

SCP Conditions of Engagement

Standard Conditions

1. SCP Consulting Pty Ltd ('SCP') shall provide to the Client the consulting engineering services described in the accompanying letter ('Services').
2. In providing the Services, SCP shall exercise the degree of skill, care and diligence normally exercised by consultants carrying out similar services.
3. The Client shall provide to SCP with a briefing and all information and documents concerning the Client's requirement for the Services.
4. The Client shall pay to SCP the fee and the reimbursable expenses as set out in the Fee Proposal provided by SCP to the Client, together with any additional fees payable pursuant to clause 2 of the Special Conditions.
5. SCP shall be entitled to submit a payment claim in respect of the fee and any reimbursable expenses on the last business day of each month. A payment claim which is submitted earlier shall be deemed to have been made on the date for making that claim under this clause. All moneys payable by the Client to SCP shall be paid within 30 days of the date of the invoice. Moneys not paid within that period shall attract interest at the cash rate published by the RBA at the date of the invoice plus 5% from the date of payment of the invoice until the date payment is received by SCP.
6. Notwithstanding any other provision of this agreement but subject to clause 7 and clause 8, the total aggregate liability of SCP and its employees, agents and contractors to the Client (and any person claiming under or through the Client) arising out of or in connection with the Services or this agreement whether in contract, tort (including negligence), restitution, statute, equity or otherwise is limited to the fee.
7. The limitation on SCP's liability pursuant to clause 6 shall not apply to the extent that:
 - a. SCP is actually indemnified in respect of that liability pursuant to a policy of insurance which SCP effects and maintains under this agreement, in which case SCP's liability is limited to the amount actually paid to SCP pursuant to that insurance;
 - b. the liability is in respect of personal injury, death, or third party property damage for which SCP is liable;
 - c. the liability arises as a result of wilful misconduct, malicious or criminal acts by SCP or its contractors, consultants, employees or agents; or
 - d. the liability cannot be limited by law.
8. Notwithstanding any other clause of this agreement, SCP shall not be liable to the Client for loss of income, loss of profit, loss of revenue; financing costs, loss of use, loss of opportunity, loss of reputation, loss of rent, business interruption, loss of data or information, loss of production, loss of contract or failure to realise anticipated savings.
9. SCP is discharged from all liability arising out of or in connection with the performance or non-performance of the Services or any act, default or omission in connection with this agreement whether:
 - a. in contract or tort (including negligence); restitution, equity or other principle of law; or
 - b. arising out of any state or federal legislation; or
 - c. otherwise;at the expiration of one (1) year from the earlier of:

- i. the date of completion of the Services described in the Fee Proposal; and
 - ii. the date of SCP's final invoice for the provision of the Services; and
 - iii. the date of termination of the agreement for provision of the Services;
- and the Client (and any person claiming through or under the Client) shall not be entitled to commence any proceeding, action or claim of any kind whatsoever against SCP (or any employee, agent or contractor of SCP) in connection with the same after the expiration of that one year period.

This clause and clause 6 shall only operate to the extent permitted by law and do not affect the liability of SCP which cannot be lawfully excluded.

10. To the extent that:

- a. clauses 6, 7, 8 or 9 above do not apply; and
- b. the Services comprise the supply of goods or services other than goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption; the liability of SCP to the Client for a breach of a consumer guarantee under the Australian Consumer Law (other than a consumer guarantee under sections 51, 52 or 53 of the Australian Consumer Law), condition or warranty shall be limited to:
- c. in the case of goods, the replacement or repair of the goods or the supply of equivalent goods or payment of the cost of replacing the goods or of having the goods repaired or supplying equivalent goods at the option of SCP; or
- d. in the case of services:
 - i. the supplying of the services again; or
 - ii. the payment of the cost of having the services supplied again.

In this clause the term "goods or services other than domestic goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption" has the same meaning as that term has in section 64 of the Australian Consumer Law.

11. Intellectual property rights (including copyright) in all drawings, reports, specifications, bills of quantity, calculations, data and other documents (whether printed or marked on paper or communicated by any other means or medium including without limitation by being contained in or on computer disks or by being electronically communicated or any method whereby sounds, images or writing are capable of being reproduced whether with or without the aid of any other article or device) produced by or on behalf of SCP in connection with the Services shall remain the property of SCP.
12. Subject to clause 13, SCP grants to the Client a non-transferable licence to use the materials referred to in clause 11 for the purpose of completing the works or project in relation to which the Services are provided. The Client shall not use, or make copies of, such documents in connection with any other works or project. SCP shall not be liable for the use by any person of any such documents.
13. If the Client is in breach of any obligation to make a payment to SCP, SCP may revoke the licence referred to in clause 11, and the Client shall then cause to be returned to SCP all documents referred to in clause 11, and all copies thereof.
14. If any dispute or claim arises between the Client and SCP either party may serve a Notice of Dispute on the other party. Within 10 business days of service of the Notice of Dispute, the parties must meet to attempt to resolve the dispute or agree on methods of doing so.
15. If the dispute is not resolved within 10 business days of the meeting referred to in clause 14, the dispute shall be referred to a mediation which shall be conducted pursuant to the rules of the Resolution Institute (NSW Chapter). The parties shall share the costs of the mediation including the fee payable to the mediator equally and shall bear their own costs of the mediation.

