

Intrax Standard Terms & Conditions

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Intrax Standard Terms and Conditions

1. Definitions & interpretation

1.1. In these conditions, unless expressed or implied to the contrary:

- a. "Account Application Form" means the Account Application Form of Intrax from time to time available at <https://www.intrax.com.au/about-us/forms/>.
- b. "ACL" means the Australian Consumer Law as applicable as a law of the Commonwealth and in each State and Territory of Australia and as defined in Condition 12.1(a).
- c. "Background IP" means any Intellectual Property Rights in connection with the Services developed by Intrax independently of a Contract and or prior to the date of a Contract.
- d. "Business Day" means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed, or a payment is to be made.
- e. "Claim" includes actions, proceedings, suits, causes of action, arbitrations, verdicts and judgements either at law or in equity or arising under a statute, debts, dues, demands, claims of any nature, costs and expenses.
- f. "Conditions" means these Standard Terms and Conditions.
- g. "Contract" means the contract for the supply by Intrax to the Client of Services which is formed by the acceptance by the Client of Intrax's Fee Proposal for particular Services, and which incorporates these Conditions and the Fee Proposal (including any schedules or attachments to that Fee Proposal), as amended by agreement between the parties in writing from time to time.
- h. "Client" means, as the context requires, the applicant named in the Account Application Form, the person who submits an order for Services or accepts a Fee Proposal, or the purchaser of the Services.
- i. "Deliverables" means all documents delivered by Intrax to the Client as part of the Services under a Contract.
- j. "Fee Proposal", means the document, however titled, including any document titled "Quote" or similar, given to the Client explaining the Services being provided by Intrax to the Client and the pricing for each.
- k. "GST" has the same meaning given to that in the term in the GST Act, "GST Act" means A New Tax System (Goods and Services Tax) Act 1999(as amended).
- l. "Insolvency Event" means an event where a party suffers an act of bankruptcy or has a receiver, receiver and manager, administrator or controller appointed over any of its assets or goes into

liquidation (including provisional liquidation) or any similar event occurs.

- m.** "Intellectual Property Right" means all intellectual property and proprietary rights (whether registered or unregistered) including:
 - copyright and similar industrial or intellectual property rights.
 - any right to have information (including confidential information) kept confidential; and
 - rights in respect of patents, patent applications, inventions, trade secrets, trademarks, technical data, formulae, knowhow and registered designs.
- n.** "Interest Rate" means the penalty rate fixed under the *Penalty Interest Rates Act 1983* (Victoria);
- o.** "Intrax" means Intrax Consulting Engineers Pty Ltd ABN 31 106 481 252, or any subsidiary or associated entity (as defined in section 9 of the Corporations Act 2001 (Cth)) as notified by Intrax to the Client in a Fee Proposal.
- p.** "Invoice" means the Intrax invoice to the Client for the Services.
- q.** "Loss or Damage" means loss or damage however caused whether based in tort, contract or otherwise and includes without limitation any direct, indirect, special or consequential loss or damage, loss of profits, loss of production, loss or corruption of data, loss of trades, opportunity or business reputation, direct or indirect labor costs and overhead expense and damage to property.
- r.** "Security of Payment Law" means, as applicable:
 - *Building and Construction Industry Security of Payment Act 2002* (Vic).
 - *Building and Construction Industry Security of Payment Act 1999* (NSW).
 - *Building Industry Fairness (Security of Payment) Act 2017* (Qld).
 - *Building and Construction Industry Security of Payment Act 2009* (Tas).
 - *Building and Construction Industry Security of Payment Act 2009* (SA)
 - *Construction Contracts Act 2004* (WA).
 - *Building and Construction Industry (Security of Payment) Act 2009* (ACT).
 - *Construction Contracts (Security of Payments) Act 2004* (NT);
- s.** "Services" means professional geotechnical, civil, structural, electrical, mechanical, hydraulic, survey, forensic or other engineering or drafting services and any other services named and described on the Fee Proposal and as may be varied by agreement between the parties in writing.
- t.** "Variations" means changes to the scope of Services as agreed between the parties in writing.

1.2. Unless the context otherwise requires, in these Conditions:

- a.** if a Client consists of more than one person or corporate body, a Contract binds them jointly and each of them severally.
- b.** a reference to a person includes a firm, partnership, joint venture, association, corporation or other

corporate body; and a person includes the legal personal representatives, successors and assigns of that person.

