

Terms and Conditions of Engagement

The Client and Consultant agree to the following terms and conditions in relation to the engagement for the "Project".

1. The "Consultant" is Wilkinson Murray Pty Limited.
The "Client" is the person or corporate entity responsible for payment of the Consultant's Fees rendered in respect of the Services.
The "Project" is the project or job referenced in the "Client Confirmation of Commission" or letter of acceptance.
The "Agreement" comprises only the "Terms and Conditions of Engagement", the Scope of Work (including any other document referenced there-in) and the Client Confirmation of Commission or letter of acceptance.
The "Scope of Work" is the document referred to as "Our Reference" in the Client Confirmation of Commission (including any other document referenced there-in).
The "Services" to be performed by the Consultant are those contained in the Scope of Work.
The "Fee" is the fee referenced in the Scope of Work.
2. In consideration of the Consultant performing the Services, the Client agrees to pay the Fee to the Consultant. In consideration of the Client paying the Fee, the Consultant agrees to perform the Services as soon as practicable after receipt of:
 - i) an official order from the Client or upon receipt of the completed and signed Client Confirmation of Commission;
 - ii) provision of all required information outlined in the Scope of Work.
3. In providing the Services, the Consultant shall exercise the degree of skill, care and diligence normally exercised by Consultants in similar circumstances.
4. Where a fixed price is quoted, this will remain fixed for a period of 60 days. Where a price is quoted at hourly rates plus disbursement charge, the rate will be fixed for 60 days and may be reviewed and varied with notice on an annual basis (1 July).
5. The Consultant shall be entitled to render invoices at any time by email to the Client contact. Such invoices are due to be paid on receipt of the invoice. The Consultant shall be entitled to interest at the same rate as the maximum overdraft rate fixed by the National Australia Bank of all fees due and not paid within seven (7) days of the date the invoice was sent without relieving the Client of his obligation to pay the account.
Wilkinson Murray requires that our reports/advice or any other information provided by us to our client **must not** be relied upon and remains the property of Wilkinson Murray, until such time as our **Tax Invoice** for provision of such reports/advice or any other information provided to the client have been paid for in-full.
6. The Client agrees to pay all costs (including legal and other debt collection costs on an indemnity basis) related to the recovery by the Consultant from the Client of any monies due by the Client to the Consultant under or in connection with this Agreement.
7. All fees are quoted excluding the Goods and Services Tax (GST). GST must be added at the appropriate rate at the time of invoicing. For credit card payments with Visa or MasterCard a 2.0% fee applies.
8. The Client shall supply free of charge to the Consultant's office all information, drawings, plans, maps, photographs and all other documents necessary for completion of the Services.
9. The following **exclusions** apply to the Services (unless expressly provided for in the brief and our tender response):
 - i) attendance at meetings or project and site safety inductions;
 - ii) preparation of site specific SWMS or other HSE documentation;
 - iii) any work arising after issue of the final report;
 - iv) detailed design advice and acoustic specifications (where this type of work does not form part of the services). Any report prepared for the purpose of satisfying relevant authority requirements only contains the necessary "in-principle" design concept for that purpose. Detailed design work required for construction purposes is to be separately commissioned at the appropriate time.
10. Copyright in all reports, specifications, drawings, calculations and other documents prepared by the Consultant in connection with the Project shall remain the property of the Consultant. The Client shall have a licence to use the documents for the purpose of completing the Project, but the Client shall not use, or make copies of, such documents for use with any other project.
11. The Consultant has professional indemnity insurance, public liability insurance and workers compensation cover meeting statutory requirements. A copy of the insurance certificates may be obtained from the Wilkinson Murray website using links in the insurance table on the "about us" page www.wilkinsonmurray.com.au/about.html
12. The Consultant shall not be liable to the Client under this Agreement, law of tort (including negligence), statute, in equity or otherwise for any kind of indirect or consequential loss or damage arising out of or in connection with this Agreement.

