

TERMS AND CONDITIONS

1. Definitions

Agreement means the agreement between the parties evidenced by these Terms and any attachments.

Business Day means a day which is not a Saturday, Sunday or a public holiday in the State or Territory of Australia in which the Company is performing the Services.

Client means the party specified in "Company/ Customer Name" on page 1 of the Account Credit Application and its permitted successors, assigns, agents, employees and at the option of the Company shall include related bodies corporate as defined in the Corporations Act.

Company means Coffey Testing Pty Ltd successors, assigns, agents, employees, related bodies corporate (as defined in the Corporations Act) and sub-contractors.

Confidential Information means all information, including (without limitation) any Intellectual Property, whether oral, graphic, electronic, written or in any other form, that is not generally available to the public at the time of disclosure other than by reason of a breach of this Agreement or that is in fact, or should reasonably be regarded as, confidential to the party to whom it belongs or relates.

Corporations Act means the *Corporations Act 2001* (Cth).

GST has the same meaning given to that term in the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended from time to time.

Insolvency Event means in relation to a party any one or more of the following events or circumstances:

- (a) being in liquidation or provisional liquidation or under administration;
- (b) having a controller or analogous person appointed to it or any of its property;
- (c) being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
- (d) being unable to pay its debts or being otherwise insolvent;
- (e) becoming an insolvent under administration, as defined in section 9 of the Corporations Act;
- (f) entering into a compromise or arrangements with, or assignment for the benefit of, any of its members or creditors;
- (g) any analogous event or circumstance under the laws of any jurisdiction; or
- (h) taking any step or being the subject of any action that is reasonably likely to result in any of the above occurring,

unless such event or circumstance occurs as part of a solvent reconstruction, amalgamation, compromise, arrangement, merger or consolidation.

Intellectual Property means all present and future intellectual and industrial property whether conferred by statute, at common law or in equity and wherever existing, including (without limitation) patents, designs, copyright, rights in circuit layouts, trademarks, know how, brand names, domain names, inventions, product names, trade secrets and any other rights subsisting in the results of intellectual effort in any field, whether registered or not or capable of being registered, and includes any application or right to apply for registration of any of these rights.

Law means:

- (a) principles of law or equity established by decisions of courts;
- (b) statutes, regulations or by-laws of the Commonwealth, a State, a Territory or a government agency; and
- (c) requirements and approvals (including conditions) of the Commonwealth, a State, a Territory or a government agency that have the force of law.

Services means the consultancy services the Company has been engaged by the Client to provide as set out in the Project Scope.

2. Company's obligations

The Company must:

- (a) when carrying out work for the purposes of providing the Services:
 - (i) exercise reasonable care in accordance with standards ordinarily exercised by members of the profession generally who practice in the same locality and under similar conditions as the Company. There shall be no liability whatsoever in respect of any failure to exercise a degree or level of care beyond such reasonable care;
 - (ii) perform the Services in accordance with all relevant Law; and

- (iii) perform the Services in accordance with the Client's reasonable site rules, policies and procedures in so far as these have been made known in writing to the Company prior to the date of this Agreement; and
- (b) if the Company becomes aware of any matter which may change the scope or timing of any of the Services, provide the Client with reasonable written notice in relation to the change.

3. Client's obligations

The Client must:

