

HENRY & HYMAS Terms of Agreement for Professional Services

H&H Consulting Engineers Pty Ltd ABN 77 091 243 355



henry&hymas

1. Scope of Works

- 1.1. H&H Consulting Engineers Pty Ltd shall provide to the Client the consulting services set out in the proposal letter, having undertaken to provide the diligence normally exercised by consulting civil, structural and water engineers in similar circumstances.
- 1.2. The total Costs Payable to H&H Consulting Engineers Pty Ltd shall be set out in the proposal letter.

2. Calculation of Fixed Costs

- 2.1. If the Costs Payable provided in the proposal letter represents a 'fixed cost' then the Costs Payable by the Client to H&H Consulting Engineers Pty Ltd shall be the amount set out in the proposal letter, subject to Clause 2.2.
- 2.2. Where H&H Consulting Engineers Pty Ltd is requested by the Client, or are required by circumstances beyond their control to carry out work or incur expenses in excess of the work or expenses normally required to complete the services outlined in the proposal letter, the Client shall also pay costs to H&H Consulting Engineers Pty Ltd in respect of such excess work and expenses, calculated in accordance with Clause 3.
- 2.3. H&H Consulting Engineers Pty Ltd will endeavour in such circumstances to inform the Client of any additional work or expenses prior to commencing or incurring additional work or expenses.
- 2.4. Where the services outlined in the proposal letter are not completed by circumstances beyond the control of H&H Consulting Engineers Pty Ltd, the Client shall pay to H&H Consulting Engineers Pty Ltd Costs calculated in accordance with Clause 3, provided such costs shall not exceed Costs otherwise payable under Clause 2.1.
- 2.5. Where a 'fixed cost' item has not commenced within 6 months of acceptance of the proposal letter, these costs may be reviewed and adjusted in line with inflation and/or movements in salaries as determined by the relevant professional organisation.

3. Calculation of Time Costs

- 3.1. If the proposal letter requires the Costs Payable to H&H Consulting Engineers Pty Ltd for performing the services to be time costed, then the costs shall be calculated as follows:-
 - 3.1.1. for work performed by staff (refer fee letter)
 - 3.1.2. for work performed by a consultant or sub-contractor will be charged at that person or companies invoiced amount plus 10 per cent;
 - 3.1.3. for work performed as an expert witness including preparation, meetings, attendance at the hearing and delivery of evidence the above rates plus 25 per cent; and
 - 3.1.4. any costs which attract a GST shall be increased by 10 per cent, or such other amount as shall be nominated by the Australian Government from time to time in the GST law.
- 3.2. These costs shall be reviewed at the end of the calendar year and adjusted in line with inflation and/or movements in salaries as determined by the relevant professional organisation.

4. Documents

- 4.1. Unless otherwise stated, up to 6 hard copies of all drawings and up to 2 hard copies of all reports, specifications and other documents provided by H&H Consulting Engineers Pty Ltd shall be provided to the Client at no additional cost.
- 4.2. All documents shall be provided to the client via email in PDF format at no additional cost.
- 4.3. If additional copies are to be provided then the costs shall be calculated as follows:-
 - A4 \$1.50 per print • A3 \$2.00 per print • A2 \$3.50 per print • A1 \$4.50 per print
 - B1 \$5.00 per print • A0 \$5.50 per print • CD \$50 per disc
- 4.4. Where a specific project requires fabrication shop drawings to be submitted to H&H Consulting Engineers Pty Ltd for approval, these shall be submitted as hard copies. If fabrication drawings are provided electronically, the Client shall pay to H&H Consulting Engineers Pty Ltd printing costs calculated at the rates subject to Clause 4.3.
- 4.5. If the use of Web Based Document Management Systems, including but not limited to ftp, Aconex, Team Binder, Project Center, are required on a specific project, then the Client shall:-
 - 4.5.1. pay costs to H&H Consulting Engineers Pty Ltd, calculated as the maximum of the following categories:-
 - Monthly fee \$500 per month • Logon fee \$40 per login • Upload fee \$40 per document
 - 4.5.2. provide H&H Consulting Engineers Pty Ltd with a CD and/or hard copy of all documents/information relevant to H&H Consulting Engineers Pty Ltd stored on external servers.

5. Billing Procedure

- 5.1. H&H Consulting Engineers Pty Ltd shall submit invoices to the Client from time to time. Such invoices shall contain an outline of the work performed or to be performed to that date and the amount of costs calculated in accordance with this agreement.
- 5.2. All monies payable by the Client to H&H Consulting Engineers Pty Ltd shall be paid within 30 days of the date of invoice. Monies not paid within that period shall attract interest from the date of the invoice until payment at the rate of 15% per annum.

6. Security for Costs

- 6.1. Any monies held by H&H Consulting Engineers Pty Ltd on behalf of the Client may be applied in payment or part payment of any invoice for outstanding Costs referred to in Clause 5.2 on or after the date of such invoice.
- 6.2. Copyright in all drawings, reports, specifications, calculations and other documents provided by H&H Consulting Engineers Pty Ltd in connection with the assignment shall remain the property of H&H Consulting Engineers Pty Ltd.
- 6.3. Provided that the Client is not in breach of any of its obligations to make payment to H&H Consulting Engineers Pty Ltd pursuant to Clause 5.2 hereof, then the Client shall have a licence to use the documents referred to in Clause 6.2 for the purpose of completing the assignment, but the Client shall not use or make copies of such documents in connection with any works not included in the assignment.
- 6.4. H&H Consulting Engineers Pty Ltd may retain files, and any other documentation provided by or held on behalf of the Client until all amount outstanding under invoices payable by the Client have been paid, whether or not such costs

relate to the assignment as a result of which such documents were held.