- c. a reference to the singular includes the plural and vice versa; and a gender includes the other genders; and
- d. headings are inserted for ease of reference and do not affect the interpretation of these Conditions.

2. Trade

Intrax agrees to provide, and the Client agrees to purchase Services under these Conditions to the exclusion of any terms and conditions of the Client or any other document. Intrax's agreement to provide the Services does not constitute Intrax's acceptance of any terms and conditions purported to be imposed by the Client. The Services to be provided are set out in the Fee Proposal and in any Variations agreed in writing by Intrax and the Client.

3. Credit Facilities

- 3.1.** A credit account is only available to the Client if the Client has completed an Account Application Form which has been processed and approved by Intrax. Until an Account Application Form is approved or where no Account Application Form has been submitted, all trade for the provision of Services is strictly on a cash prior to delivery basis, or in accord with any other written agreement made between the parties at the time of the acceptance of the order.
- 3.2.** Payment for Services supplied under the credit account must be received by Intrax as per the trading terms granted. Any amount outstanding 30 days from the date of invoice will be notified to the Client and if amounts outstanding are not paid, may be subject to an interest charge.
- 3.3.** Where there is no approved credit account, payment terms for all invoices will be as set out in the relevant Fee Proposal.
- 3.4.** Subject to Condition 3.2, Intrax may charge interest on overdue accounts at the Interest Rate calculated daily until payment of the outstanding amount is made in full.
- 3.5.** If an Insolvency Event occurs in respect of the Client, the provision of a credit account to a client may be withdrawn at any time on notice to the Client. If the Client fails to make any payment due under this Contract, Intrax will notify the Client of the non-payment and allow a reasonable period for payment (generally not exceeding 14 days). If the Client does not make payment within this period:
 - a. the Client's credit account may be withdrawn (if applicable).
 - b. Intrax may terminate this Contract under clause 15.1(a); and
 - c. all reasonable debt recovery costs incurred by Intrax—including legal costs on a solicitor/client basis and any direct mercantile agent costs—will be added to the amount owing by the Client.

- 3.7** If payment of an account is made by credit card a 1.7% surcharge will apply.

4. PPSR

- 4.1. If Intrax agrees to provide Services on credit, this Condition 4 applies.
- 4.2. The Client acknowledges that these Conditions and each Contract will comprise a Security Agreement for the purposes of the PPSA.
- 4.3. The Client acknowledges that until such time as Intrax receives full payment in cleared funds for all Services supplied to the Client. These Conditions and each Contract creates a Purchase Money Security Interest in the Deliverables as security for the Client's obligations to Intrax under these Conditions and each Contract, registrable on the Personal Property Securities Register.
- 4.4. Until Intrax has been paid in full for Services provided under a Contract, the legal and equitable rights in the Deliverables will remain with Intrax.
- 4.5. For the purpose of this Condition 4:
 - a. "Personal Property Securities Register", "Purchase Money Security Interest", "Security Agreement" and "Security Interest" each have the meanings given in the PPSA.
 - b. "PPSA" means the Personal Property Securities Act 2009 (Cth).

5. Price

- 5.1. Services will be charged to the Client at the amount specified in the Fee Proposal or, to the extent that any Services provided are outside the scope of work set out in the Fee Proposal, at the amount specified in the then current Intrax price list, as provided to the Client for the Client's agreement prior to the Services being undertaken and will be listed in each invoice with details of the work completed to that date.
- 5.2. Any Fee Proposal given by Intrax to the Client will remain valid and capable of being accepted by the Client for a period of 30 days from the date when the Fee Proposal was given or such other period as nominated in the Fee Proposal.
- 5.3. A Client may accept a Fee Proposal by returning to Intrax a copy of the Fee Proposal signed by the Client, or by otherwise advising Intrax in writing that the Fee Proposal is accepted.

6. GST

- 6.1. The price payable for the Services is exclusive of GST unless the Contract states otherwise.
- 6.2. If the price set out in an invoice or Fee Proposal is exclusive of GST, the price payable by the Client will be increased by the applicable amount of GST.

7. Acceptance of order

Unless, within five Business Days of Intrax receiving a Client's purchase order for Services, Intrax advises the Client in writing that the purchase order is not accepted (for example, if the purchase order is not consistent with the terms of the relevant Fee Proposal), Intrax shall be deemed to have accepted the purchase order.

