

VORAUS PTY LTD TERMS & CONDITIONS

1) Definitions and Interpretation

- a) *In this document, unless the context indicates a contrary intention:*
- i) **“Agreement”** means these Terms of Engagement and includes the Quotation, the Schedule of Fees and the Schedule of Services.
 - ii) **“VORAUS”, “VORAUS PROJECT MANAGEMENT”, “VORAUS QUANTITY SURVEYORS” AND “XEOCON”** means VORAUS Pty Ltd ACN 611 934 411.
 - iii) **“Client”** means the entity which appoints VORAUS to perform the Services in accordance with this Agreement or the Client’s Client.
 - iv) **“Client’s Site”** means a site or part of a site other than the premises from which VORAUS carries on its business.
 - v) **“Deliverable”** means any report, assessment, estimate, plan, study, evaluation, recommendation, forecast or any other document or material to be provided by VORAUS to the Client as part of the Services under this Agreement.
 - vi) **“Fees”** means VORAUS’s fees as set out in the Schedule of Fees or as otherwise agreed under this Agreement.
 - vii) **“GST”** means a tax imposed under GST Law.
 - viii) **“GST Law”** has the meaning given in section 195-1 of A New Tax System (Goods and Services) Act 1999 (Cth).
 - ix) **“Insolvency Event”** means:
 - (1) in the case of a corporation:
 - (a) a party is liquidated, whether compulsorily or voluntarily (other than for the purpose of amalgamation or reconstruction whilst solvent);
 - (b) a party enters into any arrangement with creditors;
 - (c) a party becomes subject to external administration within the meaning of Chapter 5 of the Corporations Act 2001 (Cth) including having a receiver or administrator appointed over all or any part of its assets; or
 - (d) anything analogous or having a substantially similar effect to the events specified in (a) to (c) above occurs in relation to a party in any jurisdiction, or
 - (2) in the case of an individual:
 - (a) a party commits an act of bankruptcy within the meaning of the Bankruptcy Act 1966 (Cth);
 - (b) a party enters into any arrangement with creditors; or
 - (c) anything analogous or having a substantially similar effect to the events specified in (a) and (c) above occurs in relation to a party;
 - x) **“Intellectual Property Rights”** means trade marks, trade names, domain names, logos, get-up, patents, inventions, registered and unregistered design rights, copyrights, circuit layout rights, and all similar rights in any part of the world (including know-how) including, where such rights are obtained or enhanced by registration, any registration of such rights and applications and rights to apply for such registrations.
 - xi) **“Personnel”** means a party’s officers, employees, agents and contractors.
 - xii) **“Quotation”** means VORAUS’s written fee proposal to provide the Services to the Client in accordance with this Agreement.
 - xiii) **“Schedule of Fees”** means the Schedule of Fees attached to the Quotation.
 - xiv) **“Schedule of Services”** means the Schedule of Services attached to the Quotation.
 - xv) **“Services”** means the tax depreciation services set out in the Schedule of Services and any other services to be provided by VORAUS to the Client under this Agreement as agreed between the parties.
 - xvi) **“Work”** means the Services to be provided by VORAUS under this Agreement.
 - xvii) **“Standard Rates”** are as defined in Clause 18.
- b) *In this document, unless the context indicates a contrary intention:*
- i) headings are for convenience only and do not affect interpretation;
 - ii) a reference to a person includes a natural person, corporation, partnership, and any other organisation or legal entity;
 - iii) the word “include” in all its grammatical forms is not a word of limitation;
 - iv) a word that is derived from a defined word has a corresponding meaning;
 - v) the singular includes the plural and vice versa; and
 - vi) a reference to “dollars” or “\$” is to Australian currency excluding GST unless noted otherwise.

2) This Agreement to prevail

- a) The terms and conditions of this Agreement prevail over any other terms and conditions (including those of the Client, if any) and can only be varied by written agreement between parties.
- b) Any request by the Client for the provision of the Services by VORAUS which purports to include terms not expressly included in this Agreement is of no effect and the Client’s request is deemed to be an offer based on this Agreement.