7. Limitation of Liability

- 7.1. H&H Consulting Engineers Pty Ltd does not have any liabilities for or in relation to any information supplied by the Client required in the performance of the services and the Client will hold H&H Consulting Engineers Pty Ltd harmless for any error or mistake in documentation or information supplied to the H&H Consulting Engineers Pty Ltd by the Client or his/her representative in support of the performance of the services under this Agreement.
- 7.2. The liability of H&H Consulting Engineers Pty Ltd for a breach of Section 74 of the Trade Practices Act 1974 (as amended) is limited at H&H Consulting Engineers Pty Ltd's option to either providing those services again, or refunding the price of that part of the services in respect to which the breach occurred.
- 7.3. The liability of H&H Consulting Engineers Pty Ltd to the Client for loss or damage caused by a failure to exercise reasonable care is limited to the greater of either:-
- \$300,000 or
 - three times the fee actually paid by the Client to H&H Consulting Engineers Pty Ltd for the services concerned or
 - any other amount agreed in writing between the Client and H&H Consulting Engineers Pty Ltd, subject to payment of an additional fee contributing to the cost of the extra insurance cover.
- 7.4. To the maximum extent permitted by law, H&H Consulting Engineers Pty Ltd shall be deemed to have been discharged from all liability in respect of the services, whether under contract, in tort, in equity, under statute or otherwise, at the expiration of 1 year from the completion of the services.

8. Disputes

- 8.1. Any dispute or difference between the Client and H&H Consulting Engineers Pty Ltd may be notified by a party to the other party and the parties shall:
- firstly meet to negotiate, in good faith, resolution of the dispute; and
 - secondly, if negotiation fails to achieve a resolution of the dispute within 5 working days of the negotiation of the dispute, attend mediation, administered in accordance with procedures as set out by the Institute of Arbitrators and Mediators Australia, provided that this provision shall not prevent H&H Consulting Engineers Pty Ltd from instituting legal action at any time to recover moneys owing by the client to H&H Consulting Engineers Pty Ltd.
- 8.2. In the event that a dispute should arise relating to the performance of the services to be provided under this agreement, and should that dispute result in litigation, it is agreed where H&H Consulting Engineers Pty Ltd prevails that it shall be entitled to recover all reasonable costs incurred in the defence of the claim, including staff time, court costs and legal fees assessed in a solicitor and client basis and other claim related expenses.

9. Termination

- 9.1. The Client may terminate this Agreement: -
- 9.1.1. In the event of a substantial breach by H&H Consulting Engineers Pty Ltd of its obligations hereunder, which breach has not been remedied in 30 days of written notice from the Client requiring the breach to be remedied; or
- 9.1.2. Upon giving H&H Consulting Engineers Pty Ltd 60 days written notice of the Client's intention to do so.
- 9.2. H&H Consulting Engineers Pty Ltd may terminate or suspend its obligations under this Agreement: -
- 9.2.1. If the Client: -
- 9.1.1.1 fails to pay any amount outstanding hereunder to H&H Consulting Engineers Pty Ltd for more than 60 days; or
- 9.1.1.2 substantially breaches its obligations hereunder, which breach has not been remedied within 30 days of written notice from H&H Consulting Engineers Pty Ltd requiring the breach to be so remedied; or
- 9.2.2. Upon giving the Client 60 days written notice of the intention to do so.
- 9.3. Termination shall be without prejudice to any other claim which either party may have against each other with respect of any breach of the terms of this Agreement which occurred prior to the date of termination.

10. Sub-contractors/consultants

- 10.1. H&H Consulting Engineers Pty Ltd may use a sub-consultant for site inspections if deemed appropriate. If the assignment covers such work, then H&H Consulting Engineers Pty Ltd is authorised to engage such sub-consultants without further reference to the Client.
- 10.2. If H&H Consulting Engineers Pty Ltd considers it appropriate to do so, it may, with the Client's prior approval, which shall not be unreasonably withheld, engage an external consultant to assist H&H Consulting Engineers Pty Ltd in specialist areas. The Client accepts responsibility for all monies payable to such consultants.

11. Other Matters

- 11.1. In the above conditions, where the context permits: -

"Costs" includes disbursements and reimbursable expenses including any GST incurred thereon.

"professional time" means all the time spent by H&H Consulting Engineers Pty Ltd carrying out the assignment performed by a person listed in Clause 3.1 hereof.

- 11.2. Where the Client is a company, the person who signs this Agreement on behalf of such company personally guarantees to H&H Consulting Engineers Pty Ltd the performance of such company of its obligations under this Agreement.
- 11.3. A document shall be deemed to be delivered to the Client when it (or a copy thereof) is sent by post to the Client's last known address or facsimile to the Client's last known facsimile number or by email to the Client's last known email address or else delivered to the Client's appointed agent.
- 11.4. If the Client gives any instructions to H&H Consulting Engineers Pty Ltd after this Agreement is delivered to the Client requiring H&H Consulting Engineers Pty Ltd to carry out any part of the assignment, the Client shall be deemed to have entered into this Agreement.
- 11.5. Neither party may assign, transfer or sub-let any obligation under this Agreement without the written consent of the other. Unless stated in writing to the contrary, no assignment, transfer or sub-letting shall release the assignor from any obligation under this Agreement.
- 11.6. Any proposal letter not accepted by the Client within 3 months will be open to review by H&H Consulting Engineers Pty Ltd at their discretion.