

Simmonds & Bristow Pty Ltd – Terms of Engagement and Consultancy Agreement

Form: SB-0800A

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Rev - 2



TERMS OF ENGAGEMENT AND CONSULTANCY AGREEMENT

1. Parties:

This agreement is made between SIMMONDS & BRISTOW PTY LTD (ABN 33 010 252 418) of 40 Reginald Street Rocklea in the State of Queensland (the consultant) and the organisation/person whose name and address is specified in the Schedule (the client).

2. Definitions:

'additional charge' means a charge in accordance with the consultant's standard rates in effect from time to time payable by the client;

'commencement date' means the date of commencement of this agreement specified in the schedule;

'consultancy services' means the services to be performed by the consultant under this agreement specified in schedule 1, including engineering and scientific consulting services, analytical laboratory services and training services.

'client's site' means the address of the client as specified in the schedule;

'force majeure' means an act, omission or circumstance over which the consultant could not reasonably have exercised control.

3. Scope of Agreement

The client shall employ the consultant and the consultant shall serve the client as a consultant to perform the consultancy services in accordance with this agreement.

4. Duration

This agreement will commence on the commencement date and will continue in effect for the period stated in the schedule or until otherwise terminated under this agreement whichever is the earlier.

5. Charges and Payment

- (a) The client may apply for credit or an extension of credit from the consultant, by completing the consultant's credit application form. The consultant may at its sole discretion extend an amount of credit to the client, based on this application. Any credit used by the client whilst provided on 14 day terms remains repayable on demand.
- (b) The consultant shall submit invoices at least monthly for work undertaken during the month or such other period as the invoice covers.
- (c) The client shall pay the consultancy fee calculated in accordance with the schedule including charges for analytical work performed as part of the consultancy services at the usual rates charged by the consultant within 14 days of the date of the consultant's progress and/or final tax invoice/s.
- (d) If the client is in arrears in any payment due to the consultant under this agreement, the client shall pay, in addition to the arrears, a late payment fee per month of 2% of the outstanding balance of the client's credit account until all amounts in arrears are settled.
- (e) The consultant may also at its sole discretion and without penalty, suspend the provision of services until the amount in arrears is settled by the client.

6. Expenses

The client shall reimburse the consultant the amount of all expenses reasonably and properly incurred by it in the performance of its duties under this agreement plus an administration charge of 10% of the expenses claimed, including travel expenses between the consultant's premises and the client's site, accommodation and subsistence expenses, and all other expenses incurred or required to be incurred by the consultant to promptly and efficiently provide the consultancy services.

7. Title

- (a) The client agrees that any works, items, materials or information of whatever nature produced or developed by the consultant or under the consultant's direction pursuant to or in the course of providing the consultancy services shall remain the sole and complete property of the consultant, whether such property is tangible or is in the nature of industrial and intellectual property rights (including copyright and rights of confidential information).
- (b) If the client has fully complied with this agreement and if the works, items, materials or information referred to in clause 7(a) have been produced by the consultant as part of the consultancy services, the consultant grants the client a non-exclusive and non-transferable licence to use such works, items, materials and information for such purposes as the parties reasonably contemplate at the commencement date.
- (c) All sample containers, labels, eskies, and other packing materials provided by the consultant shall remain the property of the consultant. The consultant shall not be responsible for the storage or return to the client any property tendered to the consultant by the client.

8. Additional Services

As necessary or if requested by the client the consultant may provide services in addition to the consultancy services shown in the schedule. The consultant may make an additional charge and the client agrees to pay for providing such additional services at the rates agreed for the additional work, or if no rates are agreed the rates shown in the schedule.

9. Liability of Consultant

- (a) Except as expressly provided to the contrary in this agreement, all terms, conditions, warranties, undertakings, inducements or representations whether express, implied, statutory or otherwise relating in any way to the consultancy services or to this agreement are excluded. Without limiting the generality of the preceding sentence, the consultant shall not be under any liability to the client in respect of any loss or damage (including consequential loss or damage) however caused, which may be suffered or incurred or which may arise directly or indirectly in respect of the failure or omission on the part of the consultant to comply with its obligations under this agreement.
- (b) Where any Act of Parliament implies in this agreement any term, condition or warranty that the Act avoids or prohibits provisions in a contract excluding or modifying the application of an exercises of, or liability under such term condition or warranty shall be deemed to be included in this agreement. However, the liability of the consultant for any breach of such term, condition or warranty shall be limited, at the option of the consultant, to any one or more of the following:
 - (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again

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- (c) The client warrants that it has not relied on any term, condition or warranty, undertaking, inducement or representation made by or on behalf of the consultant which has not been stated expressly in this agreement or upon any description or illustrations or specifications contained in any document including any catalogues or publicity material produced by the consultant.

10. Force Majeure

- (a) The consultant shall not be liable for any delay or failure to perform its obligations if such failure or delay is due to force majeure.
- (b) The consultant shall notify the client as soon as practicable of any anticipated delay due to force majeure. The performance of the consultant's obligations under this agreement shall be suspended for the period of the delay due to force majeure.
- (c) If a delay to force majeure exceeds thirty (30) days, the client may terminate this agreement immediately on providing notice to the consultant. If the client gives such notice to the consultant-
 - (i) the consultant shall refund moneys previously paid by the client under this agreement for which no services have been provided; and
 - (ii) the client shall pay the consultant a reasonable sum in relation to services rendered or costs and expenses incurred prior to termination for which no payment has been made by the client.

