

STANDARD TERMS OF AGREEMENT

Compiled: 6 November 2019

The following Standard Terms of Agreement apply to all Services provided to any Client by BGPL.

1. Fees and Project Management

- 1.1. BGPL shall provide the Client the Services detailed in the accompanying Proposal and will carry out the Project with due care and skill and in accordance with the Project Plan.
- 1.2. BGPL will use reasonable efforts to provide all Deliverables to the Client by the dates indicated in the Proposal.
- 1.3. The Client shall pay to BGPL the Fee and Reimbursable Expenses.
- 1.4. The Client will ensure effective liaison between all participants in the Project and with their management through a Client Project Manager.
- 1.5. Any adjustments to the Scope of Works or Project Plan will be determined between BGPL and the Client Project Manager and will be implemented by completing and signing a Variation.
- 1.6. The Client shall provide BGPL with all information and data pertaining to the requirements for the Project (and warrants that such information is correct, complete and accurate in all respects).
- 1.7. BGPL's time is charged on an hourly rate as set out in the Proposal but which may be amended from time to time.
- 1.8. BGPL's chargeable time includes time travelling, whilst on-site and at its offices or other locations undertaking the Project and producing a Report.
- 1.9. On completion of the Project and presentation of a Report, there may be a need for follow-up discussions and advice. Unless provided for within the Scope of Works, BGPL will allocate up to four hours of consultative time for those works at no additional cost to the Client, excepting where that works may be considered to extend beyond these four hours or the scope of the follow-up discussions and advice are considered as a significant departure from the originally specified Scope of Works, in which case the development of a new Project and Contract will be required.

2. Invoicing

- 2.1. BGPL shall invoice the Client from time to time, including on a monthly basis, which will be a tax invoice in the event of GST being payable.
- 2.2. All monies payable by the Client to BGPL shall be paid within 30 days of invoicing.
- 2.3. A final Report will be issued to the Client only upon payment of all invoices issued by BGPL to the Client.
- 2.4. BGPL reserves the right to undertake appropriate methods of recovery of the outstanding and overdue Fees and Reimbursable Expenses and surcharge thereon from the Client, including commencing legal proceedings. The Client will be liable on a full indemnity basis for all costs, fees and expenses incurred by BGPL in recovering the same.
- 2.5. Where a payment is overdue, BGPL may withhold, and retains a lien over, all Reports and any documents and data of the Client until payment is received.
- 2.6. BGPL reserves the right to suspend a Project where any progress payment which has been invoiced is overdue.

3. Expenses

- 3.1. The Client is liable to pay a 10% surcharge on all Reimbursable Expenses. Where a Reimbursable Expense has not yet been incurred, the Client reserves the right to accommodate these costs or expenses to avoid any surcharge.

4. Taxes

- 4.1. BGPL is a registered corporation in Australia for tax purposes.
- 4.2. Where the Project involves Services to be provided in a foreign jurisdiction, the Client will be liable for payment of any applicable withholding, duties or similar taxes which may be imposed by that jurisdiction's government.
- 4.3. BGPL's fees are exclusive of GST and all other taxes or duties due in relation to the Project.
- 4.4. Within Australia, the Client will be liable to pay any applicable GST on any goods or services provided upon BGPL issuing a Tax Invoice to Clients for amounts payable.

5. Termination

- 5.1. BGPL may terminate the Agreement by written notice to the Client for any breach by the Client of these Standard Terms of Agreement, including any failure to pay the Fees or Reimbursable Expenses and surcharge on time.
- 5.2. The Client may terminate the Agreement by written notice to BGPL for any breach by BGPL of these Standard Terms of Agreement, which is not remedied within 14 days of notice given by the Client to BGPL identifying the breach.
- 5.3. Either BGPL or the Client may terminate the Agreement for convenience upon giving the other party at least 30 days written notice.

STANDARD TERMS OF AGREEMENT

Compiled: 6 November 2019

- 5.4. Upon termination of the Agreement, the obligations of BGPL and the Client will come to an end, except in respect of any obligations stated to survive termination, including those referred to in clauses 5.5 and 5.6.
- 5.5. Notwithstanding termination of the Agreement, BGPL is entitled to be paid any Fees and Reimbursable Expenses and surcharge incurred up to the date of termination, and all other costs and expenses incurred by BGPL as a result or in consequence of the termination.
- 5.6. Upon termination of the Agreement, all invoices issued by BGPL to the Client immediately become due and payable.

6. Attendance on Site

- 6.1. BGPL may be required, as part of the Project, to attend the Client's sites. The Client agrees to provide reasonable access to the site as required by BGPL to provide the Services, warrants that it is authorised to grant the access and indemnifies BGPL in respect of any liability arising therefrom.
- 6.2. BGPL agrees to comply with all reasonable directions and instructions given by the Client whilst on-site.
- 6.3. The Client warrants that its site is not unduly hazardous or unsafe. BGPL retains the right to refuse to attend a Client's site that it deems to be unsafe in any manner.
- 6.4. The Client warrants it has appropriate and adequate insurance (including public liability insurance) to cover any liability, loss, damage, injury, death or any other risks to BGPL or its staff, contractors and agents arising out of attendance on the site.

