



TERMS & CONDITIONS
(Revision J)

1. Preamble

- 1.1. These are the Terms and Conditions of the business operated by Ian A. White, CPEng. (WAI Engineering).

2. Governing Law

- 2.1. These Terms and Conditions shall be governed by, and construed with reference to the laws applicable in the State of New South Wales, Australia.

3. Interpretation

- 3.1. Contractor means the business operated by Ian A. White, CPEng, trading under the name of WAI Engineering, or persons employed by WAI Engineering.
- 3.2. Client means the person or organisation for whom the Contractor has been engaged to provide services, including any persons employed by the Client or their agents.
- 3.3. Works means the description of work to be performed, or items to be supplied, as set out in the Contract documents.
- 3.4. Contract means the documents evidencing an agreement between the Contractor and the Client setting out the work to be carried out, delivery dates and cost.
- 3.5. Contract Value is the value of the works provided by the Contractor to the Client.

4. Service of Notices

- 4.1. All notices from the Client, under the Contract, shall be directed to the Contractor's address that is:

WAI Engineering,
2 Cumberland Street,
Blacktown. NSW. 2148.
Australia.

When notices are served, the Client shall only consider them as having been served when their receipt has been acknowledged.

5. Contract Documents

- 5.1. The documents comprising the Contract in order of precedence (in the event of any discrepancy between the documents) shall be:
- The Contractor's offer
 - The Client's inquiry including all appendices and attachments
 - The Client's purchase order

6. Force Majeure

- 6.1. The Contractor shall not be liable for delays in delivery or failure to supply or deliver due to causes not reasonably foreseeable, which are beyond the Contractor's control. Reasons for which the Contractor shall be entitled to submit a claim for extension of time include, but are not limited to, the following:
- 6.1.1. The suspension of Works by written direction from the Client, except where such direction is the result of an act, default, or omission of the Contractor or employee or agent of the Contractor.
- 6.1.2. Changes in law.
- 6.1.3. Directions by public authorities except where the direction arose from the failure of the Contractor to comply with a requirement referred to in these Terms and Conditions clause "Statutory Requirements".
- 6.1.4. General or local strikes or lockouts or combinations thereof by workers, except those situations that follow:
- (a) Strikes, industrial disputes or stoppages considered to have been within the control of Contractor.
 - (b) Strikes, industrial disputes or stoppages involving industry generally and which are of less than one working day's duration in any one calendar month.



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- 6.1.5. An accident in the supply of the Works or during transit to or on the site, not avoidable by reasonable care on the part of the Contractor.
- 6.1.6. Unreasonable delay on the part of the Client to give the Contractor instructions when requested to do so by the Contractor.
- 6.2. In the event of such a delay, the Contractor shall be entitled to claim any extension of time and/or cost which can be shown to be as a result of the delay. Such an extension of time, which may be attended by costs payable by the Client will be the Contractor's remedy under the Contract.
- 7. Assignment and Sub-contracting**
- 7.1. Assignment and Sub-contracting
- 7.1.1. The Contractor reserves the right to assign any part of the Works, by way of a secondary sub-contract, to any other party, however, the Contractor accepts the liability as set out in these Terms and Conditions. As such, it shall not be necessary for the Contractor to provide any notification of this to the Client.
- 7.2. Contractor's Responsibility
- 7.2.1. Assigning and/or sub-contracting all or part of the Works shall not relieve the Contractor from any liability or obligation as set out in these Terms and Conditions.
- 8. Statutory Requirements**
- 8.1. Complying with Statutory Requirements
- 8.1.1. In respect of the work performed, the Contractor shall comply with the requirements of:
- (a) Acts of the Commonwealth;
 - (b) Acts and Ordinances of the State or Territory in which the Works under the Contract or any part thereof is carried out;
 - (c) Ordinances, regulations, by-laws, orders and proclamations under the Acts and Ordinances;
 - (d) Persons acting in the exercise of statutory powers enabling them to give directions affecting the Works under the Contract.
- 8.1.2. If a requirement is at variance with a provision of the Contract, as soon as the Contractor discovers the variance the Contractor shall notify the Client in writing specifying the difference.
- 8.1.3. The Contractor shall give the notices and the Client shall pay the fees necessary to comply with the requirements referred to in (a), (b) and (c) above.
- 8.1.4. The Contractor shall give the Client copies of documents issued to the Contractor by municipal or other statutory authorities in respect of the Works under the Contract and, in particular, any approvals.
- 9. Communication & Language**
- 9.1. All communications shall be in writing, and the English language.
- 10. Progress and Programming**
- 10.1. Rate of Progress
- 10.1.1. The Contractor shall proceed with the Works under the Contract with due expedition and without delay. All work shall be performed with a high degree of skill, care and diligence
- 10.1.2. The Contractor shall give the Client reasonable advance notice of any information documents or instructions required by the Contractor.
- 10.1.3. Upon the Client's request, the Contractor shall provide to the Client all information which may be reasonably required to enable proper co-ordination of the Main Contract Works.
- 10.1.4. The Client shall not be obliged to furnish information, documents or instructions earlier than the Client should reasonably have anticipated at the Date of Acceptance of the Contractor's offer.



