

## ITIC's Standard Terms and Conditions for Australian Surveyors and Consultants

These terms and conditions of business form the contract ("Contract") between [name] and the party at whose request or on whose behalf [name] undertakes the surveyor/consultancy services (the "Client").

In the event that there is a written letter of engagement from [name] to the Client (the "Engagement Letter"), then this document, together with the Engagement Letter, forms the Contract between [name] and the Client.

### 1. Definitions

"Surveyor"/"Consultant" is [name], the surveyor/consultant trading under these conditions.

"Client" is the party at whose request or on whose behalf the Surveyor/Consultant undertakes the Services under these conditions.

"Report" means any report or statement supplied by the Surveyor/Consultant in connection with instructions received from the Client.

"Disbursements" means the cost of all reasonable third party costs incurred in the provision of the Services including, but not limited to, photography, reproduction of drawings, diagrams, sketches and printing, duplicating and, where applicable, electronic transmission fees, and all reasonable and appropriate expenses including travel, refreshments and hotel accommodation where an overnight stay is necessary.

"Fees" means the fees charged by the Surveyor/Consultant to the Client and including any goods and services tax where applicable and any Disbursements.

"Services" means the services to be provided by the Surveyor/Consultant to the Client under the Contract together with any other services which the Surveyor/Consultant provides or agrees to provide to the Client.

### 2. Scope

The Surveyor/Consultant shall provide its services solely in accordance with these conditions, which together with any Engagement Letter, form the Contract.

### 3. Work

The Client will set out in writing the Services which it requires the Surveyor/Consultant to provide. The Surveyor/Consultant will, where possible to do so, confirm in writing that it accepts those instructions or alternatively set out what Services it will perform in connection with the Client's instructions. Once the Surveyor/Consultant and the Client have agreed the Services that are to be performed any subsequent changes or additions must be agreed by both parties in writing. For the avoidance of doubt, if the instructions are not provided in writing but the surveyor nevertheless confirms their acceptance of these, the services will be provided in accordance with these conditions.

### 4. Payment Terms

The Client shall pay the Surveyor/Consultant's Fees punctually in accordance with these conditions and in any event not later than 30 days following the relevant invoice date, or in such other manner as may have been agreed in writing between the parties. Any delay in payment shall entitle the Surveyor/Consultant to interest at 8% above the Base Lending Rate of Westpac Banking Corporation prevailing at the time of default.

## 5. Obligations and Responsibilities

### (a) Client:

(i) The Client undertakes to ensure that full, accurate, and unambiguous information and instructions are given to the Surveyor/Consultant in writing and are provided in sufficient time to enable the required Services to be performed effectively and efficiently. The Client acknowledges that the Surveyor/Consultant is entitled to rely on such information and instructions without verification and shall not be liable for any loss or damage, resulting from late, incomplete, inadequate, inaccurate or ambiguous information and/or instructions.

(ii) The Client undertakes to procure all necessary access for the Surveyor/Consultant to any goods, premises, vessels, installations and transport as may be required and to ensure that all appropriate safety measures are taken to provide safe and secure working conditions. The Client shall be liable to the Surveyor/Consultant, its employees and subcontractors, for any loss of or damage to property or death or personal injury, including any consequential losses therefrom, arising out of or in connection with any access provided or any equipment or other item placed at its disposal by or on behalf of the Client, however such loss, damage, death or injury occurs. The Client, or a third party on their behalf, will brief the Surveyor/Consultant on how to operate and use any such equipment or item and will highlight any dangers associated with the use of such equipment or item.

**(b) Surveyor:** The Surveyor/Consultant shall use reasonable care and skill in the performance of the Services in accordance with sound marine surveying/consulting practice.

**(c) Reporting:** The Surveyor/Consultant shall submit a final written Report to the Client following completion of the agreed Services describing the Surveyor's/Consultant's findings, unless otherwise expressly instructed by the Client not to do so.

The Report and the Services are for the benefit of the Client only and to be used only for purposes agreed upon between the parties. Where permission is agreed to provide the report to a third party, unless otherwise agreed, the entire report with all disclaimers must be provided – not selected sections which can be read out of context. If only sections are provided the disclaimers and context must be included.

Unless expressly agreed by Surveyor/Consultant in writing, Surveyor/Consultant accepts no responsibility to anyone else, and the Client will indemnify and hold the Surveyor/Consultant harmless should they suffer any loss, damage or expense due to the Client using the Report and/or Services outside the agreed scope of use or disclosing it to third parties without the Surveyor/Consultant's authorisation.

**(d) Confidentiality:** The Surveyor/Consultant undertakes not to disclose any information provided in confidence by the Client to any third party and will not permit access to such information by any third party unless the Client expressly grants permission save where required to do so by an order of a competent court of law, or where required to its advisers, auditors or insurers. If information is provided by the Client in confidence the Client undertakes to make it clear in writing what information is provided in confidence.

This undertaking shall not apply to:

- (i) the provision of information to sub-contractors in order for them to perform the Services sub-contracted, provided that similar confidentiality obligations apply to them; and
- (ii) information which:
  - a. would not reasonably be considered to be confidential;
  - b. was already in the public domain;
  - c. was already in the Surveyor/Consultant's possession; or
  - d. was developed by the Surveyor/Consultant.

All such obligations of confidentiality will expire 12 months after the date of the report (or final report where there is more than one).

### **(e) Property:**

(i) The copyright and right of ownership in respect of all original work created by the Surveyor/Consultant remains the property of the Surveyor/Consultant.

(ii) The Client shall ensure that the Surveyor/Consultant is permitted to use any third party information or intellectual property rights which the Client requires the Surveyor/Consultant to use to perform the Services and/or which the Surveyor/Consultant will require to perform the Services.

## **6. Liability**

**(a)** Without prejudice to Clause 7, the Surveyor/Consultant shall be under no liability whatsoever to the Client for any loss, damage, delay or expense of whatsoever nature, whether direct or indirect and howsoever arising UNLESS same is proved to have resulted solely from the negligence, gross negligence or wilful default of the Surveyor/Consultant or any of its employees or agents or sub-contractors.

**(b)** Where the Australian Consumer Law consumer guarantees do not apply and in the event that the Client proves that the loss, damage, delay or expense was caused by the negligence, gross negligence or wilful default of the Surveyor/Consultant aforesaid then, save for where loss, damage, delay or expense has resulted from the Surveyor's/Consultant's personal act or omission committed with the intent to cause same or recklessly and with knowledge that such loss, damage, delay or expense would probably result, the Surveyor's/Consultant's aggregate liability for each incident or series of incidents giving rise to a claim or claims shall never exceed a sum calculated on the basis of ten times the Surveyor's/Consultant's charges or Australian \$100,000 [Member to choose – please note amount should be no lower than the cost of supplying the services again], whichever is the lesser.

**(c)** Notwithstanding anything set out in these conditions, they are subject to the Australian Consumer Law as set out in Schedule 2 of the Competition and Consumer Act 2010. If and to the extent consumer guarantees apply to this Contract and prevent the exclusion, restriction or modification of any such consumer guarantee: the liability of the Surveyor/Consultant, if any, for breach of any consumer guarantee which applies (other than where the Services are of a kind ordinarily acquired for personal, domestic or household consumption) shall be limited at the option of the Surveyor/Consultant to the supply of the Services again or the payment of having the Services supplied again.

**(d)** The Surveyor/Consultant shall not be liable for loss of or damage to equipment and other items placed at its disposal by or on behalf of the Client however such loss or damage occurs.

## **7. Indemnity**

Except to the extent and solely for the amount therein set out that the Surveyor/Consultant would be liable under Clause 6, the Client hereby undertakes to keep the Surveyor/Consultant and its employees, agents and sub-contractors indemnified and to hold them harmless against all actions, proceedings, claims, demands or liabilities whatsoever or howsoever arising which may be brought against them or incurred or suffered by them, and against and in respect of all costs, loss, damages and expenses (including legal costs and expenses on a full indemnity basis) which the Surveyor/Consultant may suffer or incur (either directly or indirectly) in the course of providing the Services.

## **8. Force Majeure**

Neither the Surveyor/Consultant nor the Client shall, except as otherwise provided in these conditions, be responsible for any loss, damage, delay or failure in performance hereunder arising or resulting from an act of God, act of war, seizure under legal process, quarantine restrictions, strikes, boycotts, lockouts, riots, civil commotions and arrest or restraint of princes, rulers or people.

## **9. Sanctions**

The Client warrants that it is not, at any point on entering into the Contract and throughout the duration of the provision of the Services, a sanctioned party or in breach of any sanctions and that provision of the Services to the Client will not put the Surveyor/Consultant in breach of sanctions.

If at any time during the performance of the Services, the Surveyor/Consultant becomes aware that the Client is in breach of this warranty, it may terminate the Contract with immediate effect.

The Client shall indemnify the Surveyor/Consultant against any and all claims, losses, damages, costs and fines whatsoever suffered by the Surveyor/Consultant resulting from any breach of this warranty.

## **10. Surveyor's/Consultant's Right to Sub-contract**

The Surveyor/Consultant shall have the right to sub-contract any of the Services provided, subject to the Client's right to object on reasonable grounds. In the event of such a sub-contract the Surveyor/Consultant shall remain fully liable for the due performance of its obligations under these conditions and Contract.

## **11. Time Bar**

The Surveyor/Consultant shall be discharged of all liability in respect of any claim for loss, damage, delay or expense suffered by the Client unless, within 12 months from the date on which the Surveyor/Consultant submits a final report to the client (or, if not report is issued, the date on which the report would have been issued), suit is brought against the Surveyor/Consultant in the proper forum and written notice thereof is received by the Surveyor/Consultant.

## **12. Jurisdiction and Law**

These conditions and the Contract shall be governed by and construed in accordance with the laws of Australia and any dispute or claim arising out of or in connection with it, shall be subject to the exclusive jurisdiction of the Australian Courts.

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