



ASSURED ENVIRONMENTAL; TERMS & CONDITIONS

CLAUSE 1. AGREEMENT

- 1.1. These terms of engagement together with the definition of:
 - 1.1.1. the scope of services of Assured Environmental (the "Services"), and
 - 1.1.2. the charges applicable to the services (the "Payment")and any terms and conditions incorporated in or attached thereto shall comprise the agreement between Assured Environmental and the Client (the "Agreement").

CLAUSE 2. ROLE OF ASSURED ENVIRONMENTAL

- 2.1. Assured Environmental shall perform the Services in accordance with the Agreement. Assured Environmental shall consult the Client throughout the performance of the Services and shall advise the Client of any event or circumstance materially affecting the scope or timing of the Services.
- 2.2. If Assured Environmental considers that the information, documents and other particulars made available by the Client are not sufficient to enable Assured Environmental to provide the Services in accordance with the Agreement, Assured Environmental will advise the Client who shall then provide such further assistance, information or other particulars as necessary in the circumstances.
- 2.3. Assured Environmental shall perform the Services in a timely manner to the extent that it is within its reasonable control to do so.

CLAUSE 3. ROLE OF THE CLIENT

- 3.1. The Client shall as soon as practicable make available to Assured Environmental all information, documents and other particulars relating to the Client's requirements and shall make all necessary arrangements to enable Assured Environmental to perform the services in a timely manner. The Client shall notify Assured Environmental if the Client becomes aware of any matter that may change the scope or timing of the Services.
- 3.2. Unless otherwise specifically agreed the Client shall give its decisions and approvals and obtain all necessary approvals, authorities, licences and permits from governmental, municipal or other responsible authorities in time to permit the Services to be performed without delay.
- 3.3. The Client agrees that unless specifically stated in the Agreement the Services do not include any services or enquiries that are normally carried out by other professions such as legal, financial, accounting or insurance advisors.
- 3.4. The Client shall independently satisfy itself of the need for the Services.
- 3.5. The client shall nominate a person or persons as their representatives and give written notice of the names of the person/s so appointed. The client will agree that the nominated person/s has authority to act on its behalf for all purposes regarding a commission. Assured Environmental will not be obliged to accept or respond to instructions given by any person other than the nominated person/s.

CLAUSE 4. PAYMENT TO ASSURED ENVIRONMENTAL FOR SERVICES

- 4.1. In consideration of the promise by Assured Environmental to perform the Services, the Client promises to pay to Assured Environmental the Payment at the times and in the manner set out in the Agreement. Unless otherwise stated to the contrary elsewhere in the Agreement amounts invoiced to the Client by Assured Environmental shall be due and payable within fourteen (14) days of date of invoice by the Client.
- 4.2. If the Client disputes the whole or any portion of the amount claimed in an account submitted by Assured Environmental the Client shall pay that portion of the amount stated in the account which is not in dispute and shall notify Assured Environmental in writing of the reasons for disputing the account. If it is resolved that some or all of the amount in dispute ought properly to have been paid at the time it was first claimed, then the Client shall pay the amount finally resolved together with interest on that amount in accordance with the terms of payment set out in the Agreement.
- 4.3. The Client shall pay to Assured Environmental interest on any amount due and not paid by the Client within the time required under the Agreement at the rate of 15 percent per month accruing daily.
- 4.4. Where any of the following occur for any reason other than a breach of the Agreement by Assured Environmental
 - 4.4.1. the performance of the Services is delayed;
 - 4.4.2. Assured Environmental is required to perform the Services in circumstances other than those expressly or reasonably assumed and normally pertaining to services of a similar nature;
 - 4.4.3. there is a change in the scope, timing, order or complexity of the Services;then Assured Environmental shall be entitled to additional payment by the Client and amendment to the Agreement that is reasonable in the circumstances.
- 4.5. The Payment does not cover any costs incurred or charges imposed as a consequence of force majeure and therefore any risk and costs, including Assured Environmental' costs, which may result from force majeure shall be borne and paid by the Client.
- 4.6. Unless otherwise agreed additional payments to which Assured Environmental may be entitled hereunder shall be calculated with reference to Assured Environmental' standard charges.
- 4.7. Goods and Services Tax will be applied at the applicable rate on the total of each invoice issued.

