



Quantise Consulting Engineers Pty Ltd
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CONSULTANCY AGREEMENT

Between:.....ABN: _ _ - _ _ - _ _ _ _
the "*Client*" (Company Name)

and

Quantise Consulting Engineers Pty Ltd ABN: 63 168 188 092
the "*Consultant*"

The *Client* wishes to engage the *Consultant* to perform the *Services* detailed in the "*Proposal*" comprised of the following documents (attached):

1. Document IDxxxxxx1, dated dd-mm-yyyy
2. Document IDxxxxxx2, dated dd-mm-yyyy
3. Document IDxxxxxx3, dated dd-mm-yyyy

The *Consultant* wishes to accept the engagement and perform the *Services* for the *Client* in accordance with the attached "*Terms and Conditions*" (Quantise Standard Terms and Conditions dated 1/12/2014).

Signed for and on behalf of:

Quantise Consulting Engineers Pty Ltd by(signature)

.....(print name and position)

Date (dd - mm - yyyy): _ _ - _ _ - _ _ _ _

And the *Client* by(signature)

.....(print name and position)

Date (dd - mm - yyyy): _ _ - _ _ - _ _ _ _

TERMS AND CONDITIONS

1 Definitions

In these *Terms and Conditions*, except to the extent the context otherwise requires:

Agreement	means the agreement that arises between the <i>Consultant</i> and the <i>Client</i> based upon and including the <i>Proposal</i> and these <i>Terms and Conditions</i> ;
Approval(s)	means certificates, licenses, consents, permits, approvals and requirements made or authorised by a Commonwealth, State, Territory or local government, or by Legislative Requirement;
Business Day(s)	means calendar day but excludes public holidays as defined by the governing law of this <i>Agreement</i> and weekends;
Client	means the <i>Client</i> as identified on the Consultancy Agreement;
Client Information	means all information supplied to the <i>Consultant</i> in a document for the purposes of this <i>Agreement</i> ;
Consultant	means the <i>Consultant</i> identified on the Consultancy Agreement;
Deliverables	means those documents and things required under this <i>Agreement</i> to be handed over to the <i>Client</i> by the <i>Consultant</i> ;
Fee(s)	means the money payable under this <i>Agreement</i> for the performance of the <i>Services</i> as adjusted in accordance with this <i>Agreement</i> (excluding disbursements) and includes any additional amount to the <i>Consultant</i> for granting of <i>Intellectual Property Rights</i> to the <i>Client</i> ;
GST	means the tax payable on a taxable supply under A New Tax System (Goods and Services Tax) Act 1999 (Cth) and any related legislation;
Intellectual Property Rights	means any statutory and other proprietary right in respect of inventions, innovations, patents, designs, copyright, confidential information, trade secrets, know-how, trademarks and any other right in respect of intellectual property;
Legislative Requirement	means legislation and subordinate legislation of the Commonwealth of Australia or the State or Territory applicable to the <i>Services</i> , and any instruments made under such legislation or subordinate legislation;
Party/Parties	parties means the <i>Client</i> and the <i>Consultant</i> . Party means either the <i>Client</i> or the <i>Consultant</i> ;
Project	means the activities to be carried out by the <i>Consultant</i> as specified in the <i>Proposal</i> (as varied or extended in any way by agreement in writing from time to time);
Proposal	means the documentation identified on the Consultancy Agreement describing the <i>Services</i> to be undertaken by the <i>Consultant</i> for the <i>Client</i> ;
Purchase Order	means the written communication by which the <i>Client</i> accepts the <i>Consultant's Proposal</i> ;
Reimbursable Expenses	means out-of-pocket expenses including, but not limited to, travel, telephone, courier, postage, accommodation, copying, and subcontractor fees;

Services

means any provision made from the *Consultant* to the *Client* as part of the *Agreement* which includes, but is not limited to reports, results, recommendations, product and process designs, system specifications and designs, design documentation, products, prototypes, equipment, or other *Deliverables* developed for the *Client*;

Terms and Conditions

means the general conditions for consultancy services as outlined in this document.

