

Beacon Consulting Standard Terms and Conditions of Service

This document must be read in conjunction with Beacon Consulting's Fee Proposal.
Together they form the Rules and Conditions of Service Delivery.

Revision 4.0 January 2013



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**THIS AGREEMENT
BETWEEN:**

- (1) ((The person / entity / corporation named in the fee acceptance form in the Beacon Consulting Fee Proposal (the "**Client**"), and which expression shall include its successors in title and permitted assigns);
- (2) **BEACON CONSULTING PTY LTD, BEACON CERTIFICATION PTY LTD**, a Proprietary Limited Company registered in Queensland, Australia of 345 McLeod Street, CAIRNS, Queensland, Australia, ("**Beacon Consulting**")

WHEREAS:

- (A) The Client wishes to appoint Beacon Consulting to act as Quantity Surveyor or Project Manager, BIM Consultant, Building Certifier to carry out the services set out in Fee Proposal in relation to the project on the terms and conditions set out in this Agreement ("**the Project**").
- (B) The Client has entered or may enter into Consultancy Agreements with other Consultants and a Building Contract(s) with a Building Contractor(s) to be selected by the Client for the Project.

NOW IT IS HEREBY AGREED as follows:

1. Services

- 1.1 The Client appoints Beacon Consulting to perform and Beacon Consulting agree to perform the Services set out in the fee proposal.
- 1.2 Beacon Consulting shall perform the Services in accordance with the terms of this Agreement and shall exercise in the performance of the Services and discharging of all their duties and obligations are the reasonable skill and care to be expected of an appropriately qualified project manager holding himself out as having the competence and experience necessary for the proper performance of such Services in connection with a project of a size, scope and character similar to that of the Project.

2. Client's Undertakings

- 2.1 The Client shall advise Beacon Consulting of the person within the Client's organisation to whom Beacon Consulting will report and such person shall be deemed to have full authority to issue instructions and otherwise to act on behalf of the Client for all purposes in connection with this Agreement.
- 2.2 The Client shall promptly provide Beacon Consulting, free of charge, with such information as Beacon Consulting may reasonably require and shall make such decisions in due time as shall be necessary for the proper performance of the Services by Beacon Consulting.
- 2.3 The Client shall procure such legal advice and provide such information and evidence as required for the resolution of any dispute between the Client and any other parties providing services in connection with the Project.
- 2.4 The Client hereby acknowledges and agrees with Beacon Consulting that, in performing the Services:
 - 2.4.1 Beacon Consulting rely upon and intend to rely upon the information, designs, specifications, plans, design drawings and instructions provided to them by the Client, the Consultants and the Building Contractor(s); and,

- 2.4.2 Beacon Consulting shall have no liability or responsibility for the design of the Project, the fitness for the purpose thereof, the specification or choice of materials used in the construction thereof (save in respect of advice requested on the cost of materials), the workmanship and/or operational methods employed therein, the supervision of construction in relation thereto, the inspection acceptance and approvals given or made in relation to the construction thereof, health and safety provisions on the site and such instructions as may from time to time in or about the Project be given to Beacon Consulting by the Client and the Consultants.
- 2.5 The Client further acknowledges and agrees that if this agreement relates to a Bill of Quantities:
- 2.5.1 It does not form part of the building contract; and
- 2.5.2 That whilst every care has been taken to ensure the Bill of Quantities is inclusive of all required measurable items it is nonetheless the responsibility of the client to ensure that all items included in the scope of works and tender documents are included in any tender.
- 2.5.3 The quantities contained in the Bill of Quantities are measured as nett theoretical (not actual) as shown on the design drawings.
- 2.5.4 The quantities contained in the Bill of Quantities do not allow for any waste, over/under excavation and laps other than shown on the drawings.
- 2.6 The Client further acknowledges and agrees that:
- 2.6.1 Any reinforcement and structural steel tonnages given are measured nett theoretical as opposed to actual and do not include for rolling margins, bending variances, attached connections etc. The Client shall check quantities with those provided by the tenderer's reinforcement scheduler/supplier.
- 2.6.2 The Client shall check the measurement and prices clauses and method of measurement clauses contained in the Bill of Quantities to determine the scope of measure items and pricing of measured items.
- 2.6.3 Priced Bills of Quantities are given as a guide to Clients who are tenderers only and are representative of historical construction and materials supply rates obtained by Beacon Consulting. The Client (as tenderer) shall not rely on these prices for the basis of their tender submission.
- 3. Fees**
- 3.1 The Client shall pay Beacon Consulting the Fee calculated in accordance with the Fee Proposal. If Beacon Consulting performs services other than those set out in, the Client shall pay Beacon Consulting reasonable additional fees calculated in by the additional hours multiplied by the hourly rate of \$180/ hour excl. GST, or in accordance with the hourly rates contained in the fee proposal (if any).
- 3.2 Beacon Consulting shall submit a valid GST invoice for each interim or final instalment of the Fee at the end of each month.
- 3.4 The final date for payment of each instalment of the Fee shall be 14 days from the date of issue by Beacon Consulting of a valid GST invoice.