11. File and Sample Storage and Retrieval

- (a) The consultant will store the client's file/s for up to 7 years following completion of the matter or termination of the client's instructions. The client authorizes the consultant to destroy the records stored on the client's file/s after 7 years, except file/s relating to the delivery of training and issuing of qualifications which will be stored for a period of 35 years in accordance the consultant's obligations as a Registered Training Organisation.
- (b) If the client wishes to retrieve a file from storage for any reason following completion, the client agrees to pay the retrieval costs of \$75.00 for each matter, or such greater sum as the consultant may incur.
- (c) Samples of water, soil, aggregate and other materials submitted by or on behalf of the client for analysis by the consultant shall be stored at no charge for a period of 14 days from the date of issue of the Laboratory Certificate of Analysis. The client authorizes the consultant to appropriately and safely destroy and dispose of the samples thereafter.

12. Termination

- (a) Without limiting the generality of any other clause in this agreement, the consultant may terminate this agreement and any licence granted pursuant to this agreement immediately by notice in writing if-
 - (i) any payment due from the client to the consultant pursuant to this agreement remains unpaid for a period of fourteen (14) days; or
 - (ii) the client breaches any clause of this agreement and such breach is not remedied within seven (7) days of written notice by the consultant.

- (b) Notwithstanding the preceding clause the consultant may terminate this agreement and any licence granted pursuant to this agreement immediately on notice in writing to the client if-
 - (i) the client becomes, threatens or resolved to become or is in jeopardy of becoming subject to any form of insolvency administration;
 - (ii) the client, being a partnership, dissolves, threatens or resolved to dissolve or is in jeopardy of dissolving.
 - (iii) the client, being a natural person, dies; or
 - (iv) the client ceases or threatens to cease conducting its business in the normal manner.
- (c) Notwithstanding the preceding paragraphs, the consultant may terminate this agreement by giving thirty (30) days' notice to the client.
- (d) If notice is given to the client pursuant to the preceding clauses, the consultant may, in addition to terminating the agreement-
 - (i) retain any moneys paid;
 - (ii) charge a reasonable sum for work performed in respect of work which no sum has been previously charged;
 - (iii) retake possession of all property of the consultant in the possession of the client;
 - (iv) be regarded as discharged from any further obligations under this agreement; and
 - (v) pursue any additional or alternative remedies provided by law.
- (e) The client may terminate this agreement if the consultant breaches any term of this agreement and such breach is not remedied within fourteen (14) days of written notice by the client.

13. Assignment

The benefit of this agreement shall not be dealt with in any way by either party (whether by assignment, sub-licensing or otherwise) without the other party's prior written consent.

14. Sub-contractors

The consultant may sub-contract for the performance of this agreement or any part of this agreement, unless specifically agreed otherwise between the parties.

15. Sample Collection Warranty

- (a) The client agrees to warrant that it and its employees and contractors will comply with the Sampling Instructions as issued from time to time by the consultant (Current Revision attached) when undertaking sampling and/or submitting samples for analysis by the consultant. The consultant may claim and the client agrees to pay an additional fee should the client fail to fulfil this warranty.
- (b) The consultant warrants that it will ensure that samples collected by it shall be collected in accordance with its NATA accredited sampling methods and the relevant state Environmental Protection Agency sampling requirements, whichever the stricter, and transport samples in accordance with AS5667.

16. Waiver

- (a) No right under this agreement shall be deemed to be waived by a party except if such waiver is in writing signed by the party alleged to have waived the right.
- (b) A waiver by a party pursuant to clause 16(a) will not prejudice its rights in respect of any subsequent breach this agreement by the other party.
- (c) Subject to clause 16(b) any failure by a party to enforce any clause of this agreement, or any forbearance, delay or indulgence granted by a party to the other shall not be construed as a waiver of the first-mentioned party's rights under this agreement.

17. Entire Assignment

This agreement constitutes the entire agreement between the parties for the provision of consultancy services by the consultant to the client. Any prior arrangements, agreements, representations or undertakings are superseded. Any modifications or alterations of any clause of this agreement will not be valid except in writing signed by each party.

18. Headings

Headings used in this agreement are for convenience and ease of reference only, are not part of this agreement and shall not be relevant to or affect the meaning or interpretation of this agreement.

19. Severability

If any provision of this agreement is held invalid, unenforceable or illegal for any reason, this agreement shall remain otherwise in full force apart from such provision which shall be deemed deleted.

20. Governing Law

This agreement will be governed by and construed according to the law of Queensland and the parties agree to submit to the jurisdiction of the courts and tribunals of the State.

21. Notices

- (a) Notices under this agreement may be delivered by hand, by registered mail, or by facsimile to the addresses of the parties specified in or notified pursuant to this agreement.
- (b) Notice will be deemed given:
 - (i) in the case of hand delivery or registered mail, upon written acknowledgment of receipt by an officer or other duly authorised employee, agent or representative of the receiving party;
 - (ii) in the case of facsimile, upon proof of completion of transmission.