2 Interpretation

2.1 In these *Terms and Conditions*:

- clause headings are inserted for ease of reference only and shall not form part of nor be used in the interpretation of these *Terms and Conditions*.
- words importing the singular shall include the plural and vice versa, words importing gender shall include other genders. A reference to a person shall be construed as a reference to an individual, firm, body corporate or other entity (whether incorporated or not), or, where a position is nominated, the individual occupying that position.

3 Consultant Obligations

- 3.1 Provision of Services.** The *Consultant* agrees to perform the *Services* for the *Client* as described in the accompanying *Proposal* together with such other *Services* as may be agreed from time to time.
- 3.2 Standard of care.** The *Consultant* agrees to perform the *Services* to the standard of skill, care and diligence expected of a skilled and competent professional practising in the particular fields relevant to the *Services*, or such higher standard as the *Consultant* has represented in the *Proposal*.
- 3.3 Communication.** The *Consultant* agrees to liaise regularly with the *Client* throughout the performance of the *Services* in order to remain informed about the *Client's* requirements.
- 3.4 Independence.** If the *Consultant* is required to exercise professional judgment between the *Client* and a third party with whom the *Client* has a contract, the *Consultant* agrees to do so independently as required by the terms of that contract and in accordance with the ethics of the engineering profession in Australia.
- 3.5 Client Information errors.** The *Consultant* agrees to promptly give notice to the *Client* if and to the extent the *Consultant* becomes aware that any *Client Information* contains an ambiguity, error, omission, discrepancy, insufficiency or inconsistency or is otherwise insufficient to enable the *Consultant* to perform the *Services*.
- 3.6 Change of Scope.** If the *Consultant* becomes aware of any matter which will change or which has changed the scope or the timing of the *Services* then it agrees to promptly give notice to the *Client* and the notice shall contain as far as practicable in the circumstances, particulars of the change.
- 3.7 Timing.** The *Consultant* agrees to perform the *Services* in a timely manner to the extent the *Consultant* has control to do so.

4 Client Obligations

- 4.1 Payment.** The *Client* agrees to pay to the *Consultant* the *Fees* and *Reimbursable Expenses* at the times and in the manner set out in the accompanying *Proposal*.
- 4.2 Provision of Client Information.** The *Client* agrees to, as soon as practicable, provide the *Consultant* with *Client Information* sufficient to enable the *Consultant* to perform the *Services*.
- 4.3 Client Information accuracy.** The *Consultant* shall be entitled to rely upon the accuracy of all information provided by the *Client*, or third parties on the *Client's* behalf, without having to independently check it.
- 4.4 Access.** The *Client* agrees to, as soon as practicable, make arrangements allowing the *Consultant* to enter any sites, lands and premises as necessary to enable the *Consultant* to perform the *Services*.
- 4.5 Change of Scope.** If the *Client* becomes aware of any matter, which may require a change to the scope or the timing of the *Services*, then the *Client* agrees to give written notice to the *Consultant*.
- 4.6 Change of Scope.** If the *Consultant* gives notice under clause 3.6, then the *Client* agrees to direct an appropriate amendment to the scope.
- 4.7 Co-operation.** The *Client* agrees to co-operate with the *Consultant* and not interfere with or obstruct the performance of the *Services*.