- 3.5 Not later than five (5) days before the due date for payment from the Client, the Client shall give notice to Beacon Consulting specifying the amount (if any) of the payment made or proposed to be made, and the basis on which that amount was calculated.

4. Licence

Subject to payment by the Client of all sums properly due to Beacon Consulting under this Agreement, Beacon Consulting hereby grant and agree to grant to the Client with full title guarantee an irrevocable, royalty-free, non-exclusive licence to use and reproduce all schedules, reports, calculations and other similar documents which have been or are to be prepared by Beacon Consulting or on their behalf in connection with the Project ("**Proprietary Material**") for any purpose relating to the Project including without limitation the execution, completion, maintenance, letting, management, sale, advertisement, alteration, reinstatement and repair of the Project. Upon any termination of this Agreement, Beacon Consulting shall, upon receipt of payment of any Fee outstanding, deliver copies of all or any such Proprietary Material to the Client. Beacon Consulting shall not be liable for the use by the Client or any other party for any Proprietary Material for any purpose other than that for which it was prepared or provided by Beacon Consulting.

5. Confidentiality

Beacon Consulting shall not without the prior written consent of the Client, which consent shall not be unreasonably delayed or withheld, disclose to any third party any confidential information relating to the Project save for where such consent is:

- 5.1. required by law;
- 5.2. necessary for Beacon Consulting to carry out their duties in relation to this Agreement;
- 5.3. necessary for Beacon Consulting to make full frank and proper disclosure to their insurers or intended insurers;
- 5.4. necessary for Beacon Consulting to obtain legal or accounting advice;
- 5.5. agreed in writing between the parties.

6. Assignment / Sub-Letting / Third Party Rights

- 6.1 Neither the Client nor Beacon Consulting shall assign the whole or any part of this Agreement without the consent of the other in writing, which consent shall not be unreasonably delayed or withheld. In the event that the Client intends to assign the benefit of this Agreement, Beacon Consulting shall not be obliged to give their written consent unless any such assignment takes place prior to practical completion to and for the sole purpose of completing the Project and until all fees of Beacon Consulting incurred and due pursuant to this Agreement prior to the date of the assignment have been paid, and the assignee has entered into contractual obligations direct with Beacon Consulting to be liable for all fees of Beacon Consulting that become due pursuant to this Agreement after the date of the assignment.
- 6.2 Beacon Consulting shall not sub-let any part of the services without the consent of the Client in writing, which consent shall not be unreasonably delayed or withheld.
- 6.3 Notwithstanding any other provision of this Agreement, nothing in this Agreement confers or purports to confer any right to enforce any of its terms on any person who is not a party to it.

7. Liability / Insurance / Indemnity

- 7.1 To the extent permitted by law, Beacon Consulting will not be liable in tort, breach of statutory duty, contract or otherwise for any loss or damage, including for any personal injuries or death, or any consequential loss, including loss of profits, loss of production, loss of business, loss of markets and pure economic loss or any other indirect losses suffered by the Client, whether or not the loss or damage occurs in the course of performance or non performance by Beacon Consulting of this Agreement or other services which are in the contemplation of Beacon Consulting and/or the Client..
- 7.2 Beacon Consulting will not be liable to the Client for any claims, losses and/or expenses arising from pollution, contamination, date recognition or asbestos risks under or in connection with this Agreement.
- 7.3 To the extent that liability has not been effectively excluded by the preceding clauses, then the Client acknowledges and agrees that Beacon Consulting limits its liability to:
- a) The supply of a particular service again; or
 - b) The payment of the cost of supply of the particular service again at Beach Consulting's election.
- 7.4 The warranties set out in this Agreement are the sole and express warranties between the parties and the parties make no other express, implied, oral, written, or any other warranties in respect of the agreement.
- 7.5 Any reference Beacon Consulting make to members of Beacon Consulting as "Directors" is to their title as senior professionals. The Client agrees that all dealings with servants, agents or employees of Beacon Consulting, including without limitation any appointment of any servant, agent or employee of Beacon Consulting to act as expert, adjudicator or in any other personal capacity. The Client acknowledges and agrees not to bring any claim personally against any servant, agent or employee of Beacon Consulting for any loss incurred by the Client resulting from Beacon Consulting's acts or omissions in the performance or non performance of the Services.