7. Deliverables

- 7.1. Intellectual Property (including but not limited to copyright) in all drawings, figures, Reports, specifications, calculations, applications, macros/scripts, software, records, processes and plans and other documents and material used, produced or provided by BGPL in connection with the Project shall remain the property of BGPL. BGPL grants the Client ownership of the Deliverables and license to make copies of the Deliverables for the purposes only for which BGPL has provided the Client with the Services.
- 7.2. The Client agrees not to change or alter the content or format of a Report or publish a Report or parts thereof, without BGPL's consent in writing.
- 7.3. The Client acknowledges that the reputation of BGPL may be adversely affected and BGPL may suffer loss through publication of a Report with BGPL's name within it in a form other than that provided to the Client.
- 7.4. The Client assumes all liability arising out of its use of the Deliverables and any information in them.
- 7.5. This clause 7 survives termination of the Agreement.

8. Disclaimer

- 8.1. The conclusions and recommendations presented in the Reports and Deliverables are provided pursuant to the Proposal with the Client, provided for the Client's internal use and only with relation to the purposes of the Project, and are based on the data available to BGPL at the time the Project was undertaken by BGPL.
- 8.2. BGPL will not be liable for:
 - a. Any claim for loss or damage whatsoever resulting from any commercial decisions made or actions taken based on BGPL's Reports, conclusions and recommendations.
 - b. Any variations or additions to the Scope of Works, or the accuracy of estimates of the Fee, Reimbursable Expenses, Project Plan or the timing of Deliverables identified in Proposals, where not expressly agreed to by BGPL;
 - c. Any inaccurate, incomplete or incorrect information provided by the Client in relation to the Services;
 - d. Any damage to the Client's property occurring during or as a result of the provision of the Services (provided reasonable care is taken);
 - e. Any amount greater than the value of the Services already provided and paid for as at the date the liability arose;
 - f. Any delay or failure to provide the Services as a result of circumstances beyond the control of BGPL, including but not limited to strikes, lock-outs, labour disturbances, acts of government, riot, civil war, fire, flood, failure of power supply or similar event; or
 - g. the Client's failure to comply with any laws or the Standard Terms of Agreement, or any loss caused or contributed by the Client, its employees, agents or contractors (including for negligence, contractual breach or wrongful termination of the Agreement). The Client indemnifies and holds harmless BGPL in respect of any loss, damage, action, liabilities or claims suffered by BGPL arising as a result of this failure.
- 8.3. Whilst BGPL will exercise all reasonable care, skill and diligence in carrying out the Services, BGPL will only be liable to the Client in respect of the provision of the Services or the Report to the extent that any loss or damage to the Client is caused or contributed to by the negligence of BGPL.
- 8.4. Neither BGPL or the Client will be liable for any consequential loss or damage.
- 8.5. This clause 8 survives termination of the Agreement.

STANDARD TERMS OF AGREEMENT

Compiled: 6 November 2019

9. Electronic Media

- 9.1. BGPL will use every reasonable effort to ensure that the Deliverables provided to the Client in electronic form are free from computer viruses, or other conditions or defects, however BGPL cannot guarantee that any of the Deliverables are free from defects which could damage or interfere with the Client's data, hardware, software or network.
- 9.2. The Client accepts all risk of use and agrees that BGPL will not be held liable in respect to any loss or damage which may arise directly or indirectly from the use of the Deliverables in an electronic form by the Client or any other person, in the acceptance of the Deliverables in electronic form.

10. Storage

- 10.1. BGPL will store all materials provided by the Client or developed for the Project by BGPL for a period of up to five (5) years or as required by law. At the end of that period, BGPL may at its discretion destroy such materials unless otherwise requested by the Client.

11. Dispute Resolution

- 11.1. With the exception of legal proceedings taken by BGPL against the Client for non-payment of the Fee or Reimbursable Expenses or surcharge pursuant to clause 2.4, the Client or BGPL must not start arbitration or court proceedings about a Dispute arising out of an Agreement to undertake the Project unless it has complied with the procedure set out in this clause 11.
- 11.2. Either of the Client or BGPL claiming that a Dispute has arisen must communicate a Notification to the other party to the Dispute giving details of the Dispute.
- 11.3. Upon receipt of the Notification, both the Client and BGPL must negotiate in good faith to resolve the Dispute and if necessary involve other senior officers of the parties in those negotiations.
- 11.4. If the Dispute is in reference to technical matters and has not been resolved by negotiations within 60 days of the Notification, the Client and BGPL will refer the Dispute for determination by an independent expert agreed between the Client and BGPL.
- 11.5. If the Dispute is not resolved within 60 days (or as agreed between the Client and BGPL) of the Notification, the Client and BGPL will refer the Dispute for mediation by the Australian Disputes Centre (ADC) for resolution in accordance with the ADC Guidelines for Commercial Conciliation, 2019.
- 11.6. If the Dispute is not resolved within 60 days (or as agreed between the Client and BGPL) after referral to the ADC, either party may initiate proceedings in a court.