5 Payment for Services

- 5.1 **Proposal Validity.** The *Proposal* is valid for acceptance within 60 days from the date of issue. The *Consultant* reserves the right to amend the *Proposal* in relation to *Fees* and *Reimbursable Expenses* should the work not commence within this period.
- 5.2 **Reimbursable Expense mark-up.** Unless specified otherwise, *Reimbursable Expenses* incurred by the *Consultant* will include a mark up of 10%.
- 5.3 **GST.** Unless specified otherwise, all amounts payable under this agreement are exclusive of GST. The *Client* agrees to pay an additional amount for the GST incurred by the *Consultant* in relation to provision of the *Services*.
- 5.4 **Change in law.** If a new *Legislative Requirement* or *Approval*, or a change in a *Legislative Requirement* or *Approval* occurring after signing this *Agreement* causes the *Consultant* to incur more or less cost or time than otherwise would have been incurred or expended, then the *Fee* and *Reimbursable Expenses* otherwise payable to the *Consultant* under this *Agreement* will be increased or decreased accordingly.
- 5.5 **Change in Scope.** The *Consultant* is entitled to an adjustment to the *Fee* and *Reimbursable Expenses*, and the time for performing the *Services*, where notice has been given in accordance with clauses 3.5, 3.6, 4.5, and/or 4.6.
- 5.6 **Delays.** The *Client* agrees to pay the *Consultant* reasonable costs of and incidental to delays due to any cause other than a breach of this *Agreement* by the *Consultant*. If the *Parties* are unable to agree on an appropriate additional sum, then determination of the matter will be subject to clause 12 of this agreement.
- 5.7 **Claim for Payment.** The *Consultant* is entitled to make a payment claim on *Project* completion, or fortnightly should the *Project* duration exceed 2 weeks. Payment claims itemising the *Services* performed, the *Reimbursable Expenses* incurred, and any applicable GST amount for the period, will be made in the form of a written tax invoice.
- 5.8 **Payment Schedule.** The *Client* agrees to pay the full amount owing in respect of each invoice within 14 days of issue without any set-off or deduction.
- 5.9 **Interest on late payment.** If the *Client* fails to make payment by the due date, then the *Consultant* reserves the right to charge interest on the outstanding balance at a rate of 2% above the current Official Cash Rate as set by the Reserve Bank of Australia, and the *Client* agrees to pay such interest on demand.
- 5.10 **Disputes.** If the *Client* disputes the whole or any of the amount claimed, it agrees to pay, by the due date, that amount not in dispute, and issue notice to the *Consultant* detailing the amount in dispute and the reasons for disputing the amount. If the *Parties* are unable to reach agreement within 10 *Business Days* of the notice, then determination of the matter will be subject to clause 12 of this agreement.

6 Liability and Indemnity

- 6.1 **Exclusions.** Nothing in this *Agreement* is to be read as excluding, restricting or modifying the application of any legislation, which by law cannot be excluded, restricted or modified.
- 6.2 **Insurances.** The *Consultant* agrees to effect and maintain Public Liability Insurance, Professional Indemnity Insurance, and Workers' Compensation Insurance. The *Consultant* agrees to issue Certificates of Currency for these insurances as requested by the *Client*. On notice issued by the *Client*, the *Consultant* agrees to, at the cost of the *Client*, arrange any additional insurance cover beyond that normally borne by the *Consultant*. The *Consultant* accepts no additional liability until the *Client* has paid the cost of such additional insurance.
- 6.3 **Consultant Indemnifies Client.** To the extent permitted by law, the *Consultant* indemnifies the *Client* from and against all liability, losses, damages, costs and expenses (including legal expenses), due to:
- Loss of, damage to, or destruction of any property (including *Deliverables*); or
 - Personal injury (including psychological injury) or death,
- to the extent contributed to by any breach of this *Agreement* by the *Consultant*, or negligent or unlawful act or omission of the *Consultant* (or negligent act or omission of the *Consultant's* officers or employees), in connection with this *Agreement*.
- 6.4 **Client Negligence.** Clause 6.3 does not apply to the extent that:
- the liability, loss, damage, cost or expense is contributed to by any breach of this *Agreement* by the *Client* or negligent or unlawful act or omission of the *Client* or its officers, employees, agents, other consultants or contractors, and/or
 - the *Client* fails to act reasonably to mitigate the liability, loss, damage, cost or expense.

