

Conditions of engagement

These conditions of engagement apply to consultancy services carried out by the Consultant and the Proposal constitute the terms of an agreement between the Consultant and the Client. Review and acceptance of other conditions of engagement may be subject to payment of additional fees. Unless agreed in writing, the conditions shall apply to the exclusion of any inconsistent provision which may appear on any other document issued by the Client. The Proposal and these conditions of engagement shall apply to any variations which may be agreed or ordered in the scope of the work and to any supplementary work on the project which may be subject of verbal agreement.

1. Definitions

Consultant: means Milton Messer & Associates PTY. LTD. trading as Northern Consulting Engineers (NCE) – ABN 34 100 817 356

Client: means the company and / or person to whom the Consultant provides services and who is ultimately responsible for payment. The Client may be represented by an Agent who acts with their authority and arranges for or directs the services on their behalf.

Proposal: means the Consultant's written offer to provide consulting or other services which accompanies these conditions.

Services: means the services to be provided by the Consultant to the Client, as detailed in the Proposal

Reference to the singular include the plural, and vice versa.

Any legislation referred to in these conditions is to that legislation as amended, re-enacted or replaced and includes any subordinate legislation issued under it.

2. Role of the Consultant

The Consultant warrants performing its services, within limits prescribed by its Clients, with the usual thoroughness and professional competence of the engineering profession in the performance of similar services in the same locality under similar conditions.

NCE also warrants observing the tenets and code of ethics set down by the Institute of Engineers of Australia during the performance of its services.

No other warranty or representation, expressed or implied, is included or intended in its proposals, contracts or reports.

3. Role of the Client

The Client must provide to the Consultant

- Written acceptance of the Proposal
- All information relevant to the brief

The Client must promptly inform the Consultant if any information or document provided to the Consultant is found to contain material inaccuracies or is inadequate to enable the Consultant to properly perform its Services.

The client must use all reasonable endeavours to ensure that no events or circumstances arise which may compromise the Consultant's ability to perform the services in a timely and professional manner and in accordance with the Proposal and brief.

Where the consultant proceeds with the services in good faith based on the Client's or Agent's verbal or informal advice to proceed with all or parts of the service, the Client acknowledges the services are formally accepted. Acceptance may be inferred from communications, phone discussions or other informal engagements and authorisation to proceed is deemed accepted unless an explicit direction to cease work is provided. The portion of the services performed prior to a cease work and associated commitments shall be paid in full. Associated commitments may include sub-consultants' costs and scheduled travel arrangements.

4. Role of the Agent

If the Proposal is accepted by an Agent, the Agent warrants to the Consultant that they have the Client's authority to do so and accepts that they are personally liable for the Client's obligations under these conditions of engagement. If the person who accepts the Proposal does not indicate in writing that they are an Agent at the time of acceptance, they are the Client and liable accordingly.

5. Fees

The Proposal indicates whether the Consultant will provide the Services for a lump sum or a fee calculated by hourly rates on a continuing basis. If calculated by hourly rates, then the Consultant may give an estimate of the total cost in the Proposal.

The estimate of total cost and the lump sum are based on the Consultant's understanding of the required scope of work. The Consultant will endeavour to provide the Services at the estimate or sum provided or reasonable margin above.

If undisclosed or unexpected conditions are encountered then additional work not allowed for may be required. Under these circumstances the Consultant will endeavour to advise the Client and seek its approval prior to undertaking work which exceeds the total costs or lump sum estimate.

If any activity is required which is outside the scope of the Proposal, the Consultant will charge such additional work at the current standard hourly rates for its personnel.

Unless otherwise stated Goods and Services tax is not included in the rates or lump sum in the Proposal and will be charged to the Client, when applicable.

The schedule of rates or lump sum in the Proposal is current for a period of two months from the date of the Proposal.

6. Terms of payment

At the Consultant's election, progress claims / invoices will be issued monthly or rendered on completion of the work or as agreed in the Proposal and are due for payment in full within 30 days. Prior to release of documentation all accounts must be settled in full unless agreed otherwise in advance. The Consultant will charge interest at the rate of 7.8% per annum on any invoices unpaid after 30 days.