8. Cancellation of Order

8.1. Subject to Condition 10 and Condition 15, a Contract can only be cancelled by a client without cause where written request for cancellation has been made by the Client and accepted by Intrax.

8.2. If the Client terminates this Contract under Condition 8.1:

- a.** Intrax must do everything reasonably necessary to mitigate all losses, costs and expenses arising from the termination.
- b.** the liability of the Client will be limited to:
 - (i) payments that are due and properly payable for work performed in accordance with this Contract before the effective date of termination; and
 - (ii) any reasonable costs unavoidably incurred by Intrax, which are directly attributable to the termination, and which are substantiated to the reasonable satisfaction of the Client.

9. Services Provided to Deadline

9.1. Intrax will use its best endeavours to provide Services to the Client by any date specified in a purchase order or Fee Proposal. Any timeframes specified in a purchase order or Fee Proposal are estimates only.

9.2. The Client acknowledges that Intrax does not warrant or represent that the Service will be delivered on a particular date but will provide the Services within a reasonable timeframe.

9.3. Where a site visit is required, and access to the site by Intrax's employees is delayed, hindered or prevented:

- a.** by an act, default or omission the Client; or
- b.** because the site is not ready for the Services to be undertaken; or
- c.** due to climatic conditions; or
- d.** by any person, including any Authority, or employee, subcontractor, agent or consultant of the Client; or
- e.** because of an agreed variation to the Services; or
- f.** because the condition of the site poses an unacceptable risk to Intrax employees.

the Client acknowledges that Intrax's ability to deliver to deadline may be impeded and, if such circumstances require additional site visits to be undertaken by Intrax employees and the delay, hindrance or prevention is due to a factor within the Client's control, Intrax reserves the right to impose one or more additional site visit fees for each additional site visit at Intrax's standard rates included in Intrax's Fee Proposal, or if none are specified in the Fee Proposal, at the rates specified in the then current Intrax price list, as provided to the Client for the Client's agreement prior to the Services being undertaken.

9.4. The failure to deliver the Services by the date required will not:

- a. avoid or give the Client the right to avoid the Contract; or
- b. to the extent permitted by law, render Intrax liable for any Loss or Damage, provided that Intrax complies with Condition 9.1.

10. Force Majeure

10.1. Neither party is liable for any delay or failure to perform an obligation (other than to pay money) under a Contract caused by:

- a. act of God.
- b. war, riot, insurrection, vandalism or sabotage.
- c. strike, lockout, ban, limitation of work or other industrial disturbance; or
- d. law, rule or regulation of any government or governmental agency and executive or administrative order or act of general or particular application.

10.2. Each party must notify the other party as soon as practical of any anticipated delay or failure caused by an event referred to in Condition 10.1 ("Event").

10.3. The performance of the affected party's obligation is suspended for the period of delay caused by the Event.

10.4. If:

- a. performance of an obligation is prevented by an Event; and
- b. a delay caused by the Event exceeds 60 days, then either Intrax or the Client may terminate a Contract at the expiration of not less than five Business Days' notice to the other party.

11. No Warranty

If the Client is a consumer under the ACL, the Client also has extensive rights under the ACL including consumer guarantees and remedies. Nothing in these Conditions limits or excludes those rights and remedies in any way.

If the Client is not a consumer under the ACL, and except as required by law, all warranties beyond those expressly given in these Conditions, with regard to the Services are excluded.

12. Liability

12.1. Nothing in these Conditions is to be read as excluding, restricting or modifying the application of any legislation which by law cannot be excluded, restricted or modified.

12.2. To the extent permitted by law, the liability of Intrax in connection with a breach of any guarantee under Schedule 2 to the Competition and Consumer Act 2010 (Cth) (ACL) in relation to the supply of the Services other than where those services are of a kind ordinarily acquired for personal, domestic or household use or consumption is limited to:

- a. supplying of the services again; or
- b. payment of the cost of having the services supplied again.
- c. Nothing in this Contract is intended to have the effect of excluding, restricting or modifying the

application of all or any of the provisions of the ACL, or the exercise of a right conferred by such a provision, or any liability of either party in relation to a failure to comply with a guarantee that applies under the ACL to a supply of goods or services.

