

STANDARD TERMS OF AGREEMENT FOR PROFESSIONAL SERVICES

Version 10 Published - 1 June, 2011

1 INTRODUCTION

These Terms of Agreement apply to work carried out by S J CONNELLY CPP PTY LTD unless agreed in writing.

2 BILLING

In general, we will send you an interim memorandum of fees at the end of each month while the work is in progress and a final bill on completion of the project. Sometimes we may find it necessary to ask you to pay us in advance an amount to enable payment of our professional and other charges or significant disbursements. In that case, we will have your authority to draw on that money for those charges and disbursements as they become due. Occasionally, disbursements are billed to us later than the month in which they are incurred and this may result in a delay in billing them to you. Our memorandum of fees contain simple explanations of the progress of the work which we have found most clients prefer. We can, however provide more detailed memorandum if required. Our memorandums will detail our hourly rates exclusive of GST and then identify that part of our work that is subject to GST and that part, if any, not subject to GST.

All bills are payable within 21 days of their receipt. Amounts outstanding after 30 days may be subject to an account keeping charge (presently 2% per month).

3 PROFESSIONAL CHARGES

Unless a written Project Retainer Agreement is in place our professional charges relate to the amount of time spent attending to your project. Where professional charges are charged on a time basis, time will be calculated by reference to 6 minute units. Charge rates for our professional staff vary according to their specialist skills and experience. Our hourly billing rate bands are provided in the table below.

	Range of hourly fee rates from 1 June 2011		
	GST Exclusive	GST	GST Inclusive
Specialist professionals	\$95.00 - \$256.00	\$9.50 - \$25.60	\$104.50 - \$281.60
Drafting and report production personnel	\$74.00 - \$106.00	\$7.40 - \$10.60	\$81.40 - \$116.60

4 DISBURSEMENTS

All project related expenses are the responsibility of the client. Where circumstances permit, sub-consultants will be instructed to directly invoice the client. Where such expenses are processed and paid by S J CONNELLY CPP PTY LTD, a 7% service fee will be added to the cost¹.

5 SCOPE OF RESPONSIBILITY

- 5.1 All goods or services provided by S J CONNELLY CPP PTY LTD are subject only to these terms. No other term or condition shall be incorporated herein unless specifically agreed in writing by S J CONNELLY CPP PTY LTD.
- 5.2 S J CONNELLY CPP PTY LTD undertakes to exercise reasonable care in accordance with standards ordinarily exercised by members of the profession generally who practise in the same locality and under similar conditions. No other warranty, expressed or implied, is given.
- 5.3 The liability of S J CONNELLY CPP PTY LTD, its servants, agents or sub-consultants to the client arising out of the performance or non-performance of the services, whether under the law of contract or tort or otherwise, shall be limited to the cost of rectifying the works which are the subject of the project. The maximum liability of S J CONNELLY CPP PTY LTD, its servants, agents or sub-consultants to the client referred to herein shall be the amount of the project charges actually paid by the client in respect of the project to a maximum of \$100,000 for any single act, omission or statement, unless otherwise agreed in this Agreement.
- 5.4 The client acknowledges that, in the event of S J CONNELLY CPP PTY LTD having failed to exercise reasonable care, S J CONNELLY CPP PTY LTD's liability, if any, shall be absolutely extinguished after the expiration of 12 months from the date of the S J CONNELLY CPP PTY LTD's invoice in respect of the service.
- 5.5 Under no circumstances shall S J CONNELLY CPP PTY LTD have any liability for, or in relation to, any work performed by any third party.

1 Footnote:

1. Up until 30 June 2006 the service fee provision was not implemented. However, as a consequence of rising administrative costs this clause was made operational on 1 July 2006.
2. The consulting practice directed by Stephen Connelly and trading as s j connelly pty limited ACN 16 003 027 147 ceased on 30 June 2007. As of 1 July 2007 this consulting practice trades as S J CONNELLY CPP PTY LTD ACN 125 970 783.

- 5.6 The client acknowledges that the copyright in all documents prepared by S J CONNELLY CPP PTY LTD shall be and shall remain equally the property of the S J CONNELLY CPP PTY LTD and the client. The client shall have a licence to use the documents referred to herein for the purpose of completing the project only.

6 GENERAL

- 6.1 **Disputes** – In the event that a dispute should arise relating to the performance of the services to be provided under this Agreement and should that dispute result in litigation, it is agreed where S J CONNELLY CPP PTY LTD prevails that we shall be entitled to recover all reasonable costs incurred in the defence of the claim, including staff time, court costs, legal fees assessed on a solicitor and client basis and other claim-related expenses.
- 6.2 **Managing conflicts of interest** – We may act for clients which may compete with or, more rarely, may even be involved in business with you. Naturally, we will continue to assist those clients or new clients in projects that are not substantially related to work we are engaged to perform for you. We will not disclose or use any confidential information you may disclose to us in the course of our working for you except where required in the course of our acting for you.
- 6.3 **Liability apportionment** – While we will take care in performing services if any loss or damage is suffered partly as a result of our fault and partly as a result of your own fault, any claim for damages for breach of contract will be reduced, as if the claim was in negligence, to the extent that is just and equitable, having regard to your share of responsibility for the loss or damage in question.
- 6.4 **E-mail transmissions** – We may communicate with you via E-mail for the transmission of correspondence, documents and advices, where appropriate unless we are specifically requested by you not to do so. Because E-mail is not secure and may be read, copied or interfered with in transit or impaired, you agree to assume the risks associated with transmission and to release us from any claim you may have arising from transmission defects.
- 6.5 **Records management** – We will keep a copy of your files for a seven (7) year period after completion of your project. Your files will be digitally archived and kept in storage for this period after which they will be destroyed, unless you instruct us in writing to the contrary.
- 6.6 **Termination of our services** – We strongly believe that the proper discharge of consulting work requires continuing mutual co-operation and confidence. Accordingly:
- you may terminate our services by giving notice in writing at any time: and
 - we may elect to discontinue our work if you fail to pay our bills when due, if you fail to provide us with adequate instructions if, in our reasonable opinion, our relationship has broken down or if we are legally or otherwise obliged to do so. If we take this action we will give you reasonable notice of our intention to terminate our services, and of the grounds on which any such notice is based.
- In either case you will be required to pay our professional charges for work done, and for the charges and disbursements incurred, up to the date of termination.
- 6.7 **Agreement continuation** The agreement shall survive the death of the client and his rights and obligations shall pass to his successors.
- 6.8 **Proposals** – Where S J CONNELLY CPP PTY LTD has submitted a proposal for an assignment, and circumstances require departure from that proposal, S J CONNELLY CPP PTY LTD shall be the sole arbiter on this question and shall have no liability in respect thereof, aside from the need to advise the client in writing of such changes in circumstances.
- 6.9 **Acceptance of agreement** – Your continued instructions in relation to a project confirms your acceptance of these Standard Terms of Agreement.