8. Suspension / Termination

- 8.1 The Client may at any time by giving sixty (60) days' notice require Beacon Consulting to suspend performance of the Services, but if the Services have not been resumed within a period of six (6) months from the date of such notice then either party may by notice terminate this Agreement.
- 8.2 If Beacon Consulting shall commit a material and persistent breach of their obligations under this Agreement which they fail to remedy within 28 days after receiving a notice from the Client specifying the breach and requiring its remedy or if Beacon Consulting become Insolvent, the Client shall be entitled forthwith to terminate this Agreement by service of a notice to that effect to Beacon Consulting. Upon such termination, the Client shall not be obliged to pay any further part of the Fee until after completion of the Project or the abandonment by the Client of the Project.

Within a reasonable period of time of the completion or abandonment of the Project the Client shall send to Beacon Consulting a statement of account setting out:

- 8.2.1 the total value of the Fee properly due to Beacon Consulting at the date of termination; and
- 8.2.2 the amount of any expenses properly incurred by the Client and of any direct loss and/or damage caused to the Client as a result of the termination.

After taking into account amounts previously paid to Beacon Consulting under this Agreement if the amount stated in clause 8.2.2 exceeds or is less than the amount

stated in clause 8.2.1 the difference shall be a debt payable by Beacon Consulting to the Client or by the Client to Beacon Consulting as the case may be.

8.3 If the Client shall commit a material and persistent breach of his obligations under this Agreement which he fails to remedy within 28 days after receiving a notice from Beacon Consulting specifying the breach and requiring its remedy or if the Client becomes Insolvent, Beacon Consulting shall be entitled forthwith to terminate this Agreement on service of a notice to that effect to the Client.

8.4 Upon any termination of this Agreement, Beacon Consulting shall take such steps as are reasonable to bring to an end the Services under this Agreement and Beacon Consulting shall, upon receipt of payment of any Fee outstanding, deliver to the Client copies of all documents in their possession relating to the Project.

8.5 Should the client wrongfully terminate the contract without providing notice including where Beacon Consulting have not committed a material and persistent breach of their obligations under this Agreement and where no notice to remedy breaches was received from the Client specifying the breach and/or where a notice to remedy breaches was received but the notified breach was rectified by Beacon Consulting. Beacon Consulting shall within a reasonable period of time of the Client's termination or abandonment of the Project without due cause or notice shall send to Client a statement of account setting out:

8.5.1 the total value of the Fee properly due to Beacon Consulting at the date of wrongful termination; and

8.5.2 the amount of any expenses properly incurred by the Beacon Consulting and of any direct loss and/or damage caused to the Beacon Consulting as a result of the termination, and

8.5.3 30% of any unbilled agreed fees on the project which shall be paid to Beacon Consulting as payment for loss of profit and/or costs associated with Beacon Consulting's staff and or other resources allocated to this project which may or may not be able to be reallocated to other projects.

8.6 Any termination of this Agreement shall be without prejudice to the accrued rights and remedies of either party in respect of any negligence, omission or default of the other prior to such termination or suspension.

9. Complaints

In accordance with the requirements of the Australian Institute of Quantity Surveyors, Beacon Consulting maintains a complaints handling procedure. In the event that the Client has a complaint in respect of the performance by Beacon Consulting of the Services under this Agreement, without prejudice to any other remedy available under this Agreement, the Client should forward written complaints only to Greg McDonald, Managing Director, PO Box 1053N CAIRNS NORTH QLD 4870.

10. Dispute Resolution

10.1 Either party may at any time give notice to the other of its intention to refer any dispute or difference arising under this Agreement to adjudication in accordance with this clause 10.

