation of confidentiality; or
 - (d) disclosure is agreed in writing by the parties.

* These provisions do not derogate from the rights and obligations set out in Part IX of the *Copyright Act 1968* (Cth).

23.3 The *Consultant* must not publish or enable others to publish any information in connection with the *Services* without the prior written consent of the *Client* (which must not be unreasonably withheld or delayed).

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23.4 The *Consultant* must ensure that its officers, employees, agents, subconsultants and subcontractors comply with the *Consultant's* obligations under this clause 23.

24 SUSPENSION BY THE CLIENT

24.1 The *Client* may suspend the performance of the *Services* at any time by notice in writing to the *Consultant*.

24.2 Unless the suspension has been directed due to the *Consultant's* wrongful conduct, the *Client* must pay the *Consultant* any costs and expenses reasonably incurred by the *Consultant* as a result of the suspension.

24.3 The *Consultant* must recommence the *Services* when reasonably directed to do so by the *Client*.

24.4 If the suspension lasts longer than the period stated in *Item 23* the *Consultant* may terminate this *Contract*.

24.5 The *Client* is not liable to the *Consultant* for any indirect or consequential loss suffered or incurred as a result of the exercise by the *Client* of its rights under this clause 24.

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25 SUSPENSION BY THE CONSULTANT

25.1 If a risk to the health or safety to any person arises where the *Services* are being performed (other than at any premises owned or controlled by the *Consultant*), the *Consultant* may suspend the performance of the *Services* to the extent necessary to protect affected persons.

25.2 The *Consultant* must give prompt notice to the *Client* of the suspension, the reason for the suspension and, if known by the *Consultant*, its likely duration.

25.3 The *Consultant* must recommence the *Services* as soon as possible and give prompt notice to the *Client*.

25.4 The *Consultant's* right to suspend the performance of the *Services* following the *Client's* failure to make a payment is set out in clause 10.8.

26 TERMINATION WITHOUT CAUSE

- 26.1 This *Contract* may be terminated:
- (a) at any time by mutual agreement; or
 - (b) by the *Client* for any reason after giving reasonable written notice to the *Consultant*.
- 26.2 If this *Contract* is terminated under clause 26.1, the *Client* must pay to the *Consultant*:
- (a) the applicable portion of the *Fee* for the *Services* performed prior to the date of termination;
 - (b) all disbursements incurred by the *Consultant* prior to the date of the termination which would have been payable had this *Contract* not been terminated; and
 - (c) any costs and expenses reasonably incurred by the *Consultant* by reason of termination.
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- A1 | The *Client* is not liable to the *Consultant* under this clause 26 for any amount greater than the amount that the *Client* would have paid to the *Consultant* had this *Contract* been completely performed.
- 26.3 The *Client* is not liable to the *Consultant* for any indirect or consequential loss arising out of the termination under clause 26.1.
- 26.4 Upon termination and payment of the amount due to the *Consultant* under clause 26.2, the *Consultant* must deliver to the *Client* all *Deliverables* and all *Documents* which, on completion, would be *Deliverables*. The *Consultant* is not liable in respect of the *Documents* which it has not completed due to the termination of this *Contract*.

27 TERMINATION DUE TO DEFAULT BY EITHER PARTY

- 27.1 If either party commits a substantial breach of this *Contract*, the other party may give to the party who committed the breach a written notice to show cause. A notice to show cause must:
- (a) state it is a notice given under this clause 27;
 - (b) specify the alleged breach with reasonable details;
 - (c) require the party who committed the breach to show cause in writing why the party giving the notice should not exercise a right referred to in this clause 27; and
 - (d) specify a date (which must not be less than 5 *Business Days* after the notice is served) by which the party who committed the breach must show cause.
- A1 |
- A1 |

- A1 | 27.2 Substantial breaches include but are not limited to:
- (a) suspension of work other than as permitted in clauses 10.8, 24 and 25;
 - (b) failure to proceed with due diligence and without delay;
 - (c) failure to provide evidence of insurance in accordance with clause 30.5; and
 - (d) failure of the *Client* to pay the *Consultant* under clause 10.
- A1 | 27.3 If the recipient of a notice to show cause fails to show reasonable cause why the other party should not exercise a right under clause 27.3 within the time specified in the notice, the other party may, by further written notice:
- (a) terminate this *Contract*; or
 - (b) if the breach is a failure of the *Client* to pay the *Consultant* under clause 10, the *Consultant* may suspend performance of the *Services* until payment is made.
- A1 | 27.4 If the *Consultant* suspends performance of this *Contract* under clause 27.3(b), the *Consultant* must promptly lift the suspension after the *Client* remedies the breach, unless the *Consultant* has terminated the *Contract*.