12.3. To the extent permitted by law, and subject to the other provisions of this Condition 12, the liability of each party under this Contract is otherwise limited to the amount paid by the Client under this Contract.

12.4. To the extent permitted by law, neither party will be liable for special, indirect or consequential loss or damage, including loss of anticipated revenue or savings, loss of production, loss of third-party contract, loss of data, loss of revenue, increased financing costs, loss of opportunity, business interruption, loss of profit, and damage to reputation and goodwill.

12.5. The limitations of liability in this Condition 12 do not apply to claims in respect of personal injury or death, or breach of Condition 20 (Intellectual Property Rights), or any claims in respect of criminal misconduct or fraud by either party.

12.6. To avoid doubt, nothing in clause 12 affects Intrax's entitlement to:

- a. payment for the Services provided in accordance with this Contract; and
- b. claim damages in circumstances where Intrax has lawfully terminated the Contract under clause 15.1 or otherwise for the Client's breach of the Contract.

13. Accuracy of information

The Client warrants to Intrax that unless otherwise advised by the Client prior to commencement of the Services:

13.1. All information, advice or other material provided by or on behalf of the Client in connection with the Services is accurate, complete, and fit for the purpose of Intrax providing the Services; and

13.2. Intrax will be able to rely on such information, advice or other material provided by or on behalf of the Client without the need for Intrax to verify its accuracy, completeness or fitness.

14. Indemnity

14.1. To the extent permitted by law, the Client indemnifies and shall keep indemnified Intrax, on demand for and against any expense, Loss or Damage suffered or incurred by Intrax relating to or arising out of:

- a. any breach of the warranties given by the Client in Condition 13 (Accuracy of Information).
- b. any Claim by a third party in respect of personal injury, death or damage to property caused by the Client or the Client's personnel for whom the Client is responsible.
- c. any false, misleading or deceptive conduct; representation or statement made by the Client to Intrax relating to the supply of the Services.
- d. except to the extent any act, omission, or infringement of Intrax has contributed to such Loss or Damage. Intrax will take all reasonably necessary steps to mitigate its loss.

14.2. To the extent permitted by law, Intrax indemnifies and shall keep indemnified the Client on demand for and against any expense, Loss or Damage suffered or incurred by the Client relating to or arising out of:

- a.** any Claim by a third party in respect of personal injury, death or damage to property caused by Intrax or Intrax's personnel for whom Intrax is responsible.
- b.** any false, misleading or deceptive conduct; representation or statement made by Intrax to the Client relating to the supply of the Services, except to the extent any act, omission, or infringement of the Client has contributed to such Loss or Damage. The Client will take all reasonably necessary steps to mitigate its loss.

15. Termination

15.1. Intrax may on written notice to the Client immediately terminate a Contract and/or the Client's credit account if the Client:

- a.** fails to pay an invoice when due and the Client has failed to rectify the non-payment within the time period specified in the notice issued by Intrax under Condition 3.6.; or
- b.** breaches this Contract where Intrax has given written notice to the Client and the Client has failed to rectify the breach within a reasonable time period which will generally be no less than 14 days; or
- c.** is subject to an Insolvency Event.

15.2. The Client may on written notice to Intrax immediately terminate this Contract if Intrax:

- a.** breaches this Contract where the Client has given written notice to Intrax and Intrax has failed to rectify the breach within a reasonable time period which will generally be no less than 14 days; or
- b.** is subject to an Insolvency Event.

15.3. If either party terminates a Contract under Condition 8, 10 or 15:

- a.** each party's obligations under it are at an end (subject to any obligations that survive termination or expiry of the Contract).
- b.** either party's accrued rights and remedies are not affected.
- c.** Intrax may retain all monies paid under the Contract for which services have been provided by Intrax in accordance with this Contract.
- d.** each party will promptly return to the other party, the other party's confidential information and any other property, documentation or records of the other party (including in the case of the Client, the Client returning any Deliverables received and in relation to which no payment has been made, to Intrax).
- e.** the Client will have no ongoing license rights to the Deliverables in relation to which no payment has been made to Intrax; and
- f.** Intrax may invoice the Client, and the Client must pay, for all services provided up to the termination date plus any other amounts due and owing to Intrax under the Contract as at the date of termination.