- 10.1.5. The Client may direct in what order and at what time the various stages or parts of the Works under the Contract shall be performed. If the Contractor can reasonably comply with the direction, the Contractor shall do so. If the Contractor cannot reasonably comply, the Contractor shall notify the Client in writing, giving reasons.
- 10.1.6. The Contractor shall rectify Works, Information and Items provided that are not in accordance with the requirements of the Contract. This rectification shall commence within 7 (seven) working days of the receipt of a notice to rectify. On receipt of such a notice, the Contractor shall advise the Client of the approximate time required to complete the rectification.
- 10.2. Provision and Acceptance of Works
- 10.2.1. The Contractor shall provide the Client with Works for the review and approval of the Client as they become available. The works provided in this form are not for construction or manufacture, and they will be clearly marked as such. The Client is not to remove, alter, or otherwise obliterate any such marking. Where there is a review stamp placed on the Works by the Contractor, this must be completed by the persons or organisations nominated. If the Client chooses to add an additional review stamp to the Works, this does not override the requirement for the Contractor's review stamp to be completed.
- 10.2.2. Where works are provided by the Contractor for the review and approval of the Client, this must be completed within the time specified in the Contractor's transmittal advice. Where the Client chooses to use the Works provided for review and approval, for construction or manufacture, this is regarded as the Client having reviewed the Works, and accepted them. Notwithstanding such use of Works submitted for review and approval, the Client is still obligated under these terms and conditions to formally review the drawings as indicated, and return them to the Contractor.
- 10.2.3. Where the Client becomes aware of something about the Works provided which require rectification or amendment, the Client shall notify the Contractor of this in writing, no later than 14 calendar days after becoming aware of such an event. If the Client fails to notify the Contractor of this in writing within this time period, it will be regarded as the Client not having found any problems with the Works.
- 10.2.4. The Client is to duly complete and return all documents provided by the Contractor which require an acknowledgement. This includes all document transmittals, and any Works which are submitted for review and approval.
- 11. Liability and Indemnity**
- 11.1. Damages
- 11.1.1. The total liability of the Contractor shall be limited to the value of the Works provided under the Contract. Any rectification is to be carried out by the Contractor. If the Client undertakes rectification by persons or organisations other than the Contractor, the Client shall not be entitled to back-charge the Contractor for the costs, nor withhold payment where payment has not been received.
- 11.2. Liquidated Damages
- 11.2.1. Where the Contractor fails to provide the Works under the Contract by the date specified in the Contract, the Contractor shall be indebted to the Client for liquidated damages at the rate of \$400.00 per day for every calendar day until delivery with the total amount not to exceed 10% of the Contract value.
- 11.3. Consequential Damages
- 11.3.1. The Contractor shall not be liable for any consequential damages for any reason whatsoever.
- 11.4. Indemnity
- 11.4.1. The Contractor does not indemnify the Client against any loss or damage it may sustain either directly or indirectly, including consequential loss, or loss of profits, as a result of executing the Works under the Contract, or by any breach, act, or omission by the Contractor during the execution of the Works under the Contract
- 12. Payments**
- 12.1. The Contractor may claim payment for items purchased and for services rendered under the Contract on a weekly basis. It is a contractual obligation that the Client make payments within the time limit specified on the Contractor's Invoice.
- 12.2. Where the Client fails to pay for items purchased and for services rendered within the specified time period, the Contractor shall be entitled to cease further work, and withhold completed Works yet to be delivered, until such time as payment is made.



