



TERMS AND CONDITIONS - PROFESSIONAL SERVICES

HydroTerra Pty Ltd (HydroTerra) and the Client (as described in the accompanying Proposal) agree that any professional services, including subsequent services and charges (collectively the Services), to be provided by HydroTerra relating to the Proposal will be on the following Terms and Conditions. Collectively the Proposal and the following Terms and Conditions form the Agreement between the Client and HydroTerra Pty Ltd (HydroTerra). The client's purchase order constitutes automatic acceptance of HydroTerra's Terms and Conditions herein.

1. Standard of Care – HydroTerra shall provide the Services with such skill, care and diligence as is ordinarily exercised by consultants in similar circumstances at the time the Services are provided. HydroTerra shall provide the Client the opportunity to provide feedback regarding the provision of the Services at any time.
2. Site Disturbance – Where fieldwork activities are undertaken as part of the Services, the Client understands that in the normal course of work some surface disturbance will occur. Unless expressly described in the Proposal, or required by law, HydroTerra's responsibility to make good for disturbance caused during HydroTerra investigation activity shall be limited to uncompacted backfilling of test pits and surface-plugging of boreholes not otherwise capped. Any other repair or re-instatement of pavements or other surface finishes shall be the Client's responsibility and is not part of this Agreement.
3. Right of Entry, Permits, Site Information and Utilities - The Client shall obtain all necessary permits and licenses and provide right of entry for HydroTerra and its subcontractors to carry out the Services. The Client (at its own cost) shall provide to HydroTerra in advance all relevant and necessary information, documents and other particulars concerning the provision of the Services including but not limited to any on-site hazardous materials and underground utilities. HydroTerra shall rely on such information.
4. Rates – The rates as set out in HydroTerra's Proposals applicable for the period specified. Thereafter the Rates shall be reviewed and adjusted with respect to market conditions.
5. Limitation of Liability - To the maximum extent permitted by law:
 - a) Subject to paragraphs (b), (c) and (d) below, the liability of HydroTerra, its employees, officers and directors arising out of the performance or non-performance of the Services, whether under law of contract, tort or otherwise, shall be limited in aggregate to the cost of rectifying the works the subject of the Services, or the amount of \$300,000, whichever is the lesser
 - b) HydroTerra shall not under any circumstance be liable to the Client in respect to any indirect, consequential or special losses (including loss of profit, loss of business opportunity and payment of liquidated sums or damages under any other agreement).
 - c) HydroTerra will be deemed discharged from all liability in respect of the Services, whether under the law of contract, tort, or otherwise, on the expiration of one (1) year from the completion of the Services, the date of invoice in respect of the final amount claimed by HydroTerra pursuant to Clause 5, or the termination of this Agreement, whichever is earliest. The Client shall not be entitled to commence any action or claim whatsoever against HydroTerra or any employee, agent or sub-consultant of HydroTerra in respect of the Services after that date.
6. Third party reliance - Unless expressly agreed by HydroTerra, no third party may rely upon any work product provided under this Agreement. The Client indemnifies HydroTerra from any unlicensed use of or reliance on said work product.
7. Confidentiality – Neither the Client nor HydroTerra shall disclose to third parties or use for any purpose (other than providing or benefiting from the Services) any information provided by the other unless required by law or the information is already available to the public, or the other consents to the disclosure.



8. Dispute - Any dispute between the Client and HydroTerra shall be notified in writing by the aggrieved party to the other within 7 days of the onset of the dispute. It shall be handled as follows:
 - a) Within 7 days of notification, the parties and their principals shall meet in good faith, without legal representation, in an attempt to resolve the dispute.
 - b) If the dispute is not resolved under (a), the parties agree that the dispute shall then be subject to final expert determination. The expert shall be chosen by agreement between the parties.
 - c) The parties irrevocably waive any recourse to further action.
 - d) Notwithstanding the subject of the dispute, the parties agree to continue to perform all other obligations under this agreement.

9. Termination - Either party may terminate its obligations under this Agreement in the event of a substantial breach by the other party of its obligations and the breach has not been remedied within 30 days of a written notice requiring the breach to be remedied; OR without cause upon giving the other party 30 days' written notice of its intention to do so. HydroTerra may suspend or terminate its obligations under this Agreement in the event of monies payable to HydroTerra for the Services being outstanding for more than 30 days.