28 INDEMNITY

- A1 | 28.1 To the extent permitted by law, the *Consultant* indemnifies the *Client* from and against all liability, losses, damages, costs and expenses (including legal expenses), due to:
- (a) loss of, damage to, or destruction of any property (including the *Deliverables*); or
 - (b) personal injury (including psychological injury) or death,
- to the extent contributed to by any breach of this *Contract* by the *Consultant* or negligent or unlawful act or omission of the *Consultant*, its officers, employees, agents, subconsultants or subcontractors in connection with this *Contract*.
- A1 | 28.2 Clause 28.1 does not apply to the extent that:
- (a) the liability, loss, damage, cost or expense is contributed to by any breach of this *Contract* by the *Client* or negligent or unlawful act or omission of the *Client* or its officers, employees, agents, other consultants or contractors, and/or
 - (b) the *Client* fails to act reasonably to mitigate the liability, loss, damage, cost or expense.
- A1 | 28.3 Clauses 28.1 and 28.2 do not exclude any other right of the *Client* at law.

29 LIMITATION OF LIABILITY

- 29.1 The liability of the *Consultant* to the *Client* arising under or in connection with this *Contract* including:
- (a) in tort (including for negligence);
 - (b) under statute; or
 - (c) otherwise,
- to the extent permitted by law, is limited in the aggregate to the amount specified in *Item 24* if any.
- 29.2 Clause 29.1 does not apply to liability arising from:
- (a) personal injury (including psychological injury) or death;
 - (b) infringement of *Intellectual Property Rights*;
 - (c) fraudulent, malicious or criminal conduct;
 - (d) wilful default;
 - (e) conduct with reckless disregard for the consequences;
- or of by the *Consultant* or its officers, employees, agents, subconsultants and subcontractors.

A1

30 INSURANCE

- 30.1 Except if the *Client* has agreed to effect relevant insurance under clause 30.7, the *Consultant* must effect and maintain the following insurances:
- (a) public liability insurance;
 - (b) workers' compensation insurance; and
 - (c) professional indemnity insurance.
- 30.2 The public liability insurance must be for an amount not less than that set out in *Item 25* and must be maintained for the entire duration of this *Contract*.
- 30.3 The workers' compensation insurance must be effected and maintained in accordance with the applicable Australian, State or Territory legislation.
- 30.4 The professional indemnity insurance must be for an amount not less than that set out in *Item 26* and must be maintained for not less than the period set out in *Item 27*. The policy must include provision for one automatic reinstatement of the sum insured.

- A1
- 30.5 Before the *Consultant* commences work and whenever requested in writing by the *Client*, the *Consultant* must provide to the *Client* a certificate of currency in respect of each insurance policy required under clause 30.1, showing:
- (a) the insurance policy numbers;
 - (b) the expiry date of each policy; and
 - (c) the amount of insurance cover required to be held under this *Contract*.
- A1
- 30.6 Without limiting the *Consultant's* other obligations under this *Contract*, if the *Consultant* fails to promptly provide evidence when required under clause 30.5, the *Client* may give the *Consultant* a written notice requiring the *Consultant* to provide the evidence required within a specified period of not less than 5 *Business Days* from when the notice is served and specifying the *Client's* intent to exercise its rights under this clause 30.6 if the *Consultant* does not comply. If the *Consultant* does not comply, the *Client* may effect and maintain the insurance, pay the premiums and deduct these payments from moneys due or to become due to the *Consultant* from the *Client* or otherwise treat the failure as a breach of contract.
- 30.7 The *Client* must effect and maintain the insurances (if any) specified in *Item 28*. Each policy must name the *Consultant* as an insured. The *Client* must maintain the insurances for not less than the period set out in *Item 28*. The *Client* must provide a copy of the policies and certificates of currency to the *Consultant* before the *Consultant* is required to commence the *Services*.