10.2 The person who is to act as Adjudicator shall be nominated by the Australian Institute of Quantity Surveyors.

- 10.3 In the event that the Adjudicator is deceased, unable or unwilling to act, another Adjudicator shall be appointed on the application of either party by the President or a Vice-President for the time being of the Australian Institute of Quantity Surveyors.
- 10.4 The Adjudicator's decision shall be binding upon the parties unless and until the matter is finally determined by legal proceedings or by agreement.
- 10.5 If either party is dissatisfied with the decision of the Adjudicator then:
- 10.5.1 the dispute may be determined by agreement between the parties; or,
 - 10.5.2 the dispute may be referred at the instance of either of the parties to be determined by an arbitrator in accordance with clause 10.6 hereof.
- 10.6 Any dispute arising under this Agreement shall be referred at the instance of either of the parties to be determined by an arbitrator. The person who is to act as arbitrator shall be agreed between the parties within 28 days of the one giving notice of his wish to refer the dispute to an arbitrator or, failing agreement at the end of that period, shall be a person appointed by the President or a Vice-President of the Australian Institute of Quantity Surveyors at the instance of either party. The arbitration shall be conducted in accordance with the Construction Industry Model Arbitration Rules current at the time of entering into this Agreement.

11. Agreement

- 11.1 The headings and margin notes in this Agreement shall not be taken into consideration in the interpretation of this Agreement.
- 11.2 This Agreement embodies the complete and entire Agreement between the Client and Beacon Consulting and supersedes all previous agreements or correspondence between the Client and Beacon Consulting in connection with the Project. All services carried out by Beacon Consulting in connection with this Project prior to the date of this Agreement shall be deemed to have been carried out subject to the terms of this Agreement. The Client confirms that, in agreeing to enter into this Agreement, it has not relied on any representation except as set out herein and the Client agrees that it shall have no remedy in respect of any misrepresentation which has not become a term of this Agreement, excluding any fraudulent misrepresentation.
- 11.3 All notices, instructions, approvals and consents to be given under this Agreement shall be in writing and delivered personally or sent by pre-paid first class recorded delivery post to the party at the address shown in this Agreement or to such an address as the other party may have specified from time to time by notice to each other. Such notice shall be deemed to have been received on the day of delivery if delivered personally and otherwise two (2) working days after the date when posted.
- 11.4 Where under this Agreement an act is required to be completed within a specified period of days after or from a specified date, the period shall begin immediately after that date. Where the period would include a day which is Christmas Day, Good Friday, or a day which is a public holiday that day shall be excluded.
- 11.5 The definitions for terms used in this Agreement are set out in Appendix C.

12. Jurisdiction

Whatever the nationality, residence or domicile of the Client and wherever the Project is situated, the law of the Commonwealth of Australia shall be the law applicable to this Agreement and the parties submit to the exclusive jurisdiction of the Australian Courts.

Appendix B

Definitions

'Building Contract'	The Contract to be entered into between the Client and the Building Contractor in respect of the Works.
'Building Contractor'	The party engaged by the Client under the Building Contract.
'Consultants'	The parties engaged by the Client to undertake those duties which are not being provided by Beacon Consulting and which may include, but which shall not be limited to, architecture, engineering (structural, civils and services), planning matters, legal matters and the like in relation to the Project.
'Consultancy Agreements'	The Agreements entered into between the Client and the Consultants.
'Fee'	The amount referred to in Appendix B including any changes made in accordance therewith.
'Insolvent / Insolvency'	<p>For the purposes of clause 7, insolvency on the part of either the Client or Beacon Consulting (either, for that clause only, "the defaulting party") shall include:</p> <ol style="list-style-type: none">a. any distress or execution levied upon the defaulting party's property or assets;b. the defaulting party making any composition or arrangement with his creditors;c. the defaulting party committing an act of bankruptcy which shall include any petition or order in bankruptcy being made against the defaulting party or if, being a company, the defaulting party makes a proposal for a voluntary arrangement for a composition of debts or scheme of arrangement approved in accordance with the laws of the Commonwealth of Australia or if the defaulting party has an application made under the laws of the Commonwealth of Australia in respect of his company to the Court for the appointment of an administrator or has any petition or resolution to wind up his business (other than for the purpose of a bona fide reconstruction or amalgamation without insolvency) passed or presented; or the defaulting party having a provisional liquidator, receiver, administrative receiver or manager appointed to his undertaking, property or assets or any part of them
'Practical Completion'	As provided in the Standard Forms of Contract or the equivalent under other forms of Contract.
'Services'	The duties which Beacon Consulting are to perform and as described in the fee proposal.

'Working Day'

Means Monday to Friday inclusive but excluding Christmas Day, Good Friday and a day which is a public Holiday in the State of Queensland, Australia.

'Works'

The Work that the Building Contractor(s) is/are to perform under the Building Contract(s).