- 12.3. The Contractor shall notify the Client of an intention to cease further work until such time as outstanding payments are made, and the Contractor shall not be liable for any damages whatsoever arising out of the failure of the Client to make payments.
- 12.4. Following the serving of such a notice, the Client shall not be permitted to reassign any of the Works the subject of the Contract to any other person or organisation.
- 12.5. On recommencement of work, the Contractor shall be entitled to claim any extension of time and/or cost which can be shown to be as a result of the failure of the Client to make payments.
- 12.6. Where it is the Client's opinion that other statutory payments must be made as a result of payments made under the Contract, these costs shall be borne by the Client in total. They shall not be deducted from the amount claimed in the Contractor's Invoice. The Contractor's Invoice shall be paid as presented.
- 12.7. Notwithstanding other clauses in these Terms and Conditions, nor relinquishing any other rights and avenues available to seek redress, where payments are not received within the time specified in the invoice, the Contractor may charge the Client interest at the current MasterCard interest rate, and a service fee, applied on each occasion an invoice for overdue payments is presented by the Contractor. Invoices for overdue payments may be presented at a frequency determined by the Contractor. The Client agrees to pay all interest and charges associated with overdue payments.
- 12.8. All charges made for Works completed under the Contract shall be based on that set out in the Contractor's written quotation. Where there is no written quotation or other written documents formalising the Contract, then the Contract reverts to rates as set out and published on the WAI Engineering web site at www.wai.com.au. The method of charging will be as determined most appropriate for the type of work performed be this an hourly rate, or a charge based on the size of a drawing provided as a print or as a PDF file, or a charge based on the tonnage of steelwork detailed, or any combination of these. The published rates can vary from time to time and the rate used will be that which was in effect at the time the billed work was carried out.
- 12.8. All invoices made for Works completed in the Building & Construction industry are issued under the **Security of Payments Act – 1999**.

13. Disputes

13.1. Proceeding with the Works under the Contract

- 13.1.1. Except for a dispute arising out of the failure of the Client to make payments as outlined in the preceding clause, or any attempt to alter the Contract by revising the scope of works or the completion date, or any other attempt to alter the Contract, and notwithstanding the existence of a dispute or difference, where possible each party shall continue to execute the Contract. The Contractor shall continue with the Works and the Client shall continue to make payments required by the Contract.

13.2. Notice of Dispute

- 13.2.1. In the event of any dispute or difference arising between the Client and the Contractor at any time as to the construction of the Contract or as to any other matter or thing of whatever nature arising thereunder or in connection therewith including a dispute concerning rectification or frustration of the Contract, then either party may give the other notice in writing adequately identifying the matters the subject of that dispute or difference. The party issuing the notice shall undertake to confirm that the notice has been received.
- 13.2.2. Such a notice of dispute shall be presented within 14 calendar days of the occurrence of the event giving rise to the alleged dispute.
- 13.2.3. Except for a dispute arising out of the failure of the Client to make payments, a dispute arising out of or relating to the Contract shall first be the subject of mutual conciliation. In the event that the dispute, controversy or claim has not been resolved within twenty-eight (28) days (or such other period as agreed to in writing between the parties hereto) the dispute, controversy or claim shall be the subject of conciliation, administered by the Australian Commercial Disputes Centre Limited (ACDC) conducted and held in accordance with the Conciliation Rules of ACDC in force at the date of the Contract. In the event that the dispute, controversy or claim has not been resolved within twenty-eight (28) days (or such other period as agreed to in writing between the parties hereto) after the appointment of the conciliator by the parties hereto the dispute, controversy or claim shall be submitted to arbitration, administered by ACDC. The arbitrator shall be agreed between the parties from a panel suggested by ACDC or failing agreement an arbitrator appointed by the Secretary General of ACDC. Subject to the foregoing the arbitration shall be conducted and held in accordance with and subject to the laws of the State of New South Wales, Australia. The arbitrator shall not be the same person as the conciliator. Any conciliation or arbitration meetings and proceedings shall be held in Sydney.


14. Form of Agreement

- 14.1. The form of agreement evidencing the Contract shall be the Contractor's offer, together with the Client's official acceptance of the offer in the form of a Purchase Order.

