

Terms and Conditions of Engagement – Consulting Engineering Services

1. These Terms and Conditions of Engagement (T&Cs), along with the relevant Fee Proposal or Quote, constitute a contract between DWA Consulting Pty Ltd (DWA) and the client (the Agreement).
2. These T&Cs shall apply at the time of acceptance of any Fee Proposal or Quote provided by DWA to the client. Acceptance by the client includes by accepting the Fee Proposal or Quote in writing or instructing DWA to proceed with the Services.
3. These T&Cs are subject to change. The client should review the T&Cs each time before engaging DWA
4. DWA agrees to provide the Services and the client agrees to pay the Fees, as set out in the relevant Fee Proposal or Quote and in accordance with the T&Cs.
5. For the avoidance of doubt, Services refers to the services, inclusions, project or projects and/or work particularised in the relevant Fee Proposal or Quote.
6. Subject to clause 7 below, if instructed to do so by the client, DWA may undertake additional work outside of the scope of the Services and will charge the hourly rate(s) as set out in the Fee Proposal or Quote, which rate(s) the client agrees to pay. DWA reserves its right to change these hourly rates by written notice to the client.
7. If the client instructs DWA to undertake work or provide services that do not fall within the original scope of Services, DWA may, but is not required to, provide the client with a variation notice for the client's approval that will set out:
 - a. the revised or additional scope of work/services; and
 - b. the likely fees that will payable to provide the additional work/services.
8. Unless agreed otherwise by the parties in writing, these T&Cs will apply to the revised or additional scope of work/services as outlined at clause 7 above.
9. DWA requires, along with the acceptance of the Quote or Fee Proposal, all information concerning the client's requirements for the Services, including AutoCAD files. DWA will not be held liable for any loss or damage (or costs) caused by incomplete or inaccurate information provided by the client or their representatives.
10. DWA may require payment of a deposit on the total Fee. If applicable, the requirement to pay a deposit will be indicated on the relevant Fee Proposal or Quote.
11. If applicable, DWA will provide the client with a pre-project invoice and DWA is not required to provide the Services until this pre-project invoice is paid in full.
12. If the Services will not be provided within the specified timeframe (as set out in the Fee Proposal or Quote or as agreed otherwise), DWA may notify the client in writing that an extension of time is required in order to provide the Services. If DWA requires further information in order to provide the Services, the client must provide this information as soon as possible, and within 48 hours of written request from DWA.
13. If DWA consider it appropriate to do so it may, after agreement with the client, engage other consultants or contractors to assist DWA in specialist areas. The client agrees to be liable for all expenses, costs, disbursements, fees and related risks incurred by DWA in engaging other consultants or contractors in accordance with this clause. DWA agrees to obtain quotes and/or estimates for all work to be completed by any consultant or subcontractor and agrees to provide the same to the client for approval prior to instructing the consultant or contractor to commence work. If the client requests that DWA pay any fee or invoice generated by a consultant or contractor on the client's behalf (in accordance with this clause), the client agrees to pay to DWA an administration fee being an amount calculated to be 15% of the total invoice paid by DWA (on the client's behalf), including GST and any disbursements.
14. DWA will provide the client with a tax invoice for the Fees (including for fees incurred and/or arising out of clauses 6 and 7 above and any administration fees arising under clause 13 above). Unless agreed otherwise in writing by the parties, DWA may issue an invoice to the client at any time DWA deems it appropriate, including on a monthly basis.
15. Unless agreed otherwise by the parties in writing, the client agrees to pay an invoice within 21 days of the date of issue. If the client does not pay an invoice in full by the date stated on an invoice or as otherwise provided for in these T&Cs, DWA is entitled to do any of the following:
 - a. charge interest on the outstanding amount at the rate of 10% per annum;
 - b. require the client to pay, in advance, for any Services which have not yet been performed;
 - c. not perform any further Services (including services arising out of clauses 6,7 and 13 above); and
 - d. require the client to pay all debt collection fees incurred by DWA (including legal costs incurred on an indemnity basis, which includes any disbursements incurred by DWA) arising out of the client's failure to pay an invoice within the relevant timeframe.
16. DWA will not be held liable for any consequential loss or damage of the client or any third party in respect of any act or omission of DWA in connection with its obligations under the Agreement, even if DWA has been advised by the client as to the possibility of such losses being incurred.
17. To the fullest extent permitted by law, the liability of DWA in damages (being damages other than consequential loss and damage) in respect of any act or omission of DWA in connection with its obligations under the Agreement (including but not limited to a breach of an essential term of the Agreement and any negligent acts of omissions) will not exceed (the lesser of):
 - a. \$the Fee; or
 - b. the cost of rectifying the works/Services, even if DWA has been advised by the client as to the possibility of such losses being incurred.
18. To the fullest extent permitted by law, DWA will be deemed to have been discharged from all liability in respect of the Services (which includes services arising under clauses 6, 7 and 13 above) , whether under the law of contract, tort, equity or otherwise on the expiration of **five (5)** years from the completion of the Services or services. For the purposes of this clause, the completion of the Services or services will be the earliest of:
 - a. the date of the final invoice in respect the Services or services; or
 - b. the termination of this Agreement.
19. These T&Cs are subject always to the *Australian Consumer Law* and any other law which cannot be excluded, restricted or modified by agreement.
20. To the fullest extent permitted by law, any condition or warranty which would otherwise be implied in this Agreement is hereby excluded. For the avoidance of doubt, this clause does not impact the client's rights under the *Australian Consumer Law*.
21. In these T&Cs, **Intellectual Property** means:
 - a. the various rights and property conferred under statute, common law and equity in and in relation to patents, inventions, designs, copyright, trade marks, trade names, business names, corporate names, logos, get up, circuit layouts, know-how, trade secrets and confidential information and the right to have trade secrets and confidential information kept confidential and all other intellectual property rights as defined by Article 2 of the World Intellectual Property Organisation Convention of July 1967 including, to the fullest extent possible, moral rights;
 - b. all applications for registration, extension, renewal or otherwise in respect of the rights and property referred to in clause a above; and
 - c. all rights of action in respect of the rights or property referred to in clause a above.
22. Unless agreed otherwise by the parties in writing, in relation to the Services (which includes services arising under clauses 6 and 7 above) performed by DWA, the client acknowledges and agrees that DWA will own all rights in the Intellectual Property created by, or arising from, DWA undertaking the Services or services.

