

1. The Agreement

- (a) T.R. White Pty Ltd t/as Forensic Mechanical Engineers (**Forensic Mechanical Engineers, we, or us**) and the person, persons or company described in the attached Fee Proposal (**you**) have entered into an agreement that includes the Fee Proposal, these Terms and Conditions and any Special Conditions (such Special Conditions, if any, being annexed to these Terms and Conditions at the time of the making of the Agreement, and signed by the parties) (the **Agreement**) for Forensic Mechanical Engineers to provide you with the Services described in the Fee Proposal.
- (b) We agree to provide the Services to a standard being that which is reasonably to be expected of a qualified professional person providing the Services and otherwise in accordance with the Agreement.
- (c) In performing the Services, we may provide you with 'personal information' within the meaning of the Privacy Act 2000. You agree to treat this information in accordance with the provisions of that Act.
- (d) The parties agree that the Agreement is subject to the laws of the State of New South Wales and the parties submit to the non-exclusive jurisdiction of the Courts of the State of New South Wales.
- (e) The Fee Proposal has been prepared by us on the basis of your current instructions. If your current instructions change in substance or in scope, that change may cause us to issue a further or revised Fee Proposal for the provision of the Services. You are required to inform us as soon as possible, in writing, of any change in the substance or scope of your instructions, notwithstanding that you may also communicate this change to the Consultant named in the Fee Proposal.
- (f) The relationship between the parties, it is agreed, is one of independent contractors and not one of principal/agent, employment or joint venture.

2. The Services

- (a) We will engage the Consultant or Consultants named in the Fee Proposal to provide the Services (the **Consultant**).
- (b) You will inform us, in writing of any timetable or deadline relevant to the Consultant's provision of the Services.
- (c) If the Consultant engaged to provide the Services attends at any Court, Tribunal or Inquiry to give evidence arising from the provision of the Services (whether or not the Consultant is eventually called to give evidence, or whether a subpoena for the Consultant to attend to give evidence has been issued at your request, at the request of any other party, or at all) you agree to pay us for the Consultant's time in attending Court in accordance with the hourly or daily rate for the Consultant as set out in the Fee Proposal or as advised to you by us in writing prior to the Consultant attending to give evidence (including any reasonable travelling, waiting time or like expenses).
- (d) If we consider it appropriate to do so, we may engage another Consultant to assist in any specialised area of the Services. Your approval will be requested in writing and your approval shall not be unreasonably withheld.

- (e) If we consider it necessary we will attend sites or your premises to perform the Services. Unless otherwise provided in the Fee Proposal traveling and inspection times of the Consultant will be charged at the Consultants advised hourly rate.
- (f) You will promptly provide us with all information, rights, decisions, samples or other materials reasonably necessary for the performance of the Services (the **Materials**).

3. Work Health and Safety

The health and safety of our staff, Consultants and of third parties is very important to us. Under this agreement, you agree to:

- (a) Give us written notice of any matters affecting the safe, secure and appropriate transportation, use, storage and disposal of the Materials;
- (b) Ensure that any Consultant attending upon a site inspection or at any premises by or known to you in connection with the provision of the Services, is provided a safe place of work in compliance with relevant occupational health and safety legislation or requirements.

4. Materials Generally

- (a) You acknowledge and agree that the Materials supplied may be used-up, damaged or destroyed by us during testing and that some materials cannot be preserved or stored. We will take reasonable steps to protect the Materials, if appropriate, but we are not responsible for the loss, theft, damage to or destruction of the Materials.
- (b) You agree to pay all storage, preservation, transportation and disposal costs in connection with the Materials. Upon completion of the Services, at your request and cost, we will return the Materials to you or will otherwise retain the Materials for a maximum period of 6 months from the date of the final invoice. If the Materials remain uncollected after the expiration of 6 months from the date of the final invoice, we are entitled to dispose of the Materials in accordance with the provisions of the *Uncollected Goods Act 1995* (NSW).
- (c) We may also retain a copy of some or all of the Materials for our records provided that we comply with the confidentiality requirements as set out in clause 6.

5. Payments

- (a) Until the Initial Payment stated in the Fee Proposal is paid we will not commence to perform the Services.
- (b) Unless otherwise stated in the Fee Proposal, you will pay to us the fees, expenses, charges and any other amounts at the rate or amount and in the manner specified in the Fee Proposal within 30 days of the date of our invoice issued to the address shown in the Fee Proposal. We reserve the right to request advanced payment.
- (c) Unless otherwise stated in the Fee Proposal, all amounts and rates are stated exclusive of GST. You must pay to us an additional amount on account of GST at the time you are invoiced. We will provide a tax invoice.