15. Requests for Information

- 15.1. Following a request for information required to carry out the Contract by the Contractor, the Client shall provide this information no later than 14 calendar days after receipt of the request in writing. Where information is required sooner, and it is not unreasonable for it to be provided sooner, the Client shall endeavour to provide the information, in writing, by (or sooner than) the time requested.
- 15.2. The general period for provision of information requested is not to be used as a means of frustrating the execution of the Contract.
- 15.3. All information provided to the Contractor by the Client shall be in writing, and shall be correct and accurate unless specifically noted otherwise, in which case, the Contractor will be entitled to submit a claim for additional time and/or cost, if it was reasonable for the Contractor to have understood that such information was available in a correct and accurate form.
- 15.4. Where electronic files are provided by the Client to the Contractor, the Client must ensure that the electronic files have only ever been prepared or modified by duly licensed software.

16. Ownership of Works, Information, and Items

- 16.1. Ownership of any items provided which are covered by a licence or other agreement, shall remain as described in the licence or other agreement, and shall only be used by the Client in strict compliance with the terms and conditions as set out in that licence or other agreement.
- 16.2. All items supplied, and Works provided under the Contract, are and continue to remain the property of the Contractor until such time as full payment is made as set out in the Contract, and permission to use works provided is not given by the Contractor, until all outstanding payments, fees, charges, and costs incurred in the recovery of overdue payments have been received.
- 16.3. The Client acknowledges that until the Client has met and paid all that is owed to the Contractor as set out in invoices on any account whatsoever, the Client holds the Works as bailee for the Contractor and that a fiduciary relationship exists between the Client and the Contractor.
- 16.4. Until the Contractor receives full payment of all monies due to it from the Client, the Client shall keep the Works separate and in good condition as a fiduciary of the Contractor, clearly showing the Contractor's ownership of the Works and, shall keep books recording the Contractor's ownership of the Works and the Client's sale or otherwise of them. The Client if required, shall deliver the Works up to the Contractor.
- 16.5. If the Client defaults, despite any granting of credit by the Contractor, the Contractor may take possession of the Works wherever the Works are located, and the Client agrees that representatives of the Contractor may enter upon the Client's premises for that purpose.
- 16.6. Despite Clause 16.1, the Client may sell as fiduciary agent for the Contractor, the Works to a third party, where this is permitted and in the normal course of the Client's business, the Client shall set aside and hold such part of the proceeds of such a transaction concluded or yet to be concluded, and to the extent of the amount owing by the Client to the Contractor, on trust for the Contractor. The Client must keep those proceeds concluded or yet to be concluded, separate on trust for the Contractor and not mix those proceeds with any other monies.
- 16.7. If the Client uses the Works in some manufacturing, construction or other process of its own or some third party, then the Client shall set aside and hold such part of the proceeds of such manufacturing construction or other process concluded or yet to be concluded, as related to the Works on trust for the Contractor. Such part shall be deemed to equal in dollar terms the amount owing by the Client to the Contractor. The Client must keep that part of the proceeds concluded or yet to be concluded, separate on trust for the Contractor and not mix those proceeds with any other monies.
- 16.8. The Contractor retains exclusive Copyright of all Works, Information and Items provided under the Contract. When permission to use the Works is given, the Client is only given permission to use the Works, Information and Items for the purpose as set out in the Contract documents, and then only after payment is received for Works carried out as set out in the Contractor's invoices, including fees, charges, and costs incurred in the recovery of overdue payments. The Client may not use the Works, Information and Items for any other purpose.



16.9 The Client shall not remove, alter, or obliterate any stamp, logo, copyright statement, watermark or other mark placed by the Contractor on Works provided indicating copyright, ownership, or who has prepared the Works. The Client shall not trace over any Works provided by the Contractor or have the Works re-done so as to imply that the Works were actually provided by another person or organisation. Where the Client provides any of the Works to a third party, the obligations under this clause shall also be conveyed to that third party in writing. The obligations under this clause shall be conveyed in writing to, and apply to anyone who receives any of the Works provided under this contract.

16.10. Where the Client is the Crown, Copyright ownership is not automatically transferred to the Crown. As such, the provisions of this section apply even when the Client is the Crown.

17. Confidentiality

17.1 If required, the Contractor shall enter into, and abide by the conditions of, any Confidentiality Agreement required by the Client. In any event, even where there is no formal Confidentiality Agreement, the Contractor shall execute Works under the Contract in such a manner as to maintain Client confidences.