23. DWA grants the client a licence for the use the Intellectual Property referred to at clause 22 for the purpose of obtaining the benefit of the Services.
24. The client acknowledges and agrees that DWA will retain ownership of all rights in its Intellectual Property existing prior to the Agreement.
25. The client will grant or procure for DWA a royalty-free, non-exclusive worldwide licence to use, reproduce, communicate, adapt, modify and/or sub-licence the use of the client's Intellectual Property that is required by DWA in the course of providing the Services or services.
26. DWA may terminate the Agreement by notice in writing to the client in circumstances where the client:
 - a. breaches an essential term of the Agreement, including (but not limited to) clauses 9, 10, 12, 13, 15 and 25 above; and
 - b. fails to rectify a breach (as outlined in clause a above), to DWA's satisfaction, following the expiration of 14 days' notice of the breach being given in writing by DWA to the client.
27. DWA may also terminate the Agreement upon the happening of the following events:
 - a. the giving of at least 28 days' written notice to the client of the intention to terminate the Agreement;
 - b. if the client enters into a deed of arrangement or an order is made for it to be wound up;
 - c. if an administrator, receiver or receiver/manager or a liquidator is appointed to the client pursuant to the *Corporations Act 2001* (Cth); or
 - d. if the client would be presumed to be insolvent by a court in any of the circumstances referred to in the *Corporations Act 2001* (Cth).
28. The client may terminate the Agreement by giving DWA at least 28 days' written notice of the intention to terminate the Agreement.
29. Upon termination of the Agreement any Fees, costs, expenses or disbursements payable by the client to DWA (or a consultant or contractor under clause 13 above) in respect of any period prior to the termination date must be paid by the client within 14 days after the termination date.
30. The Agreement constitutes the entire agreement between DWA and the client regarding the matters set out in it and supersedes any prior representations, understandings or arrangements between the parties, whether oral or in writing.
31. Subject to clause 7 above, the Agreement may only be varied by both parties in writing.
32. If any part of the Agreement is (or becomes) void or unenforceable, that part is (or will be) severed from the Agreement, so that all parts that are not (or do not) become void or unenforceable remain in full force and are unaffected by that severance.
33. Each party must do all things and execute all further documents necessary to give full effect to the Agreement.
34. Each party must pay their own expenses incurred in negotiating and executing the Agreement.
35. The rights, duties and remedies granted or imposed under the provisions of the Agreement operate to the extent not excluded by law.
36. The Agreement is governed by the laws of Western Australia.
37. The parties submit to the non-exclusive jurisdiction of the courts of Western Australia and any courts competent to hear appeals from those courts.
38. If a dispute arises in connection with the Agreement, then a party must give notice in writing to the other party setting out the details of the dispute. The parties may then attend a meeting in person, by telephone or by video link in order to discuss the details of the dispute. If the dispute is not resolved within 14 days of a party giving notice in writing as set out in this clause, then either party may commence proceedings through the courts of the State of Western Australia. Nothing in this clause will prevent the parties agreeing to resolve any dispute arising out of the Agreement through an alternative dispute resolution process.