



Share your feedback
about this Standard.
Scan the QR code on your
phone or click/ enter the
link to take the survey
feedback.standards.org.au/4122-2010

AS 4122—2010
(Incorporating Amendment No. 1)

Australian Standard[®]

General Conditions of Contract for Consultants



This Australian Standard® was prepared by Committee LL-001, General Conditions of Contract for Consultants. It was approved on behalf of the Council of Standards Australia on 15 October 2010.

This Standard was published on 22 November 2010.

The following are represented on Committee LL-001:

- Association of Consulting Architects Australia
 - Australasian Procurement and Construction Council
 - Australian Constructors Association
 - Australian Institute of Architects
 - Consult Australia
 - Master Builders Australia
-

This Standard was issued in draft form for comment as DR AS 4122.

Standards Australia wishes to acknowledge the participation of the expert individuals that contributed to the development of this Standard through their representation on the Committee and through the public comment period.

Keeping Standards up-to-date

Australian Standards® are living documents that reflect progress in science, technology and systems. To maintain their currency, all Standards are periodically reviewed, and new editions are published. Between editions, amendments may be issued.

Standards may also be withdrawn. It is important that readers assure themselves they are using a current Standard, which should include any amendments that may have been published since the Standard was published.

Detailed information about Australian Standards, drafts, amendments and new projects can be found by visiting www.standards.org.au

Standards Australia welcomes suggestions for improvements, and encourages readers to notify us immediately of any apparent inaccuracies or ambiguities. Contact us via email at mail@standards.org.au, or write to Standards Australia, GPO Box 476, Sydney, NSW 2001.

Australian Standard[®]

General Conditions of Contract for Consultants

First published as AS 4122(Int)—1993.
Revised and designated AS 4122—2000.
Second edition 2010.
Reissued incorporating Amendment No. 1 (August 2011).

COPYRIGHT

© Standards Australia Limited

All rights are reserved. No part of this work may be reproduced or copied in any form or by any means, electronic or mechanical, including photocopying, without the written permission of the publisher, unless otherwise permitted under the Copyright Act 1968.

ISBN 978 0 7337 9723 1

Preface

This Standard was prepared by the Standards Australia Committee LL-001, General Conditions of Contract for Consultants, to supersede AS 4122—2000, *General conditions of contract for engagement of consultants*. The previous edition of this Standard was developed and published by Standards Australia Committee OB-010, Construction Industry Practice.

It is anticipated that the Standard will generate net benefit to the Australian community by providing greater access to a standard form of contract to purchasers and providers of services, particularly in the building and construction industry, by:

- providing fair, reasonable, commercial terms to facilitate widespread utilisation of the Standard by all stakeholders;
- reducing time and resources spent negotiating contractual terms and conditions of engagement;
- streamlining the process of engagement of consultants;
- improving clarity and certainty of contractual terms and conditions between clients and consultants; and
- reducing disputes between clients and consultants based on contractual terms.

Users of this Standard are advised of the importance of completing the Annexures, as in some cases completion of the *Item* is necessary for the operation of the corresponding clause.

The following warnings should be noted:

- (i) This Standard has not been developed specifically for use:
- in a design and construct context; and/or
 - where the *Client* intends to novate this *Contract* with the *Consultant* to another party.

Parties intending to use this Standard in those circumstances should seek advice as to when an alternative contract such as AS 4904—2009, *Consultants agreement—Design and Construct*, may be used.

- (ii) Legislation has come into force in some jurisdictions dealing with security of payments. Parties intending to use this Standard should seek expert advice as to their rights and obligations under such legislation.

This Standard incorporates Amendment No. 1 (Month Year). The changes required by the Amendment are indicated in the text by a marginal bar and amendment number against the clause, note, table, figure or part thereof affected.

Contents

Clause	Title	Page
1	DEFINITIONS AND INTERPRETATION	1
2	CONSULTANT TO PERFORM SERVICES	3
3	CLIENT TO PAY	3
4	STANDARD OF CARE	3
5	SCOPE	3
6	CLIENT'S REPRESENTATIVE AND CONSULTANT'S REPRESENTATIVE	4
7	INFORMATION	4
8	DIRECTIONS	4
9	VARIATIONS	5
10	PAYMENT	5
11	GST	6
12	TIME	7
13	LAW AND APPROVALS	7
14	CONSULTATION AND MEETINGS	8
15	REVIEW AND ACCEPTANCE	8
16	ADVERSE EVENT	8
17	COOPERATION WITH OTHERS	8
18	KEY PERSONNEL	9
19	CONFLICT OF INTEREST	9
20	SUBCONTRACTING AND ASSIGNMENT	9
21	COPYRIGHT AND OTHER INTELLECTUAL PROPERTY RIGHTS	10
22	MORAL RIGHTS	11
23	CONFIDENTIALITY	11
24	SUSPENSION BY THE CLIENT	12
25	SUSPENSION BY THE CONSULTANT	12
26	TERMINATION WITHOUT CAUSE	13
27	TERMINATION DUE TO DEFAULT BY EITHER PARTY	13
28	INDEMNITY	14
29	LIMITATION OF LIABILITY	15
30	INSURANCE	15
31	INSOLVENCY	16
32	DISPUTE RESOLUTION	17
33	SERVICE OF NOTICES	18
34	SURVIVAL OF TERMINATION	18
35	GOVERNING LAW	18
36	STANDARD FORM NATURE OF CONTRACT	18
	EXECUTION (IF REQUIRED)	19
	Annexure Part A	20
	Annexure Part B	25
	Annexure Part C	26

NOTES

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this *Contract*, except where the context otherwise requires:

Approvals	means certificates, licences, consents, permits, approvals and requirements made or authorised by a Commonwealth, State, Territory or local government, or by a <i>Legislative Requirement</i> ;
Business Day	means calendar day but excludes public holidays as defined by the governing law of this <i>Contract</i> and weekends;
Client	means the person identified in <i>Item 1</i> ;
Client Information	means all information supplied to the <i>Consultant</i> in a <i>Document</i> for the purposes of this <i>Contract</i> ;
Consultant	means the person identified in <i>Item 2</i> ;
Contract	means the agreement recorded in the <i>Contract Documents</i> ;
Contract Documents	means the <i>Documents</i> listed in <i>Item 3</i> ;
Deliverables	means those <i>Documents</i> and things required under this <i>Contract</i> to be handed over to the <i>Client</i> by the <i>Consultant</i> ;
Direction	means any agreement, approval, assessment, authorisation, decision, determination, explanation, instruction, order, permission, rejection, request or requirement given or made by the <i>Client</i> ;
Documents	includes information stored by electronic and other means;
Fee	means the money payable under this <i>Contract</i> for the performance of the <i>Services</i> as adjusted in accordance with this <i>Contract</i> (excluding disbursements) and includes any amount payable stated in <i>Item 20</i> ;
Force Majeure	means an event or circumstance which: (a) is beyond the reasonable control of either party; (b) is not caused by either party; (c) can occur with or without human intervention; and (d) was not reasonably foreseeable by the parties at the time of entering into this <i>Contract</i>, the consequences of which could not have been reasonably prevented by the party affected;
GST	means the tax payable on a taxable supply under <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and any related legislation;

Intellectual Property Right	means any statutory and other proprietary right in respect of inventions, innovations, patents, utility models, designs, circuit layouts, mask rights, copyright (including future copyright), confidential information, trade secrets, know-how, trademarks and any other right in respect of intellectual property;
Insolvency Event	means any of the events set out in clause 31;
Item	means an <i>Item</i> in Annexure Part A;
Legislative Requirements	means legislation and subordinate legislation of the Commonwealth of Australia or the State or Territory applicable to the <i>Services</i> , and any instