

STANDARD TERMS & CONDITIONS

These Standard Terms and Conditions form part of, and are to be read together with, the accompanying proposal.

1. Definitions

In these Terms, unless the context otherwise requires:

“Access Laws” means any law, requirement, restriction or condition imposed or made under any applicable law relating to access to any Site;

“Agreement” means any contract or agreement created by the Client’s acceptance of a Proposal;

“Associated Entity” means any company which is a related body corporate to either of Hydrobiology or the Client (as the context permits or demands) as defined in Section 50AAA of the Corporations Act;

“Claim” means any claim alleging liability for negligence, breach of contract or breach of any duty or failure to perform any obligation or meet any responsibility imposed by or arising under common law or statute;

“Client” means the person to which a Proposal is addressed;

“Confidential Information” has the meaning given to that term by clause 11.1;

“Corporations Act” means the Corporations Act 2001 (Cth);

“Dispute” means a dispute between the parties relating to the Agreement or any Services;

“Due Date” in relation to an invoiced amount means the 30th day after the date of delivery of the invoice;

“Fee Variation Notice” means a notice given in accordance with clause 7;

“Fees” means the price set out in the Proposal as varied by any Fee Variation Notice or any subsequently negotiated price at which Hydrobiology offers or agrees to provide Services to the Client, including any consulting fees and Reimbursable Expenses;

“GST” means Goods and Services Tax as defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and any associated Commonwealth legislation, regulations and publicly available rulings or any other consumption tax imposed by any government on the supply of the Services;

“Hydrobiology” means Hydrobiology (Qld) Pty Ltd (ABN 26 096 574 659) and any of its Associated Entities;

“Intellectual Property” has the meaning given to that term by clause 12.1;

“Latent Condition” means any physical, environmental or other condition of or pertaining to any Site or which in any case may affect the Services and which was not disclosed in information provided by the Client to Hydrobiology prior to formation of the Agreement;

“Personnel” means, in relation to a party, its employees, officers, agents and subcontractors;

“Proposal” means any proposal to which these Terms are attached in which Hydrobiology offers to provide Services to the Client and any subsequent variation of the Proposal that may be agreed between Hydrobiology and the Client;

“Reimbursable Expenses” means any costs or expenses incurred by Hydrobiology in connection with the provision of the Services for which the Agreement requires the Client to reimburse Hydrobiology;

“RFP (Request for Proposal)” means any request or invitation by the Client for a proposal, offer or expression of interest for provision of services to the Client and in response to which Hydrobiology submits a Proposal;

“Services” means the Services described or referred to in the Proposal and any subsequent variation of such or additional services that Hydrobiology provides to the Client in connection with those Services;

“Site” means any land, property, airspace or body of water that Hydrobiology or its Personnel must access to provide Services;

“Terms” means these Service Terms and Conditions.

2. Agreement

2.1 Upon the Client communicating to Hydrobiology its acceptance of the Proposal, the Client shall be deemed to have engaged Hydrobiology to provide the Services and to have agreed to pay the Fees.

2.2 The Agreement incorporates the RFP, the Proposal and these Terms and any scope of services contained in, attached to or referred to in the Proposal.

2.3 Subject to the termination provisions contained herein, the Agreement continues until the date stipulated in the Proposal or, if no date is stipulated, until the Services have been completed.

2.4 Notwithstanding clause 2.3, the term of the Agreement may be extended by agreement between the parties.

3. Relationship between the Parties

3.1 The Agreement is not one of partnership or employment between the parties, but is one of principal and independent contractor.

3.2 The Client is not responsible for Hydrobiology’s expenses except to the extent of the Reimbursable Expenses.

3.3 Hydrobiology shall not have any authority to bind the Client to any contract or create any liability against the Client in any way for any purpose.

4. Hydrobiology’s Obligations Concerning the Services

4.1 Hydrobiology must provide the Services to the Client in the manner and subject to any conditions contained in the Agreement.

4.2 Hydrobiology must ensure that it complies with all applicable laws in providing the Services. It undertakes to comply with all Access Laws of which it is aware, but this does not relieve the Client of its obligations under clause 5.

4.3 Hydrobiology is responsible for holding and maintaining any necessary insurance in relation to the Services in accordance with prudent industry practice.

5. The Client’s Obligations Concerning the Services

5.1 The Client must advise Hydrobiology of the existence of any Access Laws and obtain all such applicable consents and permits required for the Services without delay.

5.2 Unless otherwise specifically agreed, the Client:

- must comply with any Access Laws including obtaining any consent or permit necessary for the Services to the performed;
- must inform Hydrobiology of any conditions contained in any Access Laws or applicable permits or consents;
- indemnifies Hydrobiology and its Personnel for any penalty, fine, restriction or other liability that may be levied, imposed or incurred in connection with any breach of any Access Laws or any applicable permit or consent; and
- shall consent to any application for consent or permit required under any Access Laws or any other law to the extent that such application relates to the Services.

6. Fees and Payment

6.1 Any Fee quotation in a Proposal is valid for the time specified in either the RFP or the Proposal or 30 days from the date of the Proposal, whichever is the lesser.

6.2 All Fees and other monetary amounts listed or quoted in the RFP or the Proposal are exclusive of GST unless otherwise stated.

6.3 If Hydrobiology has any liability to pay GST on any Fees, Hydrobiology will add an amount equivalent to its GST liability to the relevant invoice and the Client must pay that amount.

6.4 The Client must pay the full amount of any invoice issued by Hydrobiology by the Due Date.

6.5 Notwithstanding anything else in these Terms, if the Client commits an act of bankruptcy or does any act that would entitle Hydrobiology to terminate the Agreement, all invoices issued by Hydrobiology become immediately payable.

6.6 If the Client fails to pay any amount owing to Hydrobiology by its Due Date, Hydrobiology reserves the right to charge:

- interest on the balance amount outstanding at the rate of 10% per annum from the Due Date, calculated daily; and
- all costs (including legal costs on a full indemnity basis), expenses or losses incurred or sustained by Hydrobiology in recovering the outstanding amount.

7. Variations

- 7.1 A Fee Variation Notice shall be given by Hydrobiology to the Client as soon as practicable after discovery of a Latent Condition that would or may:
- (a) cause any of its costs in providing the Services to increase;
 - (b) render it unlikely that the Services may be provided within any agreed time period; or
 - (c) require examination, testing or reporting in order for its services to be properly supplied under this agreement.
- 7.2 The Fee Variation Notice may:
- (a) estimate a longer time period for the completion of the Services under the Agreement;
 - (b) specify additional Fees; and
 - (c) advise that any of the preceding are not presently ascertainable.
- 7.3 If Hydrobiology gives a Fee Variation Notice the Client agrees to pay the further Fees to be invoiced by Hydrobiology in connection with the matters referred to in the Notice.

8. Delays

- 8.1 Neither party shall be liable for any delay in performing any of its obligations under the Agreement to the extent that the delay is caused by any circumstance beyond its reasonable control, and the time for performance of the affected obligation shall be extended accordingly.
- 8.2 Where Hydrobiology is delayed in performing Services due to a delay of the kind referred to in clause 8.1, Hydrobiology shall be entitled to treat such delay as if it was a Latent Condition and may issue a Fee Variation Notice pursuant to clause 7 in relation to that delay.

9. Limitation of Liability

- 9.1 Unless and only to the extent specifically outlined in the Proposal, no part of the Services will include a design recommendation or other advice or recommendation about how a natural or physical structure should be modified, built, constructed or configured, and to the extent that any of Hydrobiology's advice or recommendation shall relate to design or construction, the Client shall not in any way rely upon any such statement or advice for final design or construction.
- 9.2 Hydrobiology shall not be liable for misdescriptions of conditions in fact present at Site where testing is conducted, where:
- (a) the difference between Hydrobiology's report and actual conditions is within industry-accepted tolerances for inaccuracy having regard to inherent potential ranges of error of the technical equipment used;
 - (b) test conditions were atypical; or
 - (c) the condition at the Site is not a condition stated in the Agreement to be reported upon.
- 9.3 The Client shall bear the onus of proof that a misdescription has occurred.
- 9.4 The Client may not bring any Claim against Hydrobiology, and the Client hereby indemnifies Hydrobiology for Claims brought by third parties, in respect of advice or recommendation given by Hydrobiology unless that advice or a recommendation is such that an experienced and technically competent adviser contracted to provide the Services and using the technical data and reports in fact used by Hydrobiology would not reasonably have provided in accordance with best industry practice.
- 9.5 All information and advice provided by Hydrobiology to the Client as part of the Services is provided solely for the Client's own use and benefit and Hydrobiology shall not be liable or responsible to any other person who may rely upon or come into possession of any information provided by Hydrobiology to the Client by way of reports or other advices and the like.
- 9.6 In the event that Hydrobiology is found to be liable to the Client in respect of the Services, Hydrobiology's liability shall be limited to a maximum of \$100,000.00, and the Client hereby releases and indemnifies Hydrobiology for any Claims brought by any person where the liability of Hydrobiology is found to exceed that amount.
- 9.7 Hydrobiology shall not be liable to the Client or third parties in respect of any Claim unless the claimant has notified Hydrobiology in writing of its intention to make the Claim against Hydrobiology within 3 months of the date of cessation of the Services irrespective of whether any cause of action on which the Claim is based arose within that time or not.

10. Indemnities

- 10.1 Each party ("Indemnifying Party") must indemnify the other party ("Indemnified Party") against, and must pay the Indemnified Party on demand, the amount of any liability incurred by the Indemnified Party arising from or in connection with a breach by the Indemnifying Party:
- (a) of this Agreement; or
 - (b) of any law relating to the Services or the Agreement;
- except to the extent that the Indemnified Party has caused or contributed to such liability.

11. Confidentiality

- 11.1 For the purposes of this Agreement the term "Confidential Information" means all information:
- (a) that is not in the public domain (except by the failure of a party to perform and observe its obligations under this Agreement) concerning the trade secrets, operations, dealings, organisation, finance, customers, markets, suppliers, assets, liabilities, intellectual property and know-how of a party or any of its Personnel or Associated Entities; or
 - (b) that would identify:
 - (i) a party, its personnel or Associated Entities;
 - (ii) the nature of the Services; or
 - (iii) the existence of the Agreement.
- 11.2 Each party ("Recipient") agrees in relation to Confidential Information of another party ("Owner"):
- (a) to use the Confidential Information only for the purposes of performing its obligations under the Agreement; and
 - (b) to keep that Confidential Information confidential and not disclose it or allow it to be disclosed to any third party except:
 - (i) with the written consent of the Owner; or
 - (ii) to Personnel or advisers of the Recipient and of the Recipient's Associated Entities who have a need to know (and only to the extent that each has a need to know) and are aware that the Confidential Information must be kept confidential.
- 11.3 The obligations of confidentiality under this Agreement do not extend to information that (whether before or after the Agreement is formed):
- (a) is disclosed to a Recipient under or in relation to this Agreement, but at the time of disclosure is rightfully known to or in the possession or control of the Recipient and not subject to an obligation of confidentiality on the Recipient;
 - (b) is public knowledge (otherwise than as a result of a breach of this Agreement); or
 - (c) is required by law to be disclosed and the Recipient required to make the disclosure has taken all reasonable steps to oppose or prevent the disclosure and to limit, as far as reasonably possible, the extent of the disclosure.
- 11.4 In giving written consent to use or disclose its Proprietary Information, the Owner may impose such conditions as it thinks fit.
- 11.5 The Owner may at any time require the Recipient's Personnel or Associated Entities to give a written undertaking in a form reasonably required by the Owner relating to the use and non-disclosure of the Owner's Proprietary Information.
- 11.6 On ceasing to be a party and/or on the termination of the Agreement each Recipient must:
- (a) continue to keep confidential all Confidential Information of the Owner; and
 - (b) at the Owner's option, return to that Owner or destroy and certify the destruction of that Owner's Confidential Information.

12. Intellectual Property

- 12.1 For the purposes of this Agreement the term "Intellectual Property" means all present and future copyright and analogous rights (including moral rights), all rights in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), registered designs, confidential information (including trade secrets), discoveries, inventions, know-how, circuit layouts and all other rights throughout the world resulting from intellectual activity in the industrial, scientific or artistic fields. These rights include all rights in all applications to

register these rights and all renewals and extensions of these rights.

- 12.2 Title to all Intellectual Property created by Hydrobiology in the course of performing the Services shall vest in Hydrobiology.
- 12.3 So long as the Client is not in breach of any obligation to make payment to Hydrobiology, the Client shall have an irrevocable, unconditional, perpetual, royalty-free, non-exclusive, worldwide, transferable and sublicensable licence to use such of the Intellectual Property rights owned by Hydrobiology to the extent required for the sole purpose of enjoying the full benefit of the Services.
- 12.4 Hydrobiology warrants that it is the sole owner of or is legally entitled to use all of the Intellectual Property licensed to the Client by clause 12.3.

13. Termination

- 13.1 Either party may terminate the Agreement immediately and without notice if the other party:
- (a) commits any serious or persistent breach of the Agreement and fails to rectify the breach to the party's satisfaction within 14 days of receipt of written notice to rectify the breach;
 - (b) being a corporation, is wound up or deregistered or, being an individual, is made bankrupt, within the meaning of any applicable Australian law or any law of any jurisdiction applying to the party; or
 - (c) is, in the reasonable opinion of the terminating party, no longer capable of performing its obligations under the Agreement.
- 13.2 The termination of the Agreement pursuant to clause 13.1 shall not affect any rights that may have accrued to either party prior to termination, including Hydrobiology's right to be paid any Fees for Services performed.

14. Non-Solicitation

- 14.1 The Client:
- (a) acknowledges that in the ordinary performance of the Agreement, it can be expected that Hydrobiology's Personnel will have communications of various types with the Client;
 - (b) agrees not to, during the term of the Agreement or for a period of 12 months after the termination or expiration of the Agreement, engage any of Hydrobiology's Personnel as an employee or contractor except where the Client follows a conventional process of seeking applications for a position via direct advertising or use of a recruitment agency (but not including a direct approach by the recruitment agency to the Hydrobiology Personnel);
 - (c) agrees that in the event that the Client breaches the preceding restriction, the Client shall pay to Hydrobiology \$30,000.00 for each Hydrobiology Personnel so engaged or otherwise contracted;
 - (d) agrees that the sum mentioned in the preceding clause shall be payable by way of liquidated damages, and has been assessed by the parties hereto as fair compensation for the loss of such Personnel and the cost of engaging and retraining replacement Personnel; and
 - (e) acknowledges and agrees that if for any reason the preceding part of this clause shall be found unlawful or unenforceable, but where the circumstances stated in sub-clause (b) apply, the amount stated in sub-clause (c) shall represent a commission at an agreed rate for a service, namely Hydrobiology's introduction of its Personnel to the Client, and shall be due on demand.

15. Disputes

- 15.1 A party seeking to resolve a Dispute must do so strictly in accordance with the provisions of clause 15.2, compliance with that clause being a condition precedent to seeking relief in any court or tribunal in respect of the Dispute.
- 15.2 A party seeking to resolve a Dispute must notify the existence and nature of the Dispute to the other party (the "Notification"), whereupon the parties must refer the Dispute to their respective Chief Executive Officers or their nominees. If the dispute has not been resolved within 14 days of receipt of the Notification then any party may refer the Dispute to mediation under the ICC Mediation Rules by filing a request for mediation in accordance with the provisions of Article 2(1) of the ICC Mediation Rules. The parties agree that the mediator is to be appointed by the ICC and that all mediation hearings are to occur at a place or places to be

nominated by Hydrobiology that is in a city close to either a Site or a permanent Hydrobiology office. A party that files a request for mediation in accordance with this clause must, immediately after doing so, notify the other party that it has filed the request.

- 15.3 When a party has filed a request for mediation and notified the other party of the filing in accordance with clause 15.2, neither party may commence legal proceedings in any court or tribunal in respect of the subject matter of the Dispute until the mediation process has been completed or within 60 days after the filing of the request under clause 15.2, whichever occurs first. Nothing in this clause shall prevent a party from seeking interlocutory relief through the court's jurisdiction.

16. General

- 16.1 This Agreement is governed by the laws of the State of Queensland, Australia and the parties agree to submit to the non-exclusive jurisdiction of the courts in Queensland. Proceedings may be commenced in any court in Queensland and the parties consent to that court having jurisdiction, notwithstanding that it may not otherwise have jurisdiction, but for this clause.
- 16.2 If any provision of this Agreement is illegal, void or unenforceable, it will be severed from this Agreement and the remainder of the Agreement will remain valid and enforceable.
- 16.3 No amendment or variation to these Terms or this Agreement will be effective unless it is in writing.
- 16.4 Unless and to the extent otherwise specified, all references to monetary amounts in this Agreement are references to Australian Dollar amounts.
- 16.5 Any provisions of this Agreement which are capable of having effect after the expiration of the Agreement shall remain in full force and effect following the expiration of the Agreement.
- 16.6 Neither party may assign or attempt to assign any of its rights or obligations under this Agreement without the other party's prior written consent in writing, which consent may not be unreasonably withheld.
- 16.7 Notices in connection with this Agreement may be given in the manner permitted by addressing and delivering or transmitting the notice to the address or contact number listed:
- (a) for Hydrobiology, as set out in the Proposal or as notified by Hydrobiology to the Client from time to time; or
 - (b) for the Client, as stated in the RFP or as notified by the Client to Hydrobiology from time to time.
- 16.8 Notices shall be deemed to have been received at the time they would normally be received in the ordinary course according to the method of delivery used, except where the sender receives information or becomes aware or ought reasonably to be aware of circumstances that would indicate to a reasonable person that the notice had not been received.
- 16.9 Any failure by Hydrobiology to enforce any clause of this Agreement, or any forbearance, delay or waiver of Hydrobiology's rights or indulgence granted by Hydrobiology to the Client will not be construed as a waiver of Hydrobiology's rights under this Agreement.