31 INSOLVENCY

- A1
- 31.1 Either party may terminate this *Contract* without notice if the other party is subject to an *Insolvency Event*. This right is in addition to any other rights under this *Contract*.
- 31.2 *Insolvency Event* means:
- (a) a party informs the other in writing, or creditors generally, that the party is insolvent or is financially unable to proceed with the *Contract*;
 - (b) execution is levied against a party by a creditor;
 - (c) a party is an individual person or a partnership including an individual person, and if that person:
 - (i) commits an act of bankruptcy;
 - (ii) has a bankruptcy petition presented against him or her or presents his or her own petition;
 - (iii) is made bankrupt;
 - (iv) makes a proposal for a scheme of arrangement or a composition; or

- A1
- (v) has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor's petition, or has a sequestration order made, under Part X of the *Bankruptcy Act 1966* (Cth) or like provision under the law governing the *Contract*;
 - or
 - (d) in relation to a party being a corporation:
 - (i) notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;
 - (ii) it enters a deed of company arrangement with creditors;
 - (iii) a controller or administrator is appointed;
 - (iv) an application is made to a court for its winding up and not stayed within 14 days;
 - (v) a winding up order is made in respect of it;
 - (vi) it resolves by special resolution that it be wound up voluntarily (other than a voluntary winding up by members for the purpose of reconstruction or amalgamation); or
 - (vii) a mortgagee of any of its property takes possession of that property.

32 DISPUTE RESOLUTION

- 32.1 If a dispute between the parties arises in connection with this *Contract*, then either party may give the other party a written notice of the dispute in accordance with clause 33, adequately identifying and providing details of the dispute.
- 32.2 Notwithstanding the existence of a dispute in relation to any matter other than the exercise of a right to terminate this *Contract*, the parties must continue to perform the *Contract* unless permitted to suspend performance under clauses 10.8, 24, 25 or 27.
- 32.3 Within 10 *Business Days* after service of a notice of dispute, the parties must confer at least once to resolve the dispute or to agree on methods of doing so. Each party must be represented by a person having authority to agree to such resolution or methods of resolution. All conferences under this clause 32.3 must be conducted in good faith and without prejudice.
- A1
- 32.4 If the dispute has not been resolved within 20 *Business Days* of service of the notice of dispute, either party may commence legal proceedings or, if agreed in writing by the parties, commence alternative dispute resolution proceedings.
- A1

33 SERVICE OF NOTICES

- 33.1 Subject to clause 33.2, notices under this *Contract* must be served:
- (a) by hand, mail, fax or email, at the address, fax number or email address, set out in *Item 29*, or, if notice of a change in address, fax number or email address is given, at the last such notified address, fax number or email address;
 - (b) by such other means as the parties agree in writing.
- 33.2 Any *Document* given under clauses 24, 25, 26, 27, 31 or 32 must be served by hand or registered mail.
- 33.3 A *Document* is served:
- (a) by mail, 3 *Business Days* after posting;
 - (b) by fax, when the sender receives an error-free transmission report from the correct fax number;
 - (c) by email or other electronic means, when it becomes capable of being retrieved by the addressee at the relevant email or other electronic address.
- 33.4 Any notice served after 5 pm on any *Business Day* or on a weekend or a public holiday is deemed to be served on the next *Business Day*.

34 SURVIVAL OF TERMINATION

- A1 | Clauses 10, 21, 22, 23, 26, 28, 29, 30, 32, 33 and 35 will survive the completion or earlier termination of this *Contract*.

35 GOVERNING LAW

The law governing this *Contract* and its interpretation is the law of the State or Territory stated in *Item 30* or, if the State or Territory is not stated, the law of the State or Territory where the *Services* are to be substantially performed and each party irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in that State or Territory.

36 STANDARD FORM NATURE OF CONTRACT

- A1 | Apart from completed Annexures Part A and Part C, this *Contract* is AS 4122—2010 in its original form, unless *Item 31* specifies otherwise, in which case Annexure Part B states the amendments.

EXECUTION (IF REQUIRED)

A1

NOTE: If a formal execution of this *Contract* is required, the following form or another form may be used.

This *Contract* is dated: _____ 20_____

If a party is a company, use the following execution clause.

Executed in accordance with section 127 of the *Corporations Act 2001* (Cth) by the persons named below for the entity named opposite:

Insert name of *Client* company

Signed by a Director:

Signed by a Director/Secretary:

Print name of Director:

Print name of Director/Secretary:

Executed in accordance with section 127 of the *Corporations Act 2001* (Cth) by the persons named below for the entity named opposite:

Insert name of *Consultant* company

Signed by a Director:

Signed by a Director/Secretary:

Print name of Director:

Print name of Director/Secretary:

If a party is not a company, then any person with authority to bind the party can execute the *Contract* by signing it in the place allocated below. If you do so as agent for another person please write after your name "as agent for" and insert that person's name.