- (a) provide free of charge such timely access to drawings, data and information as may be available to the Client and as may reasonably be required by the Company for the performance of the Services;
- (b) give or cause to be given to the Company in writing timely directions, instructions, decisions and information sufficient to define the Services required and to facilitate the provision of the Services by the Company;
- (c) notify the Company of any known or suspected hazards existing at any site the subject of the Services including, but not limited to, hazardous waste or substances and underground utilities;
- (d) in consideration of the performance of the Services, pay the Company fees and reimburse costs and disbursements as set out in the Fee Details;
- (e) where necessary and not otherwise agreed, obtain all approvals for the Project which are required under relevant Law;
- (f) Where required under Government QMS documents, provide Accurate Test Requests in a timely manner prior to works to allow for staffing and equipment resources to be allocated to the project. If notice 24 hours prior has not been given, time taken to allocate resources, overtime associated with booking in and carrying out works may be charged an hourly rate in line with the T4 technician rate in the supplied table of rates;
- (g) In addition to (f), provide a 'look ahead', or, works forecast to ensure resources can be made available within the region;
- (h) ensure the Company and its employees, agents and contractors have access to applicable sites and locations at reasonable times that the Company may reasonably require for the purposes of providing the Services; and
- (i) co-operate with and ensure that any contractors or consultants working on the Project co-operate with the Company and do not interfere with or obstruct the proper performance of the Services.

The Client acknowledges and agrees:

- (j) that any information or document provided by it is accurate and complete and may be relied upon by the Company for the purposes of performing the Services;
- (k) that the Company does not supervise the work of others. In the case of work undertaken by others pursuant to directions from the Company, the Company is responsible for exercising reasonable care in giving the directions, but is not responsible for the manner in which the directions are carried out;
- (l) that the Company's performance of the Services is solely for the benefit of the Client and may only be relied on by the Client, and the Client shall indemnify the Company against any claims from third parties in respect of the Services save to the extent that:
 - (i) the Company has, without being requested to do so by the Client, furnished information or advice direct to such third parties; or
 - (ii) the Company has, in writing, unconditionally authorised disclosure of information or advice to such third parties.
- (m) that documents (including reports) provided by the Company's personnel are signed by them, for and on behalf of the Company and not in any personal capacity;
- (n) and warrants that, it will not supply or permit any report of the Company to be seen by or given to any third party unless that report has incorporated in, or attached to it, these Terms; and
- (o) that subject to the Client's prior approval, and at the Client's expense, the Company may engage specialist subconsultants.

4. Fees and payment

- (a) In consideration for performance of the Services, the Client agrees to pay the Company fees and reimburse costs and disbursements as set out in this Agreement or to the extent not specified in this Agreement, as mutually agreed in writing by the Client and the Company.

- (b) Unless otherwise provided in this Agreement or expressly agreed in writing by the parties, the Company will provide regular invoices (not more frequently than weekly) to the Client for fees earned and costs and disbursements incurred in providing the Services.
- (c) The Client agrees to pay the Company the amount invoiced, within 14 days from invoice date, unless another time is approved by the Company. At the option of the Company, interest may be charged on the daily balance of overdue accounts at the same rate as the maximum overdraft rate fixed by the CBA bank, plus 2.5% without relieving the Client of his obligation to pay the account.
- (d) If the Client breaches clause 4(c), the Company may suspend the provision of the Services, in which case an extension of time shall be granted for the period of suspension, and/or may require the return forthwith to the Company all reports and other documents and copies thereof that have been provided by the Company in performance of the Services. The Client shall comply with any demand made by the Company pursuant to this clause 4(d).
- (e) All amounts in this Agreement or in any other documents provided to the Company relating to fees are exclusive of GST (unless expressly stated to the contrary).

5. Professional fees

Where the Company agrees to perform the Services on a schedule of rates, the Client acknowledges and agrees that:

- (a) fees will be calculated by reference to the actual hours and expenses for any work performed from the date of the Company's proposal (including, all time spent on consultations, planning, inspections, preparing samples or equipment, travelling, field testing, analysis, calculation, assessment, drafting, word processing, presentation of results, interpretation, reporting and delays or interruptions caused by inclement weather, industrial unrest, bogging of equipment, site trafficability problems or other conditions beyond the direct control of the Company);
- (b) time spent as an expert witness on legal matters, mediations, arbitrations, litigations and Commissions of Enquiry, will be charged at not less than 150% of the standard rates, and this increased rate will apply to all aspects of work including investigation, analysis, reporting, briefing of legal advisors, appearance to give evidence, participation in proceedings and other services as required;
- (c) the Company reviews its rates periodically having regard to changes in salaries and market conditions; and
- (d) the Company may vary its rates, but it will not do so more than twice in any calendar year.