3) Appointment and Scope of Work

- a) This Agreement becomes binding on the Client when VORAUS is in receipt of a duly signed acceptance of VORAUS quotation or fee proposal from the Client or instruction to proceed has been given in writing, implied through commencement or verbally indicated by the client.
- b) By instructing to proceed in writing, implied through commencement or verbally indicated by the client, the Client is requesting that VORAUS perform the Services, the subject of VORAUS quotation or fee proposal, based upon the terms and conditions of this Agreement.
- c) Upon appointment and scope of work acceptance as defined in 3) a) and/or 3) b), VORAUS will provide the Services subject to this Agreement.
- d) The parties will comply with the Australian Standard AS4121 Code of ethics and procedures for the selection of Consultants and the National Code of Conduct for the Construction Industry as current as at the date of this Agreement, to the extent that they are applicable and consistent with this Agreement.
- e) The Client is responsible to ensure that VORAUS receives all necessary materials, documents, instructions and other information required in a timely manner to enable VORAUS to perform the Services in accordance with this Agreement.
- f) Unless otherwise agreed between the parties, the Client must provide a reasonable number of copies of all documents to VORAUS for the supply of the Services under this Agreement, free of charge to VORAUS. Unless otherwise agreed in writing, all documents must be supplied in digital format.
- g) Any oral or written instructions, materials, documents or other information given by the Client's representative or lead consultant to VORAUS will be deemed to have been given by the Client.
- h) The Client may issue further directions and request variations to the Services in writing to VORAUS from time to time. VORAUS may accept any such reasonable directions or variations and the Client must pay VORAUS in accordance with Clause 4.0 for any directions accepted or variations agreed by VORAUS.

4) Fees

- a) Unless otherwise provided under this Agreement, the Client must pay VORAUS the quoted and varied Fees for the Services.
- b) Unless otherwise agreed between the parties, if the scope of the Work is varied by the Client in a manner which requires additional Services to be performed by VORAUS (including as a result of or in connection with a delay which is beyond the reasonable control of VORAUS), the Client must pay VORAUS for the additional Services in accordance with the rates set out in the Schedule of Fees or, if there are no such rates, at Standard Rates.
- c) Unless otherwise agreed between the parties, if the scope of the Work is varied by the Client in a manner which reduces the Services required, the Client must pay VORAUS for all Services performed under this Agreement in accordance with the Standard Rates.
- d) If any phase of the Work fails to proceed through no fault of VORAUS and each of the phases is separately priced in the Schedule of Fees, the Client must pay VORAUS for the completed phases of the Work and reimburse VORAUS for any costs VORAUS incurs in contemplation of completing all stages of the Work. If the phases of the Work are not separately priced in the Schedule of Fees, the reduction in scope or termination will be dealt with under Clause 4)c) or 4)e) as appropriate.
- e) In the event of termination of this Agreement prior to the completion of the Work (except under Clause 9)a), the Client must pay VORAUS for all the Services performed under this Agreement to the date of termination in accordance with the rates set out in the Schedule of Fees or, if there are no such rates, at the Standard Rates. Minimum charge for cancellation after site inspection has been carried out is \$450 + GST.
- f) If the scope of the Work is reduced under Clause 4.3, any phase of the Work fails to proceed under Clause 4)d) or the Agreement is terminated under Clause 4)e), the Client must reimburse VORAUS for any costs of demobilising its operations, retrenching Personnel and other costs arising from or in connection with the reduction in the scope of the Work, the failure to proceed with any phase of the Work or the termination of the Agreement.
- g) If VORAUS requests that the Client provide security for VORAUS's Fees under this Agreement, the Client must provide security for the requested amount in the form of an unconditional bank guarantee, director's personal guarantee or other form of security nominated by VORAUS in the Schedule of Fees.

5) Terms of payment

- a) Settlement of VORAUS's Fees and expenses will be requested at the times indicated in the quotation.
- b) Unless otherwise agreed, fees less than \$1000 excluding GST require payment in full before VORAUS will release the report.
- c) The Client must pay within the time set out in the quotation unless negotiated otherwise.
- d) Without prejudice to any other right or remedy available to VORAUS, VORAUS may charge the Client for interest on any Fees and expenses remaining unpaid after the due date at the interest rate of 5% per day and such interest will accrue daily from the due date until the date of payment.
- e) VORAUS may withhold the performance of any Services if the Client fails to pay all amounts owing under a quotation in accordance with Clause 5) c).

- f) The Client must not withhold any amount of the Fees or expenses under an invoice issued by VORAUS by reason of any dispute that exists between the Client and VORAUS or by reason of any set-off or counter-claim by the Client.
- g) For security purposes, all payments will be processed on receipt of client authorized credit card information for the agreed fee amount to allow the securing of credit card details.

6) Time

- a) VORAUS will use its best endeavours to perform the Work in accordance with agreed times, but any such agreed times are estimates only and VORAUS will not be liable for any claim for late or non-performance.
- b) The Client must pay VORAUS for any reasonable costs incurred by VORAUS arising from or in connection with any delay in the provision of the Services that is beyond the reasonable control of VORAUS.