- 6.5 **Client Indemnifies Consultant.** The *Client* indemnifies and holds harmless the *Consultant* in respect of any claim against the *Consultant* caused by or arising out of any act or thing done by the *Consultant* in good faith and purportedly pursuant to a right granted to the *Consultant* under the provisions of this *Agreement*.
- 6.6 **Liability Limit.** The liability of the *Consultant* to the *Client* arising under or in connection with this *Agreement* including in tort (including for negligence), under statute, or otherwise, to the extent permitted by law, is limited in the aggregate to the lesser of AUD1 million, the cost of repairing damage to tangible property, the cost of supplying or having the *Deliverables* supplied again, or 3 times the *Fees* paid for the *Services* under this *Agreement*.
- 6.7 **Liability Duration.** After the expiration of 1 year from the date of invoice in respect of the final amount claimed by the *Consultant*, the *Consultant* shall be discharged from all liability in respect of the services whether under contract, in tort, in equity, under statute or otherwise.
- 6.8 **Proportional Liability.** The extent to which any loss or damage will be recovered from the *Consultant* by the *Client* will also be limited so as to be in proportion to the *Consultant's* contribution to the overall fault for such loss or damage, taking into account any contributory negligence by the *Client*, the *Client's* other consultants and/or other advisers and/or any other third parties responsible to the *Client* and/or liable in respect of such loss.
- 6.9 **Delays.** The *Consultant* shall not be liable for any delay or for the consequences of any delays in performing any of the *Consultant's* obligations under the *Agreement* if such delay is due to any cause whatsoever beyond the *Consultant's* reasonable control.
- 6.10 **Consequential losses.** The *Consultant* shall not be liable to the *Client* in respect of any indirect, consequential or special losses (including loss of profit, loss of business opportunity and payment of liquidated sums or damages under any other contract).

7 Confidential Information

- 7.1 **Confidential Information.** The *Parties* agree to treat as confidential all information deemed to be such by either *Party* and marked as such, or which of its nature is confidential or which the *Parties* ought reasonably to know is confidential. The obligation of confidentiality does not apply to the extent:
- that the information is in the public domain otherwise than as a result of a breach of this *Agreement*;
 - disclosure is required by law;
 - disclosure is necessary to procure goods or services in connection with the *Service*, provided that the recipient of the information is also subject to an obligation of confidentiality; or
 - disclosure is agreed in writing by the *Parties*.
- 7.2 **Publicity.** The *Parties* agree not to publish or enable others to publish any information in connection with the *Services* without prior written consent from the other *Party* (which must not be unreasonably withheld or delayed).
- 7.3 **Officers.** The *Parties* agree to ensure that their officers, employers, agents, subconsultants and subcontractors comply with the obligations under this clause 7.
- 7.4 **Sunset.** Obligations under this clause 7 expire 3 years after payment of the final invoice.

8 Copyright and Other Intellectual Property Rights

- 8.1 **Existing Client IP.** The *Client* licenses to the *Consultant* such *Intellectual Property Rights* in *Client Information* as are necessary to enable the *Consultant* to perform the *Services* in accordance with this *Agreement*.
- 8.2 **Existing Consultant IP.** The *Consultant* retains the *Intellectual Property Rights* created outside the terms of this *Agreement* and used in performing the *Services*. Subject to clause 8.4, the *Consultant* grants to the *Client* a royalty-free non-exclusive irrevocable license to use such *Intellectual Property Rights* for the purpose for which the *Services* are provided.
- 8.3 **New IP.** Subject to clause 8.4, on creation the *Consultant* grants to the *Client* an irrevocable, royalty-free license to use, adapt, reproduce, amend, publish and sublicense on the same terms, the *Deliverables* created by the *Consultant* for any purpose for which the *Services* are provided, including any subsequent repairs, maintenance or servicing.
- 8.4 **License Revocation.** The rights created by clause 8.3 are revocable by the *Consultant* if the *Client* does not pay the amount/s payable under this *Agreement* including any special consideration granting *Intellectual Property Rights* to the *Client*, within 20 *Business Days* after completion of the *Services*, termination of this *Agreement* or determination of any dispute regarding the *Consultant's* entitlement to payment.