If the Client disputes any part of the invoice then payment of the undisputed portion must not be delayed and a written schedule of the items disputed given to the Consultant within 10 business days of receipt the invoice.

7. Limitation of liability

The Consultant will effect and maintain professional indemnity, public liability and all other insurances which are appropriate for the Services. At the written request of the Client, the Consultant will, at the cost of the Client, arrange any additional insurance cover beyond that normally borne by the Consultant or otherwise vary the nature of the insurance cover. No additional liability shall attach to the Consultant until the Client has paid the costs of such additional insurance or alternatively reimbursed the Consultant therefore.

The Consultant shall have no liability for:

- A claim where the Client acts contrary to the Consultant's written recommendation or purports to use the Services contrary to this agreement.
- A claim unless such claim is notified in writing to the Consultant within 12 months of the completion of the provision of the Services.
- A claim involving consequential or economic loss or loss relating to delay of the project.

The client agrees to indemnify NCE against all liabilities, claims, costs and expenses collectively referred to as "Loss" incurred by NCE in respect of any claim by a third party which is related to, arises out of, or is in any way associated with the Services or this engagement including any breach of this agreement or any negligent, wrongful or wilful act or omission by you or your Agents. .

The Consultant shall endeavour to check and report dimensional errors appearing on contract drawings. However the Consultant shall accept no responsibility for loss or damage consequential or otherwise from failure to report dimensional errors unnoticed by the Consultant. It is the Client's sole responsibility to check for dimensional errors on the drawings.

Where included in the proposal to provide limited detailing, the Consultant shall endeavour to locate on its drawings the position of cleats, holings, etc. If any detailing above this level is required by the Client, the Client is directed to engage the services of a professional detailer. The Consultant shall accept no responsibility for the loss or damage consequential or otherwise the subject of claims by the Client arising from failure to position or to incorrectly position such cleats, holings etc.

8. Intellectual property

The Consultant retains intellectual property rights in all designs, drawings, reports, calculations, analyses, documents and other materials prepared or provided by the Consultant. The Consultant grants the Client a royalty-free, non-exclusive license to all issued materials, reports, drawings, calculations or documents in connection to the project for which it is prepared. Any material developed for this project that is not part of the issued materials, generally being but not limited to models, analysis etc., is retained by the Consultant and is not part of the agreement.

The Client is not permitted to assign, transfer or convey this license without the prior written consent of the Consultant.

If the Client fails to pay the Consultant, the Consultant may revoke this license, and the Client shall cause to be returned to the Consultant all materials in which such copyright subsists which is in its possession or otherwise destroy such materials as directed by the Consultant.

The Client must not alter or amend any material produced by the Consultant and must acknowledge the Consultant's work in all material incorporated into other documents or reports or otherwise used in the public domain

9. Termination, Disputes and Governing Law

This agreement may be terminated by either party if a party commits a material breach of its obligations and this is not remedied within thirty one (31) days of receipt of written notice requiring the breach to be remedied.

In the event of postponement for a period of more than three (3) months, the Consultant shall be entitled to perform such work as may be required to place its files in order so that data or analyses may not be misused or misconstrued and their value not compromised.

The order of precedence of the documents relating to the Engagement of Services is

1. Specific fee proposal relating to the services
2. These terms and conditions
3. Scope or other engagement documents

In the event of termination or postponement, the Consultant shall be paid for all services performed to the termination or postponement date plus any reasonable termination expenses.

The agreement between the Consultant and the Client shall be governed by the laws of the State or Territory where the project site is located or, in the event that there is no specific site, of the office in which the Services are performed.

10. Consultant engagement

If the Consultant considers it appropriate to do so, it may with the Client's prior written approval, which shall not be unreasonably withheld, engage another consultant to assist the Consultant in specialist areas. The Client accepts responsibility for all monies payable to such other consultant.

11. Report, drawings and designs

Reports, drawings, designs and all documents are provided for the exclusive use of the Client at a specific time, for a specific purpose and particular project. They should not be used or relied upon for other projects, purposes or by a third party without the written permission of the Consultant.

12. Assignment

The Client shall not assign, transfer or sublet any obligation under this Agreement without the written consent of the Consultant. Unless stated in writing to the contrary, no assignment, transfer or subletting shall release the assignor from any obligation under the Agreement.