7) Site and other facilities

- a) If VORAUS is required to attend a Client's Site to perform any part or all of the Services, the Client must ensure all parts of the Client's Site comply with all laws and the requirements of any relevant authority from time to time, including those relating to occupational health and safety.

8) Intellectual property

- a) Ownership of all Intellectual Property Rights in respect of any Deliverable or the provision of the Services by VORAUS to the Client is vested in, and will vest in, VORAUS.
- b) All Intellectual Property Rights arising out of or in connection with the provision of Services (including the Deliverables) by VORAUS to the Client vest in VORAUS on their creation absolutely and nothing in this Agreement confers any such Intellectual Property Rights on the Client.
- c) The Client must not provide any Deliverable prepared by VORAUS to any third party for use in any prospectus, sales or promotional material or for any other purpose without the prior written consent of VORAUS.

9) Termination

- a) The Client may terminate this Agreement by written notice to VORAUS if VORAUS is in substantial breach of this Agreement and VORAUS has not commenced action to remedy the breach within 7 days after receipt from the Client of a written notice specifying the breach and requiring it to be remedied.
- b) Without prejudice to any other rights or remedies it may have against the Client, VORAUS may terminate this Agreement immediately by written notice to the Client if:
 - i) it has not received proper instructions from the Client
 - ii) the Client is in breach of this Agreement and the Client has not commenced action to remedy the breach within 7 days after notice specifying the breach and requiring it to be remedied; or
 - iii) if an Insolvency Event occurs in respect of the Client.
- c) If this Agreement is terminated for any reason except under Clause 9)a), the Client must pay VORAUS in accordance with Clause 4)d) or 4)e) (as applicable) and reimburse VORAUS for any reasonable costs VORAUS incurs in contemplation of completing all the Services under this Agreement.
- d) If VORAUS is prevented from performing the Services for more than [30 consecutive days] for any reason beyond VORAUS's reasonable control, VORAUS may immediately terminate this Agreement and:
 - i) the Client must pay VORAUS in accordance with Clause 4)d) or 4)e) (as applicable); and
 - ii) the Client releases VORAUS from all claims in connection with or arising out of the partial or total non-performance of the Services under this Agreement.

10) Limitation of liability

- a) Except as otherwise provided in this Agreement, all terms, conditions, warranties, undertakings, inducements or representations whether express, implied, statutory or otherwise relating in any way to the provision of the Services or to this Agreement are excluded to the fullest extent permitted by law.
- b) Without limiting the generality of Clause 10)a), except where this Agreement provides otherwise, VORAUS's total liability for any claim for loss, damage or expense incurred or suffered by the Client, whether arising under or in connection with or incidental to this Agreement, including the performance or non-performance of VORAUS's obligations under this Agreement or anything incidental to it, and whether by way of indemnity, by statute, in tort (for negligence or otherwise) or on any other basis in law or in equity will be limited to the total Fees paid by the Client for the Services provided by VORAUS to the Client under this Agreement preceding the date on which the loss, damage or expense arose.
- c) Where any law implies in this Agreement any term, condition or warranty ("Implied Term") and that law voids or prohibits provisions in a contract excluding or modifying the Implied Term, the Implied Term will be deemed to be included in this Agreement but the liability of VORAUS for any breach of the Implied Term will be limited, at the option of VORAUS, to any one or more of the following:

- i) the supply of the Services again; or the payment of the costs of having the Services supplied again.
- d) The Client must not commence proceedings against any of VORAUS's Personnel in respect of the facts, matters or circumstances giving rise to any loss, damage or expense under Clause 10)b) and this Clause 10)d) may be pleaded in bar to any such proceedings.
- e) Despite any other provision in this Agreement, VORAUS will not be liable for any consequential, indirect or special loss, such as loss of profits or revenue, loss of business opportunity, loss of production or loss of goodwill, suffered by the Client whether arising under or in connection with or incidental to this Agreement, including the performance or non-performance of its obligations under this Agreement or anything incidental to it, and whether by way of indemnity, by statute (to the extent that it is possible to limit such liability), in tort (for negligence or otherwise), or on any other basis in law or in equity.
- f) The provision to VORAUS of any documents or information evidencing or relating to any relationship, arrangement, contract or understanding between the Client and any third party is for information purposes only and does not affect, and must not be used to interpret the scope of VORAUS's engagement to perform the Services under this Agreement.
- g) VORAUS does not assume any responsibility to any third party or undertake to discharge any duty or responsibility of the Client to any third party by performing the Services or providing any Deliverables to the Client.
- h) VORAUS assumes no responsibility in respect of, and is not liable for any error, omission, discrepancy or defect in any materials, documents, information or instructions provided by the Client or the Client's Personnel to VORAUS under Clause 3)e). The Client must pay VORAUS at the Standard Rates for the performance of any additional Services by VORAUS due to any such error, omission, discrepancy or defect in the materials, documents, information or instructions.
- i) The Client indemnifies VORAUS from and against any and all loss, damage or expense directly or indirectly arising from or in connection with any breach of this Agreement by the Client or any unlawful, negligent or willfully wrong act or omission by the Client or the Client's Personnel.