- (d) We may charge interest on overdue payments at the rate of 0.05% per day. Interest will accrue daily and interest shall capitalise daily.
- (e) We may suspend performance of the Services and our other obligations until all overdue amounts are paid.
- (f) We will issue you with a tax invoice either at the conclusion of the provision of the Services or on an interim basis. The amount due in accordance with the relevant tax invoice is payable within 30 days of the invoice date. Should we not receive payment within 30 days we may issue you with a reminder notice. Should we not receive payment within 60 days of the invoice date we reserve the right to commence recovery proceedings as we see fit. If we incur any cost or expense in recovering monies owing to us by you (including legal, debt recovery agency and court costs) we may recover such costs and expenses as a debt from you on an indemnity basis.
- (g) To the extent that it is necessary, you acknowledge and agree that we may disclose and report any default of the payment of our fees under this agreement (which is in excess of 60 days) to a mercantile or credit reporting agency.

6. Intellectual Property Rights, Confidential Information and Publicity

- (a) We own all intellectual property rights created in the course of performing the Services (the IPR). On full payment of all amounts due under clause 5, you have a non-exclusive right to use the IPR in any report or other document provided by us as part of the Services (the Report) for the sole purpose for which you obtained the Services.
- (b) Each party must maintain the secrecy and confidentiality of any information disclosed by the other party in the course of this Agreement which is not in the public domain, including information regarding the party's business or affairs and the Services (the **Confidential Information**) and use the Confidential Information only for the purpose for which it was provided.
- (c) This clause will not prevent either party disclosing any Confidential Information that is already in the public domain or as required by law, or you from using any Report for the purpose for which you obtained the Services, or us from disclosing the Confidential Information to the Consultant for the purpose of performing the Services. The Consultant, and Forensic Mechanical Engineers may publish information relating to the Services in academic, scientific and technical publications and our website with your consent, which you must not withhold unreasonably.
- (d) You must not use the names 'Forensic Mechanical Engineers', or the name of the Consultant, or any department, unit, employee or contractor of these entities in any promotional material without our prior written approval. You must ensure that your clients and customers comply with this requirement.

7. Responsibilities

- (a) Neither party is liable for any loss of profits, loss of data, special, incidental, or consequential loss or damage arising in connection with this Agreement.
- (b) You acknowledge and agree that where the

- (c) Services involve research, development, expert opinion or testing, we may produce no results or conclusions, opinions or results that are unpredictable or which do not favour you. We make no promise, prediction or warranty concerning the conclusions, opinions or results.
- (d) These Terms & Conditions include all statutory terms and conditions which by law may not be excluded. You acknowledge that you have not relied on any representations not set out in this Agreement. Our sole liability under or arising out of or in connection with this Agreement, whether arising out of breach of contract, under statute, common law, tort (including negligence) or otherwise is limited, at our option, to re-supply of the Services or paying the cost of re-supply of the Services.

8. Termination

- (a) Either party may terminate this Agreement immediately by written notice if the other party commits a material breach of this Agreement which it fails to correct within 30 days of being notified of the breach, or if the other party becomes the subject of any insolvency administration.
- (b) You may terminate the Agreement or reduce the scope of the Services by written notice to us but you must pay all fees and expenses incurred by us in connection with the Services up to the date on which we receive your notice and all future unavoidable costs and expenses we will incur in relation to the Agreement.
- (c) Clauses 1(c), 2(c), 4, 5, 6 and 7 survive termination or expiry of this Agreement.

9. Waiver

We may from time to time waive any one or more of these conditions. Such waiver will not affect these conditions other than for the particular transaction in which such waiver is given. These conditions will continue to operate as if such waiver had not been given.

10. Severability

Any provision of the Agreement which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. This does not invalidate the remaining provisions of the Agreement nor does it affect the validity or enforceability of that provision in any other jurisdiction.

11. Governing Law

These terms and conditions supersede all prior understandings, transactions, and communications, whether oral or written, with respect to the matters referred to herein and form the complete contract between us and you. No modification, alteration, or amendment of these terms and conditions shall be binding upon us unless accepted in writing by us. These terms and conditions shall be interpreted, construed and governed by the laws of the State of New South Wales, Australia.