6. Reimbursable costs and disbursements

The Client is liable for all costs and disbursements incurred by the Company in the course of performing the Services, and will be charged as set out below.

- (a) Motor Vehicle Use: use of private, hired or Company motor vehicles in the course of performing the Services will be charged at the rates set out in the Project Scope.
- (b) Airfares: air flights undertaken in the course of performing the Services will be charged at cost plus 15%.
- (c) Any other expenses: where such expenses are processed and paid by the Company they will be charged at cost plus a service fee of 15%. Such expenses include:
 - (i) services of other consultants or contractors (including laboratories and printing services);
 - (ii) the hiring of plant and equipment as required (including drilling equipment and earthmoving equipment), and related costs (including cost of travel, delays associated with access, inclement weather, bogging of vehicles and equipment, or any other delays which could not be reasonably avoided);
 - (iii) transportation of personnel, equipment and samples (including living expenses of the Company's personnel who are working away from the city in which they normally reside);
 - (iv) site allowances and project allowances paid to the Company's personnel;
 - (v) expendable items installed in connection with the Services (including piezometers, settlement plates and inclinometers);
 - (vi) any special equipment, miscellaneous items or services specifically required for the particular Services (including maps, charts or aerial photographs, special stationery, photography and permit fees);
 - (vii) costs of rectifying any damage to property or services which could not be reasonably avoided; and
 - (viii) any additional insurances required for special projects.

7. Laboratory testing

- (a) Where required, laboratory tests are charged in accordance with the schedule of rates for standard tests, available on request from the relevant laboratory performing the work.
- (b) Special tests not covered by the schedule of rates or tests for procedures other than those shown will be charged at the usual hourly rate for the relevant personnel involved.
- (c) Except where laboratory testing is carried out by the Company's laboratories, charges for laboratory testing will be in accordance with clause 6 and subject to the service fee of 15%.

8. GST

- (a) Italicised terms in this clause 8, have the same meaning as in the GST Act.
- (b) To the extent that any *Supply* under the Agreement constitutes a *Taxable Supply*, the *Consideration* payable by the *Recipient* to the *Supplier* will be increased by the applicable amount of GST ('GST Amount'), which shall be calculated by multiplying the amount upon which GST is payable by the prevailing rate of GST.
- (c) Subject to compliance with subclause (e), any *GST Amount* shall be paid by the *Recipient* to the *Supplier* at the same time and in the same manner as the relevant *Consideration* is paid or given under the Agreement, without any right of set-off or deduction (unless otherwise provided in the Agreement).
- (d) If the Agreement requires the *Recipient* to pay, reimburse or contribute to any expense, loss or outgoing suffered or incurred by the *Supplier* ('Relevant Expense'), the amount which the *Recipient* shall pay, reimburse or contribute will be the amount net of any *Input Tax Credits* to which the *Supplier* is entitled in respect of the *Relevant Expense*, together with any *GST Amount* if the payment, reimbursement or contribution constitutes a *Taxable Supply* by the *Supplier* to the *Recipient*.
- (e) The *Supplier* shall provide to the *Recipient* a valid *Tax Invoice* at or prior to the time of payment of any *GST Amount*.
- (f) To the extent that any *Adjustment* occurs in relation to a *Taxable Supply*, the *Supplier* shall issue an *Adjustment Note* to the *Recipient* within 28 Business Days of becoming aware of the *Adjustment*, and any payment necessary to give effect to such *Adjustment* shall be made within 5 Business Days after the date of receipt of the *Adjustment Note*.

