

Consultancy Standard Terms & Conditions

in2Dredging Pty Ltd prides itself on its ability to provide quality services to its Clients. The Engagement or use in whatever capacity by the Client of in2Dredging Pty Ltd Services constitutes acceptance of these Terms and Conditions by the Client, unless otherwise agreed to in writing.

1. Definition of Terms

In these Terms and Conditions, the following definitions are applicable:

- **“Consultant”** means in2Dredging Pty Ltd or any person or persons assigned by in2Dredging Pty Ltd to undertake work for the Client;
- **“Client”** means the person, firm, company, authority or organisation to which the Consultant is engaged to provide the Services;
- **“Services”** means any and all work undertaken by the Consultant for the Client and any and all materials and/or deliverables supplied by the Consultant to the Client;
- **“Project”** means the Client’s planned works that the Services relate to;
- **“Contract”** means the written agreement between the Client and the Consultant which defines the scope of the Engagement and the Services to be rendered by the Consultant, as well as the fee schedule for said Services;
- **“the Engagement”** means any agreement, in whatever form, reached between the Consultant and the Client pursuant to which the Consultant agrees to render Services to the Client in exchange for a fee plus costs;
- **“Force Majeure”** means any cause beyond the reasonable control of the affected party, including, but not limited to, any act of God, war, riots, acts of the public enemy, fires, strikes, labour disputes, accidents, or any act in consequence of compliance with any order of any government or governmental authority.

2. General Provisions

These Terms and Conditions shall apply to all consultancy services proposed or provided by the Consultant, which are delivered entirely or partially to the Client.

These Terms and Conditions supersede any and all terms and conditions submitted by the Client. Failure of the Consultant to object to terms and conditions set by the Client shall in no event be construed as an acceptance of any terms and conditions of the Client. Neither the Consultant's commencement of work nor the Consultant's delivery of Services shall be deemed or constituted as acceptance of any of the Client's terms and conditions.

3. Consultant's Obligations and Responsibilities

The Consultant will use reasonable skill, care and diligence in the provision of Services and warrants that it is qualified and generally exercised by competent professionals performing Services of a similar nature, at the time the Services are provided.

The Consultant shall use all reasonable efforts to keep itself abreast of the Project's requirements and to that end shall consult with the Client throughout the performance of the Services.

Unless otherwise agreed, the Consultant may rely on and treat the documentation and the directions provided by the Client as accurate and correct.

The Consultant shall notify the Client in writing if it considers that any information or documentation made available to it by the Client is incorrect, biased or is insufficient to enable the Consultant to provide the Services. The Consultant will not check and does not accept any liability in connection with any information the Client has provided, unless checking that information is part of the Services.

If the Consultant becomes aware of any matter that will change the scope, character, quality, sequence or timing of the Services, then the Consultant shall promptly notify the Client of that matter.

The Consultant shall provide independent advice in accordance with the Consultant's best professional judgement.

Unless already known or in the public domain or required by law, the Consultant shall keep confidential any information disclosed by the Client or of which the Consultant becomes aware in respect of the Project, unless such disclosure is approved or agreed to by the Client in writing.

The Consultant shall procure that any third party or subcontractor to whom information is disclosed pursuant to the Contract, is made aware of, and complies with, obligations of confidentiality equivalent to those set out in these Terms and Conditions.

Nothing shall prevent the Consultant from employing such persons or companies as it may deem appropriate to assist it in the performance of the Services.

4. Client's Obligations and Responsibilities

The Client shall as soon as practicable provide the Consultant with all documentation and directions necessary to enable the Consultant to provide the Services.

Unless otherwise agreed, the Client shall promptly obtain all access, approvals, authorities, licences and permits necessary to enable the Consultant to provide the Services.

The Client shall assign a representative to communicate with the Consultant who shall have the authority to bind the Client in respect to all matters arising out of or in connection with the Services.

If the Client becomes aware of any matter that will change the scope, character, quality, sequence or timing of the Services, then the Client shall promptly notify the Consultant of that matter.

The Client shall provide such access to its information, property and personnel as may be reasonably required in order to permit the Consultant to perform the Services. If the Client receives notice from the Consultant that any information or documentation made available to it by the Client is inaccurate, biased or insufficient to enable the Consultant to provide the services, the Client shall promptly provide such further information or documents as the Consultant reasonably deems relevant to the provision of the Services.

The Client, its employees, agents and contractors shall cooperate with the Consultant and not interfere or obstruct the proper conduct of the Services.

Unless already known or in the public domain or required by law, the Client shall keep confidential any information disclosed by the Consultant or of which the Client becomes aware during the supply of Services, unless such disclosure is approved or agreed to by the Consultant in writing. Confidential Information may include, by way of example but without limitation, formulas, models, know-how, tools, inventions, ideas and other information that is owned by or in possession of the Consultant.

The Client shall procure that any third party or subcontractor to whom information is disclosed pursuant to the Contract, is made aware of, and complies with, obligations of confidentiality equivalent to those set out in these Terms and Conditions.

5. Compensation

The Client agrees to pay the Consultant the fees at the agreed rate(s) and the reimbursable expenses as set out within the Contract, together with such other amounts in respect of other Services agreed to and any reasonable adjustments to reflect any additional costs, expenses or other amounts incurred by the Consultant in the performance of the Services.

All amounts payable under the Contract are exclusive of GST, or other applicable service tax, unless expressly included in the Contract.