16. Dispute Resolution

16.1. If a difference or dispute between the parties arises in connection with a Contract and/or Services, then

either party can provide the other party with written notice of dispute.

16.2. If a notice of dispute has been issued, then representatives of the parties with the authority to agree will meet within 10 Business Days to try and resolve the dispute.

16.3. If the dispute has not been resolved within 20 Business Days of the notice of dispute, then that dispute can be referred by either party to, and finally resolved by, arbitration administered by the Australian Disputes Centre ("ADC").

16.4. The arbitration shall be conducted in Melbourne in accordance with the ADC Rules for Domestic Arbitration operating at the time the dispute is referred to ADC ("Rules").

16.5. The terms of the Rules are hereby deemed incorporated into these Conditions.

16.6. Unless otherwise agreed in writing, each party shall bear its own costs and pay for half of all fees in relation to the arbitration, with the determination of the arbitrator being binding on both parties.

16.7. Nothing herein shall prejudice the right of a party to institute proceedings to enforce payment due under a Contract or to seek injunctive or urgent declaratory relief.

17. Inconsistency

To the extent that there is an inconsistency between a provision in any of the documents comprising a Contract and another provision in such document or between a provision in any of those documents and a provision in any other document comprising a Contract:

- a. a specific provision takes precedence over a general provision.
- b. otherwise, to the extent necessary to resolve the inconsistency, the following order of precedence applies:
 - o an agreed Variation.
 - o a Fee Proposal
 - o these Conditions.

18. Governing Law and Jurisdiction

A Contract is governed by and is to be construed in accordance with the laws of Victoria. Intrax and the Client irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of Victoria and waive any right to object to proceedings being brought in these courts.

19. Site Compliance Responsibility

It is the sole responsibility of the Client to ensure that any site where Intrax personnel are required to access complies with all local applicable safety, health, and environmental regulations. The Client must ensure the site is free from hazards and meets relevant local legal and regulatory standards before and during Intrax attendance. Intrax reserves the right to refuse to enter a site or cease work if it determines that the site poses a risk to health,

safety, or the environment.

20. Severance

If a provision in a Contract is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unforeseeable. If it is not possible to read down a provision as required in this Condition, then that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in the Contract.

21. Intellectual Property Rights

21.1. Intrax retains all copyright and all other Intellectual Property Rights in the Background IP and everything of general application that Intrax develops in the course of providing the Services, including, but not limited to, methodologies, development tools, processes, procedures, designs, data, know-how, software and working papers.

21.2. Upon payment of all moneys due to Intrax under the Contract for the Deliverables, Intrax grants to the Client a non-exclusive, royalty free licence to use the Deliverables but only to the extent necessary for the Client to obtain the benefit of the Services provided. For the avoidance of doubt, the licence granted under this Condition is not capable of sublicense or any commercialisation or use other than as required for the Client to carry out the project relevant to the Services.

21.3. When using computations, drawings, designs and the like delivered by Intrax as part of the Services, the Client must comply with the law including, without limitation, copyright laws.

22. Entire Understanding

A Contract contains the entire understanding between the parties as to the subject matter contained in it. All previous agreements, affecting this subject matter are superseded by the Contract and have no effect.

23. Notices

Any notice or communication under a Contract will be effective if it is in writing, signed and delivered to Intrax or the Client as the case may be, at the address, email address or facsimile number set out in the Fee Proposal or any purchase order.

24. For the avoidance of doubt, the parties agree that Intrax may serve a claim under a Security of Payment Law via email to the Client.

25. Variation to these Conditions

Intrax may in its absolute discretion change these Conditions at any time by publication on its website www.intrax.com.au. The change will take effect from the time specified in the publication and apply to all future Contracts entered into after the published change. An amendment or variation to this Contract is not effective unless it is in writing and signed by both parties.

26. Privacy Policy

The Client agrees that Intrax may collect, use and disclose personal information about the Client and any guarantor of the Client for the purposes of providing the Services and in accordance with Intrax's privacy policy. A copy of the privacy policy is available from the Intrax website at www.intrax.com.au.

27. Survival

The following clauses survive the termination or expiry of this Contract: Condition 12 (Liability), Condition 14 (Indemnity), Condition 15.2 (Termination), Condition 16 (Dispute resolution), Condition 18 (Governing law and jurisdiction), Condition 20 (Intellectual Property Rights) and this clause 25 (Survival).