9. Confidential Information

- (a) Each party ('Receiving Party') receiving, possessing or otherwise acquiring Confidential Information of the other party ('Disclosing Party') acknowledges that the Disclosing Party's Confidential Information is the property of, confidential to or a trade secret of the Disclosing Party. The Receiving Party must:
 - (i) keep the Disclosing Party's Confidential Information confidential and not directly or indirectly disclose, divulge or communicate the Confidential Information to, or otherwise place that Confidential Information at the disposal of, any other person without the prior written approval of the Disclosing Party;
 - (ii) take all reasonable steps to secure and keep secure all the Disclosing Party's Confidential Information coming into its possession or control;
 - (iii) only use the Confidential Information of the Disclosing Party to the extent necessary to perform its obligations under this Agreement; and
 - (iv) not memorise, modify, reverse engineer or make copies, notes or records of the Disclosing Party's Confidential Information for any purposes other than in connection with, and to the extent required for, the performance by the Receiving Party of its obligations under this Agreement.
- (b) These obligations of confidentiality under this clause 9 do not apply to any information that:
 - (i) is or becomes generally available to the public (other than by reason of a breach of this Agreement);
 - (ii) is required to be disclosed by any applicable Law; or
 - (iii) is disclosed to legal, insurance or financial advisors.
- (c) Immediately on the written request of the Disclosing Party or on the termination of this Agreement for any reason, the Receiving Party must:
 - (i) cease the use of all Confidential Information of or relating to the Disclosing Party;
 - (ii) deliver to the Disclosing Party all documents and other materials in its possession or control containing, recording or constituting that Confidential Information or, at the option of the Disclosing Party, destroy and certify to the Disclosing Party that it has destroyed, those documents and materials; and

- (iii) for Confidential Information stored electronically, permanently delete that Confidential Information from all electronic media on which it is stored, so that it cannot be restored.
- (d) Notwithstanding anything in clause (c) above, the Company may retain a copy of any information (including Confidential Information) if required to do so by law and/or for the purposes of complying with its quality management system.
- (e) Subject to compliance with this clause 9, unless advised otherwise by the Client in writing, the Company can use information regarding the Project which is the subject of this Agreement in any promotional material it may prepare or use.

10. Additional services and Extensions of Time

If requested by the Client or otherwise required by circumstances beyond the control of the Company, services not included in this Agreement may be provided by the Company and form part of the Services for the purposes of this Agreement subject to the agreement by the Company and compliance with this clause by the Client.

The Client must:

- (a) pay for additional services the Company undertakes, and all costs, liabilities and expenses the Company incurs in providing the additional services including (without limitation) all costs, expenses and liabilities the Company incurs in connection with any delays or disruptions experienced by the Company in providing the Services, to be assessed in accordance with clause 111
- (b) provide the Company with a reasonable extension of time for the provision of the additional services, including (without limitation) for any delays or disruption experienced by the Company caused by having to provide the additional services.

11. Valuation of varied or additional services

Unless the parties have expressly agreed otherwise in writing, the amount the Client must pay to the Company for additional services in accordance with clause 10 must be ascertained and calculated:

- (a) in accordance with the rates specified in this Agreement if those rates are applicable to the nature and scope of the work required;
- (b) if a rate is not so specified, at a rate which is reasonably derived from the rates specified in this Agreement; or
- (c) if there is no rate from which an applicable rate can be derived, then at those rates (taking into account the nature and scope of the work required) that would be considered reasonable in the industry taking into account all the applicable circumstances.

12. Extensions of Time and Delay

If the Company is or will be delayed in carrying out the Services by a cause beyond the reasonable control of the Company, the completion date shall be extended by the extent of the delay.

If the performance of the Services is delayed beyond a reasonable period for any reason other than a breach of the Agreement by the Company, the Client is liable to the Company for loss and damage suffered, including loss of profits and consequential costs and expenses incurred as a result of that delay. If an additional sum becomes or appears likely to become chargeable pursuant to this clause 12, notification will be given by the Company to the Client and the Client must agree to pay the additional sum, prior to the continuation of work by the Company.