A1

Signed:

Print name:

Signed:

Print name:

Part A

Annexure to the Australian Standard
General Conditions of Contract for Consultants
AS 4122—2010

The parties are encouraged to review AS 4121—1994, *Code of ethics and procedures for the selection of consultants*, prior to completing Annexure Part A.

A1	<i>Item</i> <i>Item 1</i> (clause 1.1)	<i>The Client is:</i> Guidance Note: Insert the identity of the <i>Client</i> with ABN and address. Identify whether the <i>Client</i> is acting as the agent of another person and, if so, identify that person and their ABN. (You can verify the name and ABN free of charge at www.asic.gov.au or www.abr.gov.au)	of ABN
A1	<i>Item 2</i> (clause 1.1)	<i>The Consultant is:</i> Guidance Note: Insert the identity of the <i>Consultant</i> with ABN and address. (You can verify the name and ABN free of charge at www.asic.gov.au or www.abr.gov.au)	of ABN
A1	<i>Item 3</i> (clause 1.1)	<i>The Contract Documents are:</i> Guidance Note: Insert any other relevant <i>Documents</i> forming this <i>Contract</i> .	1. These General Conditions of Contract. 2. The <i>Scope</i> . 3. (Other):
A1	<i>Item 4</i> (clause 1.1)	<i>The Scope is described in the following Documents, or the Scope is:</i> Guidance Note: The <i>Scope</i> is intended to describe the <i>Scope</i> of the <i>Services</i> that are required to be performed and their relationship to the project being undertaken by the <i>Client</i> . Either identify the <i>Documents</i> that describe the <i>Scope</i> or include a statement of the <i>Scope</i> in this <i>Item</i> .	

	<i>Item 10</i> (clause 10.3)	Time to claim payment is no later than:
	<i>Item 11</i> (clause 10.6)	The time for payment is no later than: <i>Business Days</i> after receipt of a claim for payment or if nothing is stated 30 calendar days after service of a payment claim.
	<i>Item 12</i> (clause 10.9)	The rate of interest for overdue payment is:
A1	<i>Item 13</i> (clause 12.1)	Alternative 1: The date or the period after commencement of this <i>Contract</i> , by which the <i>Services</i> must be completed is:	Alternative 1: Date:.....
		Alternative 2: Under the program attached.	Alternative 2: see attached program.
		Guidance Note: If Alternative 2 is to apply, a program must be attached.	If nothing stated or attached then within a reasonable time.
A1	<i>Item 14</i> (clause 12.3 (c))	Other causes of delay for which the <i>Consultant</i> may notify an extension of time:
	<i>Item 15</i> (clause 13.2)	The <i>Approvals</i> to be obtained by the <i>Consultant</i> are:
A1	<i>Item 16</i> (clause 18)	The key personnel are:	Name: Role to be performed:
		Guidance Note: Insert the identity of the key personnel together with a description of the work they will perform.
	<i>Item 17</i> (clause 19.2)	Existing conflicts of interest:

Item 18
 (clause 21.3) Copyright and other *Intellectual Property Rights*, the Alternative that applies is:

Guidance Note:

Identify whether Alternative 1 or Alternative 2 applies.

Item 19
 (clause 21.3 Alternative 2) List excluded *Intellectual Property Rights*:

Guidance Note:

For example, maps referenced from Google Earth.

Item 20
 (clause 21.4, Alternative 2) The additional amount payable to the *Consultant* for granting of *Intellectual Property Rights* to the *Client* is: \$.....

Guidance Note:

If Alternative 2 applies, state the additional amount payable to the *Consultant* to vest the *Intellectual Property Rights* in the *Client*.

Item 21
 (clause 22.1) Does clause 22 (*Moral Rights*) apply? Yes No
 (strike through as relevant.)

If yes, the author is:

Guidance note:

For example, the name of the *Consultant*.

Item 22
 (clause 23.1) The following *Documents* are confidential:

Guidance Note:

Confidential *Documents* could include, *Client Information*, this *Contract* and the *Deliverables*. It may also include *Fee* information and background *Intellectual Property Rights*.

A1 | *Item 23*
 (clause 24.4) Maximum period for which *Client* may suspend the *Services* at any one time, after which the *Consultant* may terminate:

Item 24
 (clause 29.1) The *Consultant's* liability is limited to:

Guidance Note:

As a guide the liability should be specified as a monetary amount and not refer to the insurance policy.