9 Covenant not to Solicit Employees

- 9.1 During the course of the *Project* and for 6 months after the termination date, neither *Party* will solicit or offer to employ any member of the other *Party's* professional staff. A *Party's* liability to the other for any breach of this provision will equate to 6 month's gross salary for the individual concerned, this amount being a genuine pre-estimate of the other *Party's* loss in this event.

10 Relationship between the Parties

- 10.1 **Employment Status.** The *Consultant* agrees not to represent itself or be represented as being an employee or agent of the *Client*, or by virtue of the *Agreement* be or become an employee or agent of the *Client*.

11 Assignment and Subcontracting

- 11.1 **Subcontracting.** The *Consultant* agrees not to subcontract any part of the *Services* without the prior written approval of the *Client* (which must not be unreasonably withheld or delayed).
- 11.2 **Assignment.** Neither *Party* may, without the prior written approval of the other (which must not be unreasonably withheld or delayed), assign, sublet or transfer any of its rights or obligations under this *Agreement*. Unless stated in writing to the contrary, no assignment shall release or discharge the assignor from any obligation under this *Agreement*.

12 Dispute Resolution

- 12.1 **Notice.** If a dispute between the *Parties* arises in connection with this *Agreement*, then either *Party* may give the other *Party* a written notice of the dispute in accordance with clause 16, adequately identifying and providing details of the dispute.
- 12.2 **Meetings.** If a notice of dispute has been issued, then representatives of the *Parties* with the authority to agree, will meet within 10 *Business Days* in order to try and resolve the dispute.
- 12.3 **Arbitration.** If the dispute has not been resolved within 20 *Business Days* of the notice of dispute, then that dispute can be referred to Arbitration and Expert Determination by either *Party*.
- 12.4 **Arbitrators and Rules.** The persons to conduct the Arbitration and Expert Determination will be decided by the Chairperson of the NSW chapter of the Institute of Arbitrators and Mediators, with that group also deciding on the rules for arbitration. The rules for Expert Determination will be the guidelines for Expert Determination of the Australian Commercial Disputes Centre.
- 12.5 **Costs.** Unless otherwise agreed in writing, each *Party* shall bear its own costs and pay for half of all fees in relation to the Arbitrator and Expert, with the determination of the Expert being binding on both *Parties*.
- 12.6 **Other Actions.** Nothing herein shall prejudice the right of a *Party* to institute proceedings to enforce payment due under the *Agreement* or to seek injunctive or urgent declaratory relief.

13 Termination Without Cause

- 13.1 **Conditions.** The *Agreement* may be terminated:
- at any time by mutual agreement; or
 - by the *Client* for any reason after giving reasonable written notice to the *Consultant*.
- 13.2 **Termination Payment.** If this *Agreement* is terminated under clause 13.1, the *Client* agrees to pay to the *Consultant*:
- the applicable portion of the *Fees* for the *Services* performed prior to the termination date;
 - all *Reimbursable Expenses* incurred by the *Consultant* prior to the termination date which would have been payable had this *Agreement* not been terminated; and
 - any costs and expenses reasonably incurred by the *Consultant* by reason of termination.
- The *Client* is not liable to the *Consultant* under this clause 13.2 for any amount greater than the amount that the *Client* would have paid to the *Consultant* had this *Agreement* been performed completely.
- 13.3 **Consequential Loss.** The *Client* is not liable to the *Consultant* for any indirect or consequential loss arising out of the termination under clause 13.1.
- 13.4 **Deliverables.** Upon termination and payment of any amount due to the *Consultant* under clause 13.2, the *Consultant* agrees to deliver to the *Client* all *Deliverables* and all documents which, on completion, would be *Deliverables*. The *Consultant* is not liable in respect of documents not completed due to termination of this *Agreement*.