17.2 It is a license condition of Autodesk for the use of AutoCAD that Autodesk (or its agents) are entitled to, and able to conduct a physical and/or electronic audit of the computers operated by the Contractor. This extends beyond merely establishing that the license of the copy of AutoCAD being operated by the Contractor is valid, but may extend to any file held on the Contractor's computers. The conditions of any audit are at the discretion of Autodesk and there is nothing limiting what files Autodesk may examine as part of any audit, nor is there anything limiting what part or how much of any file that Autodesk may examine in any audit. The Client accepts this condition and releases the contractor from any confidentiality requirement in the event of an audit conducted by Autodesk or its agents. There shall be no penalty applied in the event of an audit by Autodesk or its agents.

18. Cancellation

18.1 Exceptional Circumstances

18.1.1. The Contract can be cancelled by mutual consent as a result of circumstances that could not have been reasonably foreseen at the time the Contract was entered into. This clause is for exceptional circumstances only, and mutual consent must not be withheld unreasonably.

18.2 Failure to make Payments

18.2.1 The Contractor may cancel the Contract where the Client has failed to make payments as set out in these Terms and Conditions, and has failed to forward overdue payments following repeated requests for payment to be made, or issues a cheque for payment that is dishonoured for any reason. Cancellation of the Contract under these circumstances shall not diminish the Contractors right to seek redress at common law.

18.3 By the Contractor

18.3.1. The Contractor may cancel the Contract only with the consent of the Client, except where the Client fails to provide information requested, or where the Client alters or attempts to alter the Contract without the consent of the Contractor. The Contractor's liability shall be limited to provision of completed Works, Information and Items as of the date on which the Contract is cancelled, and only after payment is received for these items as set out in the Contractor's invoices. The Contractor shall not be liable for any other damages whatsoever. The Client shall provide payment in accordance with invoices submitted by the Contractor.

18.4 By the Client

18.4.1. The Client may cancel the Contract only with the consent of the Contractor, except where the Contractor fails to duly execute the Contract (except where the Contract is not specific as to the works to be completed, or the Contract is for work to be carried out on a hourly rate basis) or comply with these Terms and Conditions. The Contractor's liability shall be limited to provision of completed Works, Information and Items as of the date on which the Contract is cancelled, and only after payment is received for these items as set out in the Contractor's invoices. The Contractor shall not be liable for any other damages whatsoever. The Client shall provide payment in accordance with invoices submitted by the Contractor.

18.5. Except for exceptional circumstances and where the Client refuses to make payments in accordance with the Contractor's invoices, dispute settling procedures in these Terms and Conditions must be exhausted before the Contract can be cancelled.

18.6. Cancellation of the Contract cannot occur once notice of a dispute has been served by either party on the other, except where the parties fail to enter into mutual conciliation..



18.7. Termination

18.7.1 Cancellation

18.7.1.1. If the Contract is cancelled under these Terms and Conditions, the Contract will only be deemed to be terminated after:

- (a) the Contractor provides all completed Works, Information and Items as of the date of which the Contract was cancelled. The Contractor does not have to provide originals or copies of calculations, running notes, drawings, sketches, layouts, or any other Works, Information and Items that would not normally have been provided as of the date of cancellation, had the Contract not been cancelled.
- (b) the Client makes all payments claimed by the Contractor as set out in the Contractor's invoices and claims for variations. The Client may not use any Works, Information and items provided by the Contractor until such time as all payments have been made to the Contractor.
- (c) any specific conditions outlined in other documents forming part of the Contract have been complied with.

18.7.2 Normal Completion

18.7.2.1. The Contract will only be deemed to have been terminated when the time specified for normal completion in the Contract documents has been reached, and then only after:

- (a) the date for completion has been extended by all claims by the Contractor for extensions of time.
- (b) the Contractor provides all completed Works, Information and Items specified in the Contract documents. The Contractor does not have to provide originals or copies of calculations, running notes, drawings, sketches, layouts, or any other Works, Information and Items that are not specified in the Contract documents.
- (c) the Client makes all payments claimed by the Contractor as set out in the Contractor's invoices and claims for variations. The Client may not use any Works, Information and items provided by the Contractor until such time as all payments have been made to the Contractor.
- (d) any specific conditions outlined in other documents forming part of the Contract have been complied with.