13. Force majeure

The Company will be relieved from any obligation or other liability under this Agreement to the extent that any failure to perform has been caused by force majeure, including Acts of God, war, civil disturbance, government action, labour disputes or any other cause beyond the Company's reasonable control.

14. Occupational health and safety

The Client agrees to provide a safe working environment for the Company and its agents, employees and sub-contractors for the purposes of the provision of the Services where the working environment is under the control of the Client.

15. Ownership of Intellectual Property

- (a) Intellectual Property owned by the Company as at the date of this Agreement and used in connection with the Services remains vested in the Company.

- (b) The Company grants to the Client a royalty free licence to use its Intellectual Property, including all reports prepared in performing the Services and to use their content in accordance with the purpose for which they were prepared or as otherwise agreed between the Company and the Client, subject to the Company's right to revoke that royalty free licence if the Client does not strictly comply with clauses 4, 5 and 6 (time being of the essence), in which event the Client must upon demand forthwith return to the Company all such documents and copies thereof containing such Intellectual Property.
- (c) All Intellectual Property created by the Company in providing the Services vests in the Company upon and from its creation.
- (d) The Client indemnifies and shall keep indemnified the Company against any documents provided by the Client infringing any intellectual property right of any third party.

16. Soliciting of employees

For the purpose of this clause 16, the term:

- (a) "Employment" includes any arrangement or understanding pursuant to which a person provides services; and
- (b) "Services Period" means the period commencing on the date on which the Company first provides goods or services of any kind or description to the Client and ending 6 calendar months after the Company last provided any goods or services to the Client.

If during the Services Period the Client (or any person acting with the express or implied authority of the Client) offers Employment to any employee of the Company (or to any other person who is or has been involved with the Company in providing services to the Client), and such employee or other person at any time within a further 6 months leaves the Company's employment and commences Employment with the Client (or a related body corporate of the Client), the Client shall be indebted to the Company for a liquidated sum of (at the option of the Company) either an amount being the greater of the equivalent to 90 days multiplied by the daily charge out rate for the employee or other person, or 720 hours of the employee's, or other person's, hourly charge out rate (in each case, being the charge out rate of the employee or other person at the time of leaving the Company's employment).

17. Scope of responsibility

- (a) All goods or services provided by the Company are subject only to these Terms. Except where necessarily incorporated by Law, no other term, condition or warranty shall be incorporated herein unless specifically agreed in writing by the Company.
- (b) Notwithstanding any other provision of this Agreement, and to the extent permitted under Law, the liability of the Company to the Client arising under or in connection with this Agreement, including for breach of contract, in tort (including negligence), under statute or otherwise, is limited in the aggregate to the lesser of:
 - (i) 10 times the fee actually paid by the Client to the Company for the service(s) concerned; or
 - (ii) \$500,000.
- (c) The Client acknowledges any liability on the part of the Company arising under or in connection with this Agreement, including for breach of contract, in tort (including negligence), under statute or otherwise, to the extent permitted under Law, shall be absolutely extinguished after the expiration of 36 months from the date of the Company's final invoice in respect of the Services.
- (d) In the absence of explicit written agreement to the contrary signed by a duly authorised Officer of the Company the Company shall not be liable to the Client for any loss, claim, cost, expense or damage relating to any delay in the performance of the Services.
- (e) Where legislation implies in these Terms any condition or warranty ('Prescribed Conditions') and that legislation avoids or prohibits a contract excluding or modifying the application of the Prescribed Conditions, then the Prescribed Conditions will be deemed to be included in these Terms but the liability of the Company for a breach of any of the Prescribed Conditions is limited, at the option of the Company, to either:
 - (i) the supply of the Services again; or
 - (ii) the payment of the reasonable costs of having the Services supplied again.
- (f) If the Company is liable to the Client for any claim, loss or damage arising under or in connection with this Agreement, including for breach of contract, in tort (including negligence), under statute or otherwise:
 - (i) the Client's entitlement to recover damages from the Company shall be reduced by such amount as reflects the extent to which any act, omission or negligence of the Client or any third party caused or contributed to such loss or damage; and

