

11 TERMS AND CONDITIONS

1. Application of the Agreement

- 1.1. This Agreement becomes binding on the earlier of when the Client:
- signs this Agreement;
 - instructs ADG to commence the Services; or otherwise
 - indicates by words or conduct that it intends to be bound by this Agreement.

2. Obligations of the Parties

- 2.1. ADG will provide the Services to the Client in accordance with this Agreement and exercising the degree of skill, care and diligence normally exercised by a competent consultant performing services similar to the Services.
- 2.2. The Client shall, subject to this Agreement, pay to ADG:
- the Fee as adjusted under this Agreement;
 - the Reimbursable Expenses; and
 - any Other Expenses incurred by ADG in respect of the Services and which are not stated as being included in the Fee or the Reimbursable Expenses.
- 2.3. The Client shall (whether personally or through its Associates) make available to ADG, in a timely manner, all information, documents and assistance as is necessary or reasonably required by ADG to carry out the Services. The Client warrants that any information given to ADG by the Client is accurate and current and that ADG is entitled to rely upon it when performing the Services.

3. Variations

- 3.1. If ADG is required or requested to perform a Variation to the Services, ADG shall perform the Variation as far as it is reasonably practicable to do so.
- 3.2. The price of each Variation must be agreed between the parties or, if the parties fail to agree, the price will be determined by applying ADG's then current hourly rates with the inclusion of any additional disbursements or out of pocket expenses incurred by ADG in respect of the Variation. The price of each Variation will be added to or deducted from the Fee.
- 3.3. Should ADG be required to vary the Services due to the provision of inaccurate, superseded, inconsistent, ambiguous or delayed information, documents or assistance by the Client or the Client's Associates, ADG will also be entitled to be paid the additional costs incurred as a result as a Variation to the Services in accordance with clause 3.2.

4. Payment

- 4.1. ADG may claim payment of the Fee and the Reimbursable Expenses progressively at monthly intervals. Any claims for payment made by ADG must be in writing and given to the Client or the Client's Representative and include details of the Services performed, the Reimbursable Expenses incurred and any Other Expenses incurred by ADG in performing the Services. The Client shall pay ADG's payment claims within 30 days of the date of each claim.
- 4.2. Should the Client dispute the amount claimed by ADG (in whole or in part), the existence of the dispute, including reasons for it and the amount in dispute, shall be notified to ADG in writing within 14 days of the Client's receipt of the payment claim the subject of the dispute. The portion of any payment claim that is undisputed shall remain payable to ADG by the Client in accordance with clause 4.1.
- 4.3. If the Client fails to pay ADG an amount due under this Agreement, the Client shall pay interest on the amount outstanding to ADG until it has been paid in full at the rate referred to in s67P of the Queensland Building and Construction Commission Act 1991 (Qld). Interest will continue to accrue on any amounts disputed by the Client and, if the dispute is resolved in ADG's favour (in whole or in part), the Client will pay ADG all interest which accrued in respect of any amount that is ultimately payable to ADG by the Client.
- 4.4. ADG may suspend performance of the Services by written notice to the Client if:

- the Client fails to pay an amount due to ADG under this Agreement; or
- ADG has any reasonable concerns about the Client's solvency or capacity to continue to perform this Agreement.

- 4.5. If an amount remains outstanding to ADG or the Client fails to demonstrate its solvency or capacity to continue to perform this Agreement within 14 days of ADG's notice suspending the Services under clause 4.4, ADG may do one or both of the following:

- terminate this Agreement by further written notice; or
- revoke the licence referred to in clause 8.1, upon which the Client agrees that it will return to ADG all Intellectual Property provided to, and any copies made by, the Client.

5. Assignment and Novation

- 5.1. Neither party will assign, sublet, transfer or novate any right or obligation under this Agreement without the written consent of the other party.

6. Subcontracting

- 6.1. ADG may, with the Client's prior written approval (not to be unreasonably withheld), engage with other consultants to assist with the provision of the Services.