CLAUSE 5. WARRANTY AND LIMITATION OF LIABILITY

- 5.1. Assured Environmental shall perform the Services with due care and skill in accordance with the standard of care and skill normally exercised by professional engineers and scientists.
- 5.2. Assured Environmental shall perform any services which fail to comply with the standard prescribed above if the Client gives Assured Environmental notice of such failure within twelve (12) months of performance of such Services.
- 5.3. Assured Environmental shall have no liability to the Client for or in connection with any indirect, economic, special or consequential loss or damage including without limitation; loss of actual or anticipated profit or revenue, business interruption, delay costs, loss of opportunity, income or rent, financing and holding costs, loss by reason of shutdown or increased expense of operation, cost of replacement goods, services or facilities, loss of data, denial of use of any plant, port or facility.
- 5.4. The *Competition and Consumer Act 2010(Cth)* implies terms, conditions, and warranties which cannot be excluded or modified, or if they can, then only to a limited extent. The liability of Assured Environmental for breach of any term, condition or warranty implied by the *Competition and Consumer Act 2010(Cth)* shall be limited, at the option of Assured Environmental, to:
 - 5.4.1. if the breach relates to goods, to any one or more of the following:
 - 5.4.1.1. the replacement of the goods or the supply of equivalent goods;
 - 5.4.1.2. the repair of the goods;
 - 5.4.1.3. the payment of the cost of replacing the goods or of acquiring equivalent goods;
 - 5.4.1.4. the payment of the cost of having the goods repaired;
 - 5.4.2. If the breach relates to services:
 - 5.4.2.1. the supplying of the services again; or
 - 5.4.2.2. the payment of the cost of having the services supplied again.
- 5.5. Assured Environmental shall have no liability to the Client for or in connection with any cause of action of the Client or any other person unless the Client has notified Assured Environmental of the Client's intent to claim against Assured Environmental in respect of such cause of action within twelve (12) months from the date of cessation of the Services by Assured Environmental irrespective of whether the cause of action arose within that time or not.
- 5.6. The liability of Assured Environmental is proportionally reduced by any acts or omissions of the Client which contributed to the loss.
- 5.7. If, notwithstanding the above provisions Assured Environmental is liable to the Client, the liability of Assured Environmental to the Client shall be and is hereby limited in the aggregate to the amount of the payment or \$1,000,000 or three (3) times the fee, whichever is the lesser.
- 5.8. The above provisions apply to the extent that any statute does not render them or any of them void or unenforceable or otherwise limit their operation.

CLAUSE 6. FORCE MAJEURE

- 6.1. If either party hereto is not reasonably able to comply with its obligations hereunder due to force majeure those obligations shall be suspended whilst such force majeure continues.
- 6.2. Each party shall use its best endeavours to overcome the force majeure as soon as possible, but without being bound to settle any strike, lockout or other industrial disturbance on terms contrary to its wishes.

CLAUSE 7. CONFIDENTIALITY AND USE OF INFORMATION

- 7.1. The information provided in connection with or as a result of the Services is provided solely to the Client for its personal use. Assured Environmental shall have no liability or responsibility to any other person, therefore.
- 7.2. Neither party shall use, disseminate or make copies of information provided by the other party unless express approval is given in advance by the other party.

CLAUSE 8. INSURANCE

- 8.1. Assured Environmental shall have in effect for the duration of the Services the following insurances:
 - 8.1.1. Workers Compensation;



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- 8.1.2. Public Liability;
- 8.1.3. Professional Indemnity;
- 8.1.4. Motor Vehicle Third Party Liability;

Applicable to Assured Environmental' personnel, activities and motor vehicles.

- 8.2. The Client shall arrange for the endorsement of Assured Environmental as a co-insured onto any Contract Works insurance policy effected for the works in connection with which the Services are required such endorsement to include a waiver of the insurer's rights of subrogation against Assured Environmental.

CLAUSE 9. WORK AND SUPPLY BY OTHERS

- 9.1. If the Services include services in connection with construction work it is understood that Assured Environmental shall not be responsible for and shall have no liability to the Client for the work of construction contractors engaged directly or indirectly by the Client, their construction methods or precautions, nor for any of their acts, errors or omissions.