- (ii) to the extent permitted by Law, the Company is not liable to the Client for any loss of profit, loss of any contract, loss of revenue, loss of use, loss of business opportunities, loss of anticipated savings, damage to goodwill, loss of customers or any indirect or consequential losses or damages.
- (g) The Client will indemnify and hold the Company harmless against all claims, costs and demands (including in respect of negligence) by third parties in respect of the Services concerned.
- (h) Under no circumstances, whether as a result of any act, neglect or default or otherwise howsoever, shall the Company have any liability for or in relation to any work, reports, information, plans, designs, or specifications supplied or performed by any third party, including a third party engaged by or at the suggestion of the Company.
- (i) For the purposes of this clause and without limiting subclause 17(h) the Client acknowledges that the Company is contracting as principal for and on behalf of its personnel, agents and subcontractors. The personnel and agents of the Company shall not be liable to the Client in respect of any loss or damage suffered by the Client as a result of goods or services provided by the Company, nor for any consequential loss or damage suffered by any third party. The loss or damage referred to shall mean and include loss or damage caused by the negligence or willful act or default of the Company, its personnel or agents or others whether or not such loss or damage is foreseeable or contemplated by the Company.

18. Disputes

- (a) If any dispute arises between the Company and the Client relating to or arising out of this Agreement, including its construction, effect, the rights and obligations of the parties, the performance, breach, rescission or termination of this Agreement, the entitlement of any party to damages or compensation (whether for breach of contract, tort or any other cause of action) or the amount of that entitlement ('Dispute'), the party claiming that a Dispute has arisen must deliver to the other a notice containing particulars of the Dispute ('Dispute Notice').
- (b) During the period of 10 Business Days after delivery of the Dispute Notice, or any longer period agreed in writing by the Company and the Client ('Initial Period'), each of those parties must use its reasonable endeavours and act in good faith to resolve the Dispute by discussion and negotiation.
- (c) If the parties have been unable to resolve the Dispute within the Initial Period, the Dispute must be referred to their respective managing directors (or equivalent senior executive) or their nominees. The Company and the Client must ensure that their respective managing directors (or equivalent senior executive) or their nominees:
 - (i) have authority to negotiate and, if appropriate, enter into a binding agreement on behalf of the relevant party;
 - (ii) meet promptly (and in any event within 5 Business Days) after the matter is referred to them; and
 - (iii) use their reasonable endeavours and act in good faith in an attempt to resolve the Dispute.
- (d) If the managing directors (or equivalent senior executives) or their nominees have been unable to resolve the Dispute within 10 Business Days of the matter being referred to them in accordance with this clause 18, then the parties may submit the Dispute to a mediator for consideration in accordance with the Mediation Rules of the Institute of Arbitrators and Mediators Australia, as those rules may be amended or replaced from time to time, which Rules are taken to be incorporated into this Agreement.
- (e) Neither party may commence court proceedings in respect of a Dispute unless it has complied with subclauses (a) to (d) of this clause 18 and until the procedures in those subclauses have been followed in full, except where:
 - (i) a party seeks injunctive relief in relation to the Dispute from an appropriate court where failure to obtain such relief would cause irreparable damage to the party concerned; or
 - (ii) following those procedures would mean that a limitation period for a cause of action relevant to the issues in dispute will expire.

19. Notice

- (a) Any notice or other written communication given under or in connection with this Agreement may be delivered personally or sent by post or email to the address of the party provided in this Agreement.
- (b) Any notice or other written communication is deemed to have been served:
 - (i) if personally delivered, at the time of delivery;
 - (ii) if posted, at the expiry of 2 Business Days; or
 - (iii) if sent by email, on the day that it is sent, provided the sender does not receive notification that the email was not successfully received in the recipient's inbox,

and provided always that if the result is that a notice or other communication would be taken to be given or made on a day that is not a Business Day in the place to which it is sent or at later than 4.00pm (local

time) it will be taken to have been duly given or made at the start of business on the next Business Day in that place.

20. Assignment

Neither party may assign or transfer any obligation under this Agreement, without the written consent of the other. Unless stated in writing to the contrary, no assignment or transfer will release the assignor from any obligation under this Agreement.

21. Relationship

The relationship between the Company and the Client for the purposes of this Agreement is that of client and independent contractor. This Agreement must be construed in every respect to give effect to this independence. Nothing in this Agreement may be construed as creating a relationship of partnership, of principal and agent or of trustee and beneficiary.

22. Standard Australian office policies

22.1 Samples

The Client acknowledges and agrees that:

- (a) any samples will be retained by the Company for up to 3 months from date of sampling after which they will be disposed of unless the parties have agreed in writing that the Company will retain samples for a longer period;
- (b) any contaminated soil and water collected by the Company during the performance of the Services shall remain the property of the Client until properly disposed in accordance with the Client's instructions; and
- (c) the storage of samples for any period exceeding 3 months, and the transfer of samples, will be at the Client's expense.

22.2 Buried services

The Client acknowledges and agrees that it is the responsibility of the Client to notify the Company of the location of all buried services located in and adjacent to the site(s) where the Services will be performed.

22.3 Unexpected ground conditions

The parties acknowledge and agree that:

- (a) where an estimate of fees, costs or disbursements is provided, it is based on available subsurface data in relation to the Services;
- (b) the Company will endeavour to complete the Services within the estimate; and
- (c) unexpected access or ground conditions may cause the Project Scope and estimated fees, costs or disbursements to change, but where practical the Company will inform the Client of any significant changes.

22.4 Copies of reports

Where requested, additional copies of reports prepared by the Company may be provided at the discretion of the Company and will be charged at commercial copying rates.

23. Miscellaneous

- (a) This Agreement, including any Attachments, sets out the entire agreement and understanding between the parties relating to the subject matter hereof. All prior agreements and all prior negotiations, representations and communications relating to the same subject are superseded by this Agreement.
- (b) By instructing, authorising or permitting the Company to commence or to continue any work relating to the provision of goods or services to the Client, the Client is deemed to have agreed to these Terms (and Fee Details), and to have represented to the Company (on which representation the Company relies) that these are the only contractual terms which apply to the provision of goods or services by the Company, and the Client will not endeavor to obtain the Company's agreement to any additional or alternative terms. The Client warrants that it will not hereafter withhold any payment due to the Company, in respect of goods or services provided or to be provided by the Company to or at the request of the Client, by reason of the fact that the Company declines to amend these Terms, or declines to enter into another, or a different, contractual relationship with the Client.
- (c) This Agreement will be governed by and construed in accordance with the laws of the State or Territory of Australia in which the Company is performing the Services. If the Services are performed in more than one State or Territory, or if there is any doubt about where the Services are being performed, then the law of NSW will apply. Each party to this Agreement hereby submits to the non-exclusive jurisdiction of the

courts of the such State or Territory (as the case may be) in respect of all matters or things arising out of this Agreement.

- (d) Except as provided at law or in equity or elsewhere in the Agreement, none of the provisions of the Agreement shall be varied, waived, discharged or released, except with the prior written consent of the parties.
- (e) Any term contained in this Agreement which is invalid or unenforceable must be severed from this Agreement without invalidating the remaining terms.
- (f) Each party shall pay its own costs of preparing and executing this Agreement.
- (g) This Agreement may be executed in counterparts. All counterparts together will be taken to constitute one instrument.