7. Intellectual Property

- 7.1. All Intellectual Property created by ADG under this Agreement, whether Background IP or Intellectual Property created specifically in connection with the Project, remains vested in or licensed to ADG.

- 7.2. ADG grants the Client a royalty-free, non-exclusive licence to use the Intellectual Property (including Background IP) but only to the extent required to use the Deliverables for the purpose of completing the Project.

- 7.3. The licence granted in clause 7.2 is revocable if the Client does not pay to ADG an amount that is due and payable within 60 days from the relevant due date.

8. Insurance

- 8.1. ADG shall hold professional indemnity insurance and any other insurances as required by law. ADG shall provide certificates of currency upon request.

9. Default and Termination

- 9.1. This Agreement may be terminated:

- by ADG in accordance with clause 4.5 of this Agreement or if the Client directs ADG to suspend the performance of the Services (for any reason other than the occurrence of a Force Majeure Event) or there is a Continuity Event and the suspension or Continuity Event continues for a period of more than 90 days.
- by either party if the other party:
 - undergoes an Insolvency Event;
 - is in material breach of its obligations under this Agreement and that breach is incapable or remedy or where the other party fails to take steps to remedy the breach within 14 days after receiving a notice from the non-defaulting party requesting that the breach be remedied; or
 - provides its written consent to a request to terminate this Agreement, including as to the terms applicable to the termination.

- 9.2. If this Agreement is terminated pursuant to this clause 4.5, the parties' remedies, rights and liabilities shall be the same as they would have been under the law governing this Agreement had the defaulting party repudiated this Agreement and the non-defaulting party elected to treat this Agreement as at an end and recover damages.

10. Force Majeure

- 10.1. A party will be relieved from performance of an obligation (except any obligation to pay the Fee) under this Agreement where it is