12. Confidentiality

- 12.1. BGPL will take all reasonable precautions to maintain the confidentiality and privacy of any information provided by the Client.
- 12.2. The Client must take all reasonable precautions to maintain the confidentiality of any knowledge of BGPL's business practices.
- 12.3. This clause 12 survives termination of the Agreement.
- 12.4. Nothing in this clause 12 imposes any obligation on a party that would represent a breach of, or be contrary to, any law, regulation or applicable stock exchange obligation.

13. Independent Contractor

- 13.1. The parties acknowledge that BGPL is an independent contractor and, as such, BGPL may engage employees and subcontract any part or all of the Services as it sees fit.
- 13.2. Nothing in the Agreement is intended to create a relationship of employment, partnership, joint venture, trust or agency between the parties.

14. Variation

- 14.1. These Standard Terms of Agreement may be varied by BGPL as it sees fit, provided that at least 14 days' notice of the variations are given to the Client and either the Client agrees in writing to the variation applying to any existing and new Agreements, or if the Client does not so agree, the varied Standard Terms of Agreement will apply only to any new Agreements.

STANDARD TERMS OF AGREEMENT

Compiled: 6 November 2019

15. Notices

- 15.1. Any notices required to be given under these Standard Terms of Agreement are to be in writing and sent to the address for the relevant party (Recipient), as it appears in the Proposal, unless varied by written notice by the Recipient to the sender.
- 15.2. Any ordinary communication between the parties may be made by way of email or telephone unless otherwise agreed.

16. Miscellaneous

- 16.1. Where any inconsistency arises between the terms of any Proposal and these Standard Terms of Agreement, the terms of the Proposal will prevail.
- 16.2. The Agreement as set out in these Standard Terms of Agreement and any Proposal constitute the entire agreement between the parties and replace any prior negotiations, proposals, previous dealings, customs or undertakings.
- 16.3. If any clause of these Standard Terms of Agreement is void, illegal or unenforceable, it may be severed without affecting the validity, legality or enforceability of the remaining provisions of these Standard Terms of Agreement.
- 16.4. These Standard Terms of Agreement are governed by the laws of Western Australia, and the parties submit to the non-exclusive jurisdiction of the courts of Western Australia.

17. Definitions

- 17.1. In these Standard Terms of Agreement, the capitalised terms have the following meanings:
 - a. **'Agreement'** means the agreement between BGPL and the Client for the provision of the Services pursuant to the Proposal and incorporate these Standard Terms of Agreement;
 - b. **'BGPL'** means Bastion Geotechnical Pty Ltd (ACN 635 727 089);
 - c. **'Client'** means the recipient of the Services and may be identified in the Proposal and Project Plan;
 - d. **'Client Project Manager'** means a suitably qualified person appointed by the Client to act as agent of the Client in liaising with BGPL in respect of the Project;
 - e. **'Deliverables'** means the geotechnical data, analyses and evaluations, Reports or similar relating to the Services agreed to be conducted, produced and/or provided by BGPL;
 - f. **'Dispute'** means a dispute between BGPL and the Client arising from any matter relating to these Standard Terms of Agreement or the Services;
 - g. **'Fee'** means the fee for the Project, as identified in the Proposal;
 - h. **'GST'** means Goods and Services Tax under the A New Tax System (Goods and Services Tax) Act 1999;
 - i. **'Project'** means the project the subject of the Proposal;
 - j. **'Project Plan'** means the formal, approved documents pertaining to the plan for the Project including planning assumptions, decision gates, quality requirements, Scope of Works, change management, resourcing, cost and schedule baselines;
 - k. **'Proposal'** means the document prepared by BGPL identifying the Scope of Works, work plan and task outline, personnel and resourcing, estimated Fee and Reimbursable Expenses and proposed schedule;
 - l. **'Reimbursable Expenses'** means all expenses incurred by BGPL that are directly associated with the Project, including but not limited to the following:
 - i. Travel and airfares;
 - ii. Accommodation;
 - iii. Equipment hire;
 - iv. Equipment purchases on behalf of the Client;
 - v. Laboratory testing fees; and
 - vi. Mobile telephone costs incurred overseas;
 - m. **'Report'** means any report issued by BGPL relating to the Project, and includes a final report;
 - n. **'Scope of Works'** means the scope of the Services agreed to be provided by BGPL to the Client as per the Proposal;
 - o. **'Services'** means the technical and consulting services provided by BGPL to the Client; and
 - p. **'Variation'** means a written variation to the Proposal (arising out of a variation to the Scope of Works) and may involve a variation of the Fee and Reimbursable Expenses.