Item 25 The amount of public liability
 (clause 30.2) insurance is:

.....

Item 26 The amount of the professional
 (clause 30.4) indemnity insurance is:

.....

Item 27 The professional indemnity
 (clause 30.4) insurance must be maintained
 for the following period:

.....

.....

Item 28 The *Client* must effect the Insurance: Period:
 (clause 30.7) following insurances and

.....

maintain them for the

following periods:

Guidance Note:

Insurances could include for example,

public liability, professional indemnity,

and workers compensation.

Parties should clarify that the insurance

should be primary and include a clause

waiving contribution claims against the

Consultant's insurance.

Item 29 The address for the service of
 (clause 33.1) notices is:

.....

Guidance Note:

Insert the appropriate mail, fax, email or

other electronic address of each party to

this *Contract*.

.....

.....

Item 30 The law governing this *Contract*
 (clause 35) is:

.....

If nothing is stated, the state or territory
 where the *Services* are to be substantially
 performed.

Item 31 Has this *Contract* been Yes/~~No~~
 amended from its original form?

A1

Part B

Annexure to the Australian Standard
General Conditions of Contract for Consultants
AS 4122—2010

DELETIONS, AMENDMENTS AND ADDITIONS

- 1. The following clauses or parts of clauses have been deleted from the General Conditions in AS 4122—2010:

.....
.....
.....
.....
.....
.....
.....

- 2. The following clauses have been amended and differ from the corresponding clauses in AS 4122—2010:

.....
.....
.....
.....
.....
.....
.....

- 3. The following clauses have been added to those of AS 4122—2010:

.....
.....
.....
.....
.....
.....
.....

Part C

Annexure to the Australian Standard
General Conditions of Contract for Consultants
AS 4122—2010

Moral Rights Consent Form 1—For Employees of the Consultant **(clause 22)**

To: **[INSERT CONSULTANT]**

ABN: **[INSERT ABN]**

In relation to any work that I perform for

(‘you’)

in the course of my employment, I agree as follows:

- (a) Unless you and I agree otherwise in writing, I will not be attributed personally as the author of my work and you will be described as the author of any work I perform and as the author of any product that results from my work.
- (b) Alternatively you and your client may agree on the form of attribution to be given to any specific product of my work.
- (c) Without notifying or consulting me, you may alter my work in any way that you consider desirable, or necessary.
- (d) You need not advise me if you are notified of any intended alteration to or demolition of any project, building or structure related to my work.
- (e) You may provide a copy of this consent to any client.
- (f) This consent also applies to all work that I have already performed for you.

Signed by the holder of *Moral Rights*:

Print name of signatory

_____ / _____ / _____

Date

A1

***Moral Rights Consent Form 2—For use by the Consultant with its
subconsultants or subcontractors
(clause 22)***

To:

ABN:

Project name:

Note: Project name must be inserted for this consent to be valid.

In relation to any services that we supply to

(‘you’)

in the course of

we agree that, given the nature of the work, and the purpose, manner and context of its intended use:

- (a) Nothing in this consent prevents you describing yourself as an author or the author of [project name] or as the project comes to be known from time to time.
- (b) We will also be attributed as an author in circumstances that you consider reasonable and practicable, or as otherwise agreed with you in writing.
- (c) You need not advise us if you are notified of any intended alteration to or demolition of any project, building or structure related to our work.
- (d) You may provide a copy of this consent to any of your clients.
- (e) We have the right to give this consent on behalf of our employees and our own subconsultants and subcontractors (if any).
- (f) We will provide you with copies of such consents within a reasonable time if you request them.

A1

Signed by the subconsultant
on behalf of each holder of
Moral Rights:

A1

Print name and ABN of
subconsultant/subcontractor.

_____/_____/_____
Date

AMENDMENT CONTROL SHEET

AS 4122—2010

Amendment No. 1 (2011)

CORRECTION

SUMMARY: This Amendment applies to Clauses 1.1, 1.5 (new), 5.4, 8.2, 10.4, 10.9, 10.10, 21.4, 22.2, 23.2, 23.4, 24.5, 26.2, 27.1, 27.2, 27.3, 27.4, 28.1, 28.2, 29.2, 30.5, 30.6, 31, 32.3, 32.4, 34, 36, Execution, and Parts A and C.

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