14 Termination Due to Default by Either Party

- 14.1 **Breach.** If either party commits a substantial breach of this *Agreement*, the other *Party* may give to the *Party* who committed the breach a written notice to show cause why the *Agreement* should not be terminated. A notice to show cause must:
- state it is a notice given under this clause 14;
 - specify the alleged breach with reasonable details;
 - require the *Party* who committed the breach to show cause in writing why the *Party* giving notice should not exercise a right referred to in this clause 14; and
 - specify a date (which must not be less than 5 *Business Days* after the notice is served) by which the *Party* who committed the breach must show cause.
- 14.2 **Breach Definition.** Substantial breaches include but are not limited to:
- suspension of work other than as permitted by this *Agreement*;
 - failure to proceed with due diligence and without delay;
 - failure to provide evidence of insurance in accordance with clause 6.2; and
 - failure of the *Client* to pay the *Consultant* under clause 5.
- 14.3 **Termination/Suspension.** If the recipient of a notice to show cause fails to show cause, to the reasonable satisfaction of the other party, why the other *Party* should not exercise a right under clause 14 within the time specified in the notice, the other *Party* may, by further written notice:
- terminate this *Agreement*; or
 - if the breach is a failure of the *Client* to pay the *Consultant* under clause 5, the *Consultant* may suspend performance of the *Services* until payment is made.
- 14.4 **Lifting Suspension.** If the *Consultant* suspends the work under clause 14.3 b), the *Consultant* must promptly lift the suspension after the *Client* remedies the breach, unless the *Consultant* has terminated the *Agreement*.

15 Agreement Duration

- 15.1 **General.** The *Agreement* shall continue in force until completion of the *Services*, or until earlier termination.

16 Notices

- 16.1 **Notice Delivery.** Notices under this *Agreement* must be in writing and served by hand, or by mail/email at the addresses provided in the *Consultant's Proposal* and the *Client's Purchase Order*, or if notice of a change of address is given, at the last such notified address. In the case of email delivery, the sender shall request an 'Email Read Receipt'.
- 16.2 **Notice Receipt.** A notice is served immediately upon delivery by hand, 3 *Business Days* after posting by mail/email, or on receipt of an 'email read' notification if sent by email. Any notice served after 5pm on any *Business Day* or on a weekend or public holiday is deemed to be served on the next *Business Day*.

17 Governing Law

- 17.1 **Australia.** This *Agreement* shall be governed in accordance with the laws of the state in which the *Services* are principally performed and the *Parties* hereto submit to the jurisdiction of the Courts of that same State of Australia.
- 17.2 **Outside Australia.** This *Agreement* shall be governed in accordance with the laws of New South Wales if the *Services* are principally performed outside Australia.

18 Entire Agreement and Severability

- 18.1 **Whole Agreement.** These *Terms and Conditions*, and the *Proposal* documents listed in the *Agreement* constitute the entire understanding between the *Parties*. All previous oral and written communications, representations, warranties or commitments are superseded by this *Agreement* and do not affect the interpretation or meaning of this *Agreement*.
- 18.2 **Variations.** Any variation of the *Proposal*, these *Terms and Conditions*, or the *Agreement* will only be effective if it is in writing and signed by the *Consultant* and the *Client*.
- 18.3 **Severance.** If a provision in this *Agreement* is determined by any statute or any court having jurisdiction in relation hereto to be illegal, invalid, void, voidable or unenforceable, that provision or relevant part must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable. If it is not possible to read down a provision as required in this clause, then that provision is severable without in any way affecting the validity of the remainder of that provision or the remainder of the *Agreement*.