16. If the dispute is not resolved within 20 business days of the conclusion of the mediation referred to in clause 15, either party may commence proceedings in respect of the dispute in a court of competent jurisdiction.
17. The Client may terminate this agreement:
 - a. in the event of substantial breach by SCP of its obligations hereunder, which breach has not been remedied within 30 days of written notice from the Client requiring the breach to be remedied; or
 - b. upon giving SCP 60 days written notice of its intention to do so.
18. SCP may (at its option) suspend the performance of the Services or any part of the Services or terminate this agreement:
 - a. in the event of:
 - i. moneys payable to SCP hereunder being outstanding for more than 60 days; or
 - ii. other substantial breach by the Client of its obligations hereunder, which breach has not been remedied within 30 days of written notice from SCP requiring the breach to be remedied; or
 - iii. upon giving the Client 60 days written notice of its intention to do so.
19. If the agreement is terminated pursuant to:
 - a. clause 17(a) or clause 18(a)(i) or (ii), the parties' rights, remedies and liabilities shall be the same as they would have been under the law governing the agreement had the Client or SCP (as applicable) repudiated the agreement and the other party elected to treat the agreement as at an end and recover damages;
 - b. clause 17(b) or clause 18(a)(iii), SCP shall be entitled to payment in respect of all Services performed up to the date of termination, plus its reasonable demobilisation costs.
20. If SCP considers it appropriate to do so, it may, with the Client's prior approval, which shall not be unreasonably withheld, engage another consultant to advise or assist SCP in specialist consulting disciplines. The Client shall enter into the agreement with the other consultant (if any) and accepts responsibility for payment of all moneys, fee or expenses to such other consultant.
21. Neither party may assign, transfer or novate any obligation under this agreement without the written consent of the other.
22. If anything in these standard conditions or the special conditions is unenforceable, illegal or void then it is severed and the rest of the agreement remains in full force.
23. The agreement between SCP and the Client shall comprise the Fee Proposal and these conditions of engagement. The Client is deemed to have accepted the terms of the Fee Proposal and these conditions of engagement if signs and returns a copy of the Fee Proposal to SCP or otherwise continues to instruct SCP in relation to the Services after the date of the Fee Proposal.
24. This agreement shall be governed by the laws in force in New South Wales.

Special Conditions – Engineering

The special conditions below shall apply to the agreement except to the extent stated in the Fee Proposal.

1. The Client acknowledges and agrees that in preparing the Fee Proposal SCP has relied upon the information and documents which have been provided to SCP up to the date of the Fee Proposal.
2. The Client shall pay an additional fee based on hourly rates to SCP for changes to services, additional services and/or changes to documentation when such changes are the result of the Client's request or are due to circumstances outside the control of SCP. This shall include, for example, 'fast track' projects where documents prepared by SCP for early tendering require later amendment due to refinement of the architectural or engineering services designs.
3. Should the design phase of the project extend for a period greater than 6 months from the date of this agreement, or the construction phase of the project extend for a period greater than 12 months from the completion by SCP of its design documentation obligations, the Client shall pay to SCP additional fees equal to 6% of the amount otherwise payable in respect of the Services to account for any increases in staff salaries and additional administrative costs.
4. During the design and documentation process SCP shall supply hard copy prints of drawings to facilitate co-ordination and for the transfer of information. SCP shall provide a maximum of six sets of final drawings and specifications and two sets of computations. The Client shall reimburse SCP for the cost of preparing or producing any additional copies of documents.
5. If as part of the Services, SCP are commissioned to carry out inspections during construction SCP shall:
 - a. inspect the works periodically to review the general quality of workmanship and materials, but without having any obligations to inspect all the work; and
 - b. attend meetings when significant issues have arisen which affect SCP's responsibilities and which cannot be resolved more easily by other means.
6. The Client acknowledges that the service provided by SCP does not include services outside its area of expertise or outside its normal range of activity. Excluded areas include (but are not limited to), geotechnical investigation, design and documentation of formwork, shop drawing preparation, design of precast panels for lifting and handling, demolition and design of temporary works.
7. Unless noted otherwise in the Fee Proposal, the Services and the fee payable to SCP does not provide for the issue of Certificates of Compliance - Design for the project. The Fee Proposal has been provided on the basis that such Certification as required by the Client or any relevant building surveyor or certifier shall be provided by an external engineer(s) or other consultant engaged by the Client under a separate fee agreement.
8. Unless noted otherwise in the submission, the Services and the fee payable to SCP does not provide for the issue of a Certificate of Compliance – Construction for the project. The Fee Proposal has been provided on the basis that construction stage services will be carried out as described in clause 5 above. Upon completion of the construction stage(s), SCP shall issue a letter describing the inspections it has undertaken only.
9. The Client acknowledges that the Fee Proposal has been prepared on the basis that architectural files (in a format for suitable for use in AutoCAD or Revit) will be made available at:
 - a. the commencement of the stage of the project for which engineering drawings are required;
 - b. during the documentation period as the architectural design is developed; and
 - c. when any major revisions are made to the architectural design.