CLAUSE 10. SAMPLING & SITE ACCESS PROVISIONS

- 10.1. Unless agreed otherwise in writing by Assured Environmental prior to contract commencement, for the purposes of performing the work, the Client shall arrange to provide Assured Environmental with reasonable ingress and egress to the work site by Assured Environmental and/or its authorised subcontractors, its personnel and equipment, for purposes of inspecting, site preparation and conducting any necessary investigation prior to the commencement of the stated scope of work of the Project and during the course of the Project.
- 10.2. Where equipment is provided by Assured Environmental for use on the client's nominated work site, the client will provide a secure location for positioning of the equipment. The client is liable for all costs associated with the replacement or repair of equipment lost or damaged while on their nominated work site. This may include fees and costs associated with repeating monitoring due to lost data or samples, and costs associated with provision of temporary equipment.
- 10.3. Unless specified by the client, Assured Environmental takes no responsibility in providing adequate and access to the sampling sites. It is the responsibility of the client to ensure that safe and reliable access is available to each sampling location. Where requested, Assured Environmental can give advice on access requirements.

CLAUSE 11. DELIVERABLES

- 11.1. Unless otherwise agreed, Assured Environmental would deliver reports in electronic format (PDF and Excel) upon completion of the project. Should hardcopy reports be required, this would attract additional fees.

CLAUSE 12. DELAY COSTS

- 12.1. If delays are experienced due to no fault of Assured Environmental hourly rates shall apply as listed below. These fees relate to labour and equipment downtime which is a direct consequence of acts of force majeure (including inclement weather e.g. rain, high winds, storms) and all other factors except those encountered as a result of Assured Environmental.
- 12.2. Downtime charges also relate to the delaying and movement of planned on-site work after equipment has been freighted to site. Equipment downtime charges as list below apply in this case.

CLAUSE 13. HOURS OF WORK

- 13.1. Assured Environmental's standard working hours are 0730 to 1700 Monday to Friday inclusive. Non-scheduled work conducted on Monday to Friday outside of these times is considered to be night shift and attracts a 50% surcharge on top of our listed hourly rates. Weekend work attracts a 50% surcharge. Work conducted on a public holiday shall attract a 100% surcharge on hourly rates.

CLAUSE 14. VARIANCES

- 14.1. Any variance to the agreed scope may incur additional fees. The updated scope of work shall be agreed upon by both parties as a minimum by email communication.

CLAUSE 15. RESULTS GUARANTEE

- 15.1. Assured Environmental offers no guarantee that test results will be as predicted by the client. In the case where results presented by Assured Environmental are questioned, Assured Environmental would investigate and initiate a review of all procedures and data pertaining to the results. A discussion of the review process may be communicated to the client, however where Assured Environmental can find no fault, Assured Environmental does not accept withheld payment.

CLAUSE 16. CANCELLATION & POSTPONEMENT POLICY

- 16.1. The client will incur the cost of any service plus a 10% administration fee when the project is moved from the agreed start date. This fee may include freight charges for equipment, charges for flight changes and additional hourly rates related to project management.
- 16.2. Assured Environmental requires at least 30 hours' notice of any changes in site works resulting in a necessity to modify travel arrangements (air fares, accommodation etc). If insufficient notice is given additional charges may be incurred.

CLAUSE 17. PROJECT COMMENCEMENT

- 17.1. Assured Environmental will commence projects upon receipt of a purchase order. The standard project lead time is 2 weeks' notice to schedule and prepare the works. Should the client require fast mobilisation of a project, additional fees may be incurred with the associated costs of express freighting of goods, more expensive air travel and delaying any other current scheduled projects.

CLAUSE 18. HOURLY RATES

- 18.1. Where additional works are required as part of this project outside of the current proposal and any downtime charges, the following schedule of rates shall apply;

Please refer to submitted document.

- 18.2. Any additional expenses incurred as part of downtime or work outside the scope of this proposal will be charged to the client at cost plus 10% administration fee. This may include additional accommodation, flights or car hire.

CLAUSE 19. SUB-CONSULTANTS

- 19.1. Assured Environmental will exercise normal reasonable care regarding the services provided by sub-consultants retained on behalf of a client, but the sub-consultant will remain ultimately responsible for the services it provides.

CLAUSE 20. COPYRIGHT

- 20.1. Assured Environmental shall retain ownership of the copyright to all reports, drawings, designs, plans, figures and other work produced by Assured Environmental during the course of fulfilling a commission. The client shall have a licence to use such documents and materials for the purpose of the subject commission provided they are reproduced in full or, alternatively, in part with due acknowledgement to Assured Environmental.
- 20.2. Assured Environmental may agree to assign copyright if this is required by a client or if such a requirement is implicit in a client's brief and such a request is agreed upon in a proposal submitted by Assured Environmental in response to the subject client's brief