Unless otherwise agreed and specified in the contract, payment will be made to the Consultant within 30 days after the date of invoice. Payment is to be made for the full amount claimed in the Consultant's invoice, without set-offs or deductions.

If the Client disputes any portion of the amount claimed, it shall pay that portion not in dispute and notify the Consultant in writing of the amount in dispute and reasons for disputing the amount. If the parties are unable to reach agreement within seven (7) days of notice, the dispute may be determined in accordance with *Clause 9* of these Terms and Conditions.

All sums due from the Client that are delayed beyond 30 days from the due date specified on the invoice, shall bear interest at a rate per annum equal to the National Australia Bank Business Overdraft Reference Rate until all unpaid sums together with any penalty charges due under this Clause have been fully paid.

During any period in which payments are more than 30 days overdue, the Consultant has the right to immediately cease work and/or to withhold delivery of any product of the Service until the matter is resolved.

6. Limitation of Liability

The Consultant's liability to the Client arising out of or in connection with the Contract shall be limited solely to the repetition by the Consultant of the Services which are shown to be deficient. The Consultant will be liable to re-perform its Services and to rectify such deficient Services up to a cost which does not exceed the amount of fees paid by the Client in respect of such deficient Services.

The Consultant is not liable to the Client for any kind of indirect or consequential loss or damage, loss of opportunity, loss of revenue, loss of profit or anticipated profit, loss of contracts, loss of goodwill, loss arising from business interruption or liability arising out of or in connection with pollution or contamination arising out of or in connection with the Contract incurred or suffered by a party, or any other person.

The Consultant shall be deemed to have been discharged from all liability in respect of the Services at the expiration of one (1) year from the completion of the Services, and the Client (and persons claiming through or under the Client) shall not be entitled to commence any action or claim whatsoever against the Consultant in respect to the Services after that date.

7. Insurance

The Consultant will maintain at its own cost a Worker's Compensation Insurance Policy in full force and effect at all times during the term of the Contract, for the full amount of any liability in accordance with the Worker's Compensation Act in force in the Australian state or territory in which the majority of the Services are provided, or with Western Australia's Worker's Compensation Act if the majority of the Services are performed outside of Australia.

As per the requirements of the Client, Professional Indemnity and Public Liability insurance cover will be taken out by the Consultant at an additional cost to the Client on a Contract-by-Contract basis with a reputable insurer. The Consultant shall provide certificates of currency on request at any time before completion of the Services or up to the expiration of one (1) year from completion of the Services.

8. Copyright and Use of Documents

Copyright and the intellectual property in all reports, calculations, drawings and other documents produced by the Consultant in connection with the Services shall remain vested in in2Dredging Pty Ltd.

Any data generated by the Consultant with respect to the Service delivery of the Contract will be owned by the Client and may not be distributed to any third party by the Consultant without written consent from the Client, provided the Client pays the Consultant's fees and, if applicable the reimbursable expenses, in full.

The Consultant may, with prior written consent from the Client, publish, either alone or in conjunction with others, articles, photographs and other illustrations relating to the Project or the Services provided.

The Client accepts that the Consultant uses cloud storage services to store documents and information pertaining to the Client.

9. Dispute Resolution

Should a dispute or claim arise between the parties, then the party requiring the dispute to be resolved must promptly give the other party written notice identifying and giving details of the dispute or claim.

Within seven (7) days of a party receiving notification of a dispute or claim, the respective Representatives of the Client and Consultant shall meet and negotiate in good faith to resolve the dispute or claim.

If the dispute is not resolved or a process for resolving is not agreed to amicably within 28 days of service of the notice, then the matter shall be submitted for mediation under the proceedings set down by the Institute of Arbitrators and Mediators, Australia. The costs of mediation shall be shared equally by the parties.

The Contract shall be governed by the law of the Australian state or territory in which the majority of the Services are provided, or the law of Western Australia if the majority of the Services are performed outside Australia.

10. Term and Termination

The Contract will come into force on the commencement date set out in the Contract. If no such commencement date is set out, the Contract will come into force upon the earlier of (a) the commencement of Services and (b) the date the Contract has been signed by both parties, and in the event the parties do not sign on the same date, then the Contract will come into force on the date it is signed by the Consultant.

The Contract will remain in force until all Services have been provided, unless it is terminated earlier in accordance with the following termination provisions.

Either party may at any time, terminate the Contract by serving upon the other 28 days' written notice of its intention to do so. The Contract may be terminated by either party on written notice to the other with immediate effect, if the other commits a breach of any term of the Contract or these Terms and Conditions that is not remedied, or a process for resolving is not agreed to amicably within 28 days of a written notice to remedy the same.

If the Contract is terminated for any reason other than a breach of Contract by the Consultant, then the Client shall pay the Consultant for the Services carried out prior to the date of termination and all other costs and expenses incurred by the Consultant as a result of the termination (including, without limitation, cancellation charges of external consultants).

If the Contract is terminated pursuant to a breach of Contract by the Consultant, then the Consultant shall be entitled only to payment for its Services up to the date of the notice of termination.

11. Force Majeure

The Consultant shall not be liable in any way for any damage, loss, cost or expense arising out of or in connection with a Force Majeure event, or for any delay or failure to perform its obligations under the Contract where such delay or failure is due to a Force Majeure event, provided that as soon as reasonably possible after the start of the Force Majeure event, the Consultant notifies the Client of the Force Majeure event by written notice specifying the cause of, the date on which it started, its anticipated duration and the anticipated effect of the Force Majeure event on the Consultant's ability to perform its obligations.