11) Confidentiality

- a) A party must not disclose any confidential information (including technical, commercial, financial, or other information which could reasonably be regarded as being confidential) of the other party to any person except:
 - i) with the prior written consent of the other party;
 - ii) to its officers, employees or professional advisers (to the extent they need to know the confidential information); or
 - iii) if applicable, as required by an applicable law, including the rules of any relevant stock exchange, after first consulting with the other party about the form and content of the disclosure,
- b) and must use its best endeavours to ensure all permitted disclosures are kept confidential.
- c) Each party must take all reasonable steps to ensure that its officers, employees and professional advisers do not make public or disclose the other party's confidential information.
- d) This Clause 11) does not apply to information which:
 - i) is or becomes public knowledge other than by a breach of this Agreement;
 - ii) a party already possesses at the time the other party discloses the information to it; or
 - iii) a party acquires from a third party entitled to disclose that information.
- e) VORAUS does not sell, rent or lease its customer lists to third parties. As a VORAUS client, VORAUS may, from time to time, contact you about a particular VORAUS service that may be of interest to you. In all cases, your unique personally identifiable information (e-mail, name, address, telephone number) is not transferred to the third party. Should you not wish to receive this information you can unsubscribe at any time.

12) Dispute or difference

- a) A party must not commence any court or arbitration proceedings relating to a dispute under or in relation to this Agreement unless it complies with this Clause 12) except where the party seeks urgent interlocutory relief.
- b) A party claiming that a dispute has arisen under or in relation to this Agreement must give written notice to the other party specifying the nature of the Dispute.
- c) A dispute must, in the first instance, be referred to mediation within 30 days after notice is received by a party under Clause 12)b). The mediator will be selected by agreement between the parties who will bear the costs of the mediation equally. In the event that the parties cannot agree on a mediator, the parties must request that a mediator be nominated by the Chapter President of the Australian Institute of Quantity Surveyors in the State or Territory where the Services are being performed.
- d) If the dispute or any part of it is not resolved within 30 days of the mediation conference, the dispute or any part of it (as the case may be) must be immediately referred to arbitration in accordance with, and subject to, The Institute of Arbitrators Australia Expedited Rules for the Conduct of Commercial Arbitration.

13) Assignment

- a) The Client must not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of VORAUS, which consent will not be unreasonably withheld.
- b) VORAUS may assign its rights or sub-contract its obligations under this Agreement.

14) Notices

- a) Any notice to be given under this Agreement may be given in writing addressed to the party at the address specified at the commencement of this Agreement or at its last known business address or, if the party is a company, at its registered office.
- b) Any such notice will be deemed to have been received by the recipient on the third Business Day after the date of posting.

15) Applicable law and jurisdiction

- a) The law governing this Agreement will be the law of the State or Territory in which the Services are performed by VORAUS and the parties submit to the non-exclusive jurisdiction of the courts in that State or Territory.

16) Tax

- a) All Fees exclude Government taxes introduced or levied after the date of this agreement. New government taxes and charges will be added to invoice amounts.
- b) All Fees exclude GST unless noted otherwise. The amount of any GST will be added to invoice amounts.

17) General

- a) This Agreement constitutes the sole and entire agreement between the parties with regard to its subject matter and a warranty, representation, guarantee or other term or condition of any nature not contained or recorded in this Agreement is of no force or effect.
- b) The rights, duties and remedies granted or imposed under the provisions of this Agreement operate to the extent not excluded by law.
- c) A right or remedy created by this Agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.
- d) Nothing in this Agreement constitutes or will be deemed to constitute a partnership between the parties or the appointment of one party as the agent of the other, or the employment of one party by the other. Other than as expressly provided in this Agreement, no party has the authority or power to bind the other or to contract in the name of, and create a liability against, the other in any way or for any purpose.
- e) Clauses 1, 8, 10, 11, 15 and 17 survive termination or expiry of this Agreement.

18) Standard Rate for calculation of Fees

- a) \$180.00 AUD excl GST per hour during normal business hours.
- b) \$250.00 AUD excl GST per hour for all other hours.