- unable to perform the obligation due to the occurrence of a Force Majeure Event.
- 10.2. Where a party is prevented from performing an obligation because of the occurrence of a Force Majeure Event, the obligation will be suspended for so long and to the extent that it is affected by the Force Majeure Event. If a Force Majeure Event occurs the affected party must:
- A. give prompt written notice to the other party with details of the Force Majeure Event and the extent to which the party anticipates it will be unable to perform its obligations; and
 - B. recommence performance of any suspended obligations as soon as possible after the Force Majeure Event ceases and give prompt notice of the cessation of the Force Majeure Event to the other party.
- 11. Dispute Resolution**
- 11.1. If a dispute or difference between the parties arises in connection with the subject matter of the Agreement, including a claim at law, either party may give the other party a written notice of the dispute which adequately identifies and provides details of the dispute. Notwithstanding the existence of a dispute, except in relation to the exercise of a right to terminate this Agreement, the parties must continue to perform the Agreement.
- 11.2. Within 14 days after service of a notice of dispute, and as a condition precedent to the commencement of legal proceedings, the parties must confer in an attempt to resolve the dispute. If the dispute has not been resolved within a further 7 days, either party may commence legal proceedings, but this provision shall not prevent a party from commencing legal action to enforce payment due under the Agreement or to seek injunctive or urgent declaratory relief.
- 12. GST**
- 12.1. To the extent that a party makes a taxable supply to the other for the purposes of the GST Act under this Agreement, the amount due to the supplying party will include an additional amount for GST at the prevailing GST rate.
- 13. General**
- 13.1. Agency – if a Client’s Representative is identified in Item 6 of Part A the Client acknowledges and agrees that it has appointed the Client’s Representative to act as the Client’s agent in respect of this Agreement and the Client’s Representative is authorised to execute this Agreement, and otherwise give instructions or act, or receive notices in accordance with clause 1414, on the Client’s behalf. The Client’s Representative acknowledges and agrees that when acting on the Client’s behalf under this Agreement, it does so as agent of the Client.
- 13.2. Counterparts – this Agreement may be signed in any number of counterparts which together make one instrument.
- 13.3. Amendments – this Agreement may only be amended by written agreement between all parties.
- 13.4. No waiver – a right under this Agreement may only be waived in writing, signed by the party granting the waiver.
- 13.5. Entire agreement – this Agreement supersedes all previous agreements about its subject matter and this Agreement embodies the entire agreement between the parties and no prior representations or promises form part of this Agreement unless expressly stated. To the extent permissible by law, all terms and warranties implied by law (whether statute, common law or custom) are excluded.
- 13.6. Remedies cumulative – the rights and remedies contained in this Agreement are cumulative and are not exclusive to any other rights or remedies provided at law unless expressly stated to the contrary in this Agreement.
- 13.7. Severance – if any part of this Agreement is, or is held to be, void or unenforceable, it may be severed from this Agreement and the remaining provisions shall continue in full force and effect.
- 13.8. Survival – clauses 4, 5, 7, 9, 11, 13, 14, 15, 16 survive termination and any other clauses which by their nature, should survive termination of this Agreement.
- 13.9. Confidentiality – the parties shall treat as confidential this Agreement, all documents, data, drawings, and all other information provided by one party to the other and shall not disclose the information except to their professional advisers or otherwise required by law.
- 13.10. Retention of documents – ADG may retain copies (whether electronically or otherwise) of all documents provided to it or produced by it under this Agreement for a period of up to 7 years (or such later term as required by law) after which ADG may, in its absolute discretion, destroy or dispose of the documents without reference to the Client.
- 13.11. Governing law and jurisdiction – the law of the State or Territory in which the project is located govern this Agreement, except where the project is located outside of Australia in which case the jurisdiction shall be Queensland, Australia. Each party irrevocably submits to the exclusive jurisdiction of the courts of that State or Territory.
- 13.12. Consequential Loss – the parties are not liable to each other for Consequential Loss (other than in relation to the Client’s obligation to pay the Fee).
- 13.13. Delays – the Client acknowledges and agrees that ADG is not liable to the Client for any type of loss or damage suffered by the Client relating to any delay in the performance of the Services or the Client’s delivery of the Project.
- 13.14. Limitation of liability – to the extent permitted by law, ADG’s maximum liability to the Client under this Agreement for all claims arising in respect of this Agreement or the Services (whether in contract, tort (including negligence), under an indemnity, statute or any other basis in law or in equity) shall not exceed three times the Fee that ADG receives under this Agreement.
- 13.15. Indemnity – to the extent permitted by law, the Client indemnifies ADG against all Loss, whether arising under the Agreement, at law or in equity, suffered by ADG as a result of any act or omission of the Client or its Associates, in connection with this Agreement, but such indemnity will be reduced to the extent that it is established that ADG caused or contributed to the Loss.
- 14. Notices**
- 14.1. A notice, consent or communication under this Agreement, including a claim for payment, is effectively served on the recipient if it is in writing, addressed to the recipient to whom it is to be given (or where relevant, the recipient’s agent) and delivered by hand, prepaid post, fax or email to the recipient’s address stated in this Agreement, or as the recipient otherwise notifies the sender.
- 14.2. A notice given under clause 14.1 is given and received as follows, with the time expressed being the local time in the place of receipt if sent by:
- A. email, at the time of receipt by the recipient’s mail server unless the sender receives an automated message generated by the recipient’s mail server the email could not be delivered; or
 - B. post:
 - (i) 3 Business Days after posting, if sent within Australia; or
 - (ii) 7 Business Days after posting, if sent to or from a place outside Australia.
- 15. Limitation of Liability for Non-Compliant Cladding**
- 15.1. The Client indemnifies and holds ADG harmless from any liability or claim directly or indirectly connected with or arising out of any external insulation, finishing system, wall cladding or façade material that breaches the requirements or provisions of the National Construction Code or any legislation relating to fire safety (Non-Compliant Cladding) to the extent permitted by law.
- 15.2. If clause 15.1 is void or illegal for any reason, ADG’s liability to the Client arising directly or indirectly from Non-Compliant Cladding, whether under the law of contract, in tort otherwise, is limited to the Fee received by ADG.
- 16. Interpretation**
- 16.1. In this Agreement, capitalised terms have the meaning given to them below or as elsewhere defined in this Agreement:

ADG means the entity named in Item 3 of Part A;

Agreement means the agreement recorded in this document and includes the Fee Proposal and any special conditions;

Associate means agents, employees, contractors or consultants, including (in the case of the Client) the Client's Representative;

Background IP means Intellectual Property owned by, or licensed to, ADG and which was created prior to the commencement of the Services or developed independently of the Services or this Agreement;

Business Day means any day other than a Saturday, Sunday, or a gazetted public holiday in the State or Territory identified in Item 13 of Part A;

Client means the person(s) or entity(ies) described in Item 5 Part A;

Client's Representative means the person(s) or entity(ies) described in Item 6 of Part A;

Consequential Loss includes any indirect or consequential loss of income, loss of revenue, loss of profit, loss financial opportunity, financing costs, loss of business or business opportunity, loss of reputation or other loss which is not the reasonably foreseeable result of the harm caused;

Continuity Event means a break in continuity of the Services, including where the Client fails to provide ADG with instructions to, or does not allow ADG to, continue progressing or performing the Services;

Deliverable means the output of the Services that ADG is required to handover to the Client, as described in this Agreement;

Fee means the money payable to ADG under this Agreement for the performance of the Services, as identified in Item 7 of Part A, and as adjusted in accordance with this Agreement;

Fee Proposal means ADG's fee proposal for performing the Services to which this Agreement is attached;

Force Majeure Event means acts of God, war, civil disturbance, government action, (excluding strikes, lock-outs or labour disputes), computer viruses, acts of terrorism or any other event or circumstance beyond a party's reasonable control;

GST Act means A New Tax System (Goods and Services Tax) Act 1999 (Cth) as amended from time to time, and any related legislation;

Insolvency Event means any of the following:

- A. the board of the relevant party passes a resolution that the company is insolvent, or is likely to become insolvent at some future time, and that an administrator of the company should be appointed;
- B. the relevant party is placed into bankruptcy, administration, liquidation or is otherwise dissolved;
- C. a deed of arrangement is entered in respect of the relevant party;
- D. an application is made to a court for the winding up of the relevant party which is not stayed, withdrawn or otherwise disposed of within 21 days of when the application is served on the relevant party;
- E. the relevant party resolves that it be wound up voluntarily;
- F. a winding up order is made in respect of the relevant party;
- G. an administrator, receiver, receiver and manager or liquidator is appointed to the relevant party;
- H. a court orders that there be a meeting of creditors or members of the relevant party;
- I. a mortgagee takes possession of any assets of the relevant party; or
- J. the relevant party informs the other party or any of its creditors, in writing, that it, he or she is insolvent or is unable to pay its debts as and when they fall due.

Intellectual Property means any registered or unregistered rights that subsist in material, including methods of working and know how, created from intellectual activity, including copyright, trade marks, design rights, moral rights and any other intellectual property right existing anywhere in the world;

Loss means any loss, damage, expense (including debt recovery expenses and legal expenses on a solicitor and client basis and such expenses shall not be considered Consequential Loss for the purposes of this Agreement) incurred or suffered by ADG and any claim, action, demand or proceedings for payment of moneys under or in connection with the Agreement or the Services, or

otherwise at law or in equity, including by statute, in tort or for restitution (including by third parties);

Other Expenses means the out-of-pocket expenses incurred by ADG for performing the Services which the Client is to pay to ADG in accordance with this Agreement and which are not stated as being included in the Fee or the Reimbursable Expenses;

Project is described in Item 1 of Part A;

Reimbursable Expenses means the expenses described in Item 8 of Part A which the Client is to pay ADG in addition to the Fee;

Scope is described in Item 10 of Part A and contained in the Fee Proposal (as varied from time to time in accordance with this Agreement); and

Services is described in Item 9 of Part A (as varied from time to time in accordance with this Agreement);

Variation means:

- A. an increase or decrease to the Services including payment of a fee or charge by ADG in connection with the Services;
- B. the performance of additional work by ADG including as required by law or a change to law;
- C. a change to the character or quality of the Services; or
- D. the prolongation or acceleration of the Services.