13. Where the Services:
 - i) involve the design or specification or provision of advice in relation to **constructions or building works**; and
 - ii) the works are constructed without engaging the Consultant to carry out a comprehensive schedule of **construction inspections** or the works are constructed not in accordance with the Consultant's approved plans, specifications, designs or directions;

then the Consultant shall be discharged of all liability arising out of or in connection with the Services or such works, whether under the law of contract, tort (including negligence), under statute or otherwise on any basis or bases (without limitation), and the Client shall not commence any action or claim against the Consultant in respect thereof.
14. Where the Services include **construction inspections** then the Consultant shall not be liable for inspecting any works falling outside of the Services and irrespective of whether the Consultant was or should have been aware of any fault or deficiency in such works, the Consultant is discharged from and the Client shall have no claim, whether in contract, tort (including negligence) breach of Statutory or other duty or on any other basis or bases (without limitation) in respect of such work not included in the Services.
15. **Design Outcome Risk:** Where the Services involve design works in respect of constructions or building works and whereas the Consultant shall exercise the degree of skill, care and diligence normally exercised by Consultants in similar circumstances, the following will apply:
 - i) the Client accepts **that there are risks** in achieving a final design outcome which unconditionally complies with the applicable performance ratings, specifications, standards, guidelines, criteria, the Building Code of Australia and any statutory and Authority requirements ("The Specification");
 - ii) the Consultant may as it sees fit or as directed by the Client in writing, apply an engineering margin to the design works in an effort to **minimise risk** to the Client;
 - iii) the Consultant, in accepting the engagement to provide the Services, **does not warrant** that the constructions or building works which are the subject of the Services will comply with the Specifications;
 - iv) in the event that the constructions or building works **do not comply** with the Specifications, the Consultant may as it sees fit or as directed by the Client in writing, provide further design works. Unless otherwise agreed to in writing by both parties, the cost of the provision of the further design works shall be paid by the Client at the rates indicated in the Scope of Work;
 - v) the Client shall have no claim against the Consultant for any costs, losses, expenses, damages or delays in the constructions or building works caused by or in connection with the requirement or need to undertake further design works on any legal or other basis or bases including in contract, tort (including negligence), for breach of statutory or other duty or on any basis or bases (without limitation) arising out of or in connection with the further design works or any further design works undertaken by a third party or for any work required in consequence of or in connection with any further design works.
16. Any dispute between the Client and the Consultant shall in the first instance be referred to mediation in accordance with the Mediation and Conciliation Rules of the Institute of Arbitrators and Mediators Australia provided that this provision shall not prevent the Consultant from instigating legal action at any time to recover monies owing by the Client to the Consultant.
17. The Client may terminate this Agreement:
 - i) in the event of substantial breach by the Consultant of his obligations hereunder, which breach has not been remedied within thirty (30) days of written notice from the Client requiring the breach to be remedied; or
 - ii) for any or no reason upon giving the Consultant thirty (30) days written notice of his intention to do so.
18. The Consultant may terminate this Agreement:
 - i) in the event of monies payable to the Consultant being outstanding for more than 30 days from the date of invoice or as otherwise specified by the Consultant; or
 - ii) in the event of substantial breach by the Client of his obligations hereunder, which breach has not been remedied within 30 days of written notice from the Consultant requiring the breach to be remedied; or
 - iii) for any or no reason upon giving the Client thirty (30) days written notice of his intention to do so.
19. In the event of termination by either party pursuant to Clauses 18 and 19, the Consultant shall be entitled to be paid for that part of the Services rendered up to the time of termination and if the termination is under Clause 18(ii) shall be entitled to an additional payment representing its reasonable profit lost in not completing the Services.
20. The Consultant may suspend provision of the Services upon any payment being due and unpaid by the Client until such payment is made or the Agreement is terminated.
21. Neither party may assign, transfer or sublet any obligation under this Agreement, without the written consent of the other. Unless stated in writing to the contrary, no assignment, transfer of subletting shall release the assignor from any obligation under this Agreement.
22. The Client agrees to provide a safe working environment for us to conduct the services, including at their cost our time and materials associated with attending safety courses / site inductions, unless these aspects have been itemised in the brief and responded to in our submission.
23. The Client agrees to repair/replace any unattended monitoring equipment required for the delivery of the project which is vandalised, damaged by weather or stolen whilst deployed and the hire of replacement equipment in the meantime.