10. Assignment - Neither party and their respective successors may assign, transfer, or sublet any obligation under this Agreement without the prior written consent of the other party. Unless stated in writing to the contrary, no assignment, transfer, novation or sublet shall release the assignor from any obligation under this Agreement.

11. Subconsultants - If HydroTerra considers it appropriate to do so, it may, with the Client's prior written approval, engage another consultant to assist HydroTerra in provision of the Services. Such written permission from the Client cannot be unreasonably withheld. The Client acknowledges that HydroTerra may have retained subconsultants affiliated with HydroTerra to provide Services for the benefit of HydroTerra. To the maximum extent allowed by law, the Client acknowledges and agrees it will not have any direct legal recourse to, and waives any claim, demand, or cause of action against, HydroTerra's affiliated companies, and their employees, officers and directors.

12. Miscellaneous –
 - a) This Agreement shall be subject to either the laws of the State of Australia where the Services are provided, or if the Services are provided outside of Australia, the laws of the State of Australia which is the location of the HydroTerra office that is the source of the Proposal.
 - b) This Agreement is the entire Agreement between the parties for the provision of the Services in the Proposal and supersedes all other agreements, representations, correspondence, and discussions in connection with the Services. In particular, no terms incorporated into or referenced by any Purchase Order, however and whenever presented, shall at any time operate to amend or substitute for the terms of this Agreement.
 - c) If any Clause of this Agreement is found to be inoperable due to illegality, such Clause is severed from the Agreement and the rest of the Agreement remains in force.
 - d) Nothing in this Agreement, nor in the performance of the Services, shall be construed as creating a relationship of agency, partnership, or other relationship other than that of Client and Consultant between the parties.



13. Ownership and Use of Work Product - Intellectual property and copyright in all drawings, reports, specifications, bills of quantity, calculations, software, designs of systems and/or products, and other documents (“work product”) provided by HydroTerra in the provision of the Services shall remain the property of HydroTerra. Subject to the Client complying with its obligations under this Agreement, and to the following conditions, HydroTerra grants to the Client a nonexclusive, non-transferable license to use the work product for the purposes described in the Proposal. The Client shall not use, or make copies of, such work product in connection with any work not included in the Proposal without prior written consent from HydroTerra. If the Client is in breach of any obligation to make a payment to HydroTerra, HydroTerra may revoke the license to use the work product and the Client shall return to HydroTerra all originals and copies of work product provided under the Services.
14. Safety – HydroTerra shall be responsible only for its activities and that of its employees and nothing shall imply that HydroTerra has any responsibility for job site safety which is the responsibility of the Client or its agents or contractors. The Client shall provide in advance any environmental, health, or safety policies or procedures it requires HydroTerra to abide by during provision of the Services. If no policies or procedures are provided, HydroTerra shall abide by its own policies and procedures in the provision of the Services. If in HydroTerra’s reasonable opinion it is unsafe to continue, HydroTerra may suspend the Services without penalty until the unsafe condition is rectified. At no time shall HydroTerra be deemed to be in control of the project site unless by prior written agreement in connection with specific Services.
15. Publicity – The Client consents to Hydroterra’s use of a general description of its Services and general images of the Services, in Hydroterra’s internal and external marketing materials, including resumes, proposals, and marketing materials. Neither Party shall otherwise use the name, trade marks, or trade names of the other, in part or in whole, without the other party’s prior written approval.
16. Payment – The Client shall pay to HydroTerra the Fees and Expenses as set out in the Proposal without set off or deduction. Where this Agreement has been entered into or authorised by an Agent (or a person purporting to act as an Agent) on behalf of the Client, the Agent and the Client shall be jointly and severally liable for payment of all accounts due to HydroTerra under this Agreement. Unless agreed otherwise all monies payable by the Client to HydroTerra shall be paid within thirty (30) days of the date of the invoice. Monies not paid within that period shall attract interest from the date of the invoice until payment at a rate of 1.5% per month, plus debt collection fees where applicable. Client shall notify HydroTerra within ten (10) days of receipt of any invoice of any dispute with the invoice and the parties will promptly meet to resolve the dispute. Unless such notification is received by HydroTerra, the Client agrees the invoice will be deemed valid and payment is due under the terms of this Condition