In this Agreement:

- A. a reference to a clause, schedule, annexure or party is a reference to a clause of, and a schedule, annexure or party to, the Agreement and references to the Agreement include any schedules or annexures;
- B. clause headings do not form part of, and must not be used in the interpretation of, the Agreement;
- C. a reference to a party to the Agreement or any other document or agreement includes the party's successors, permitted substitutes and permitted assigns;
- D. ADG's liability will be discharged and the Client irrevocably releases ADG from any claim or liability of any nature after 12 months from completion of the Project to which the Services relate;
- E. if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- F. a reference to a document or agreement (including a reference to the Agreement) is to that document or agreement as amended, supplemented, varied or replaced;
- G. a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- H. a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity;
- I. a reference to '\$' or 'dollar' is to Australian currency;
- J. the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as', or 'for example' (or similar phrases) do not limit what else might be included;
- K. the singular includes the plural and vice versa, and a gender includes other genders;
- L. to the extent of any inconsistency, the documents will have the following order of precedence: any special conditions, Part A, this Part B and the Fee Proposal;
- M. to the extent the Client comprises of two or more persons or entities, the provisions of this Agreement bind each of them, and their respective executors, administrators, successors and permitted assigns, jointly and severally; and
- N. if there is a reference to an Item in Part A and no Part A is attached to or provided with this Agreement, the term adopts the meaning set out in the parties' email or other written correspondence (to the extent it conveys agreement

17. *Ground Penetrating Radar*

17.1 Ground penetrating radar ("GPR") is a geophysical method that uses radar pulses to image subsurface objects or services, including within concrete structures. You acknowledge and agree that:

- a) GPR has its inherent limitations and can be affected by moisture or prevailing weather, soil and ground conditions at the time of survey; and
- b) while the purpose of our engagement is to identify and record the location of subsurface objects or services, and we will use our best efforts to do so, given GPR's inherent limitations, we cannot warrant or guarantee:
 - i. a survey will identify the existence of all subsurface objects or services; or
 - ii. the accuracy of any advice, recommendations or services we provide to you, including our advice as to the existence, location, size and type of any objects or services identified during a survey.

172. You acknowledge and agree that any advice, recommendations or services we provide you:

- a) will only outline the objects or services (including locations) which were reasonably apparent and reasonably identifiable by us during the survey.
- b) will not include reference to any objects or services where the existence, location, size or type of those objects or services are unable to corroborated by reference to alternative records (for example, from drawings of any existing structures or buildings).
- c) do not address or include any assessment of the structural adequacy of any elements of any structures or buildings.
- d) will be based on the prevailing weather, soil and ground conditions at the time of the survey.
- e) do not amount to a warranty or guarantee as to the accuracy of the existence, location, size and type of any objects or services identified therein.
- f) will be used by you as an assisting tool only and not be relied upon by you as the sole source of information as to the existence, location, size and type of any objects or services identified therein; and
- g) will not be relied upon by other persons or entities (including members of the general public) for any reason.

17.3. You acknowledge and agree that:

- a) we will not be liable to you for any claim, right of action or demand (or similar legal entitlement), in any jurisdiction, (whether under the law of contract, tort or otherwise) which you may suffer or incur by reason of our advice, recommendations or services or by reason of any reliance by you on our advice, recommendations or services;
- b) we will not be liable to other persons or entities (including but not limited to members of the general public), and you indemnify us and keep us indemnified, for any claim, right of action or demand (or similar legal entitlement) against us, in any jurisdiction, (whether under the law of contract, tort or otherwise) for which they may suffer or incur by reason of our advice, recommendations or services or by reason of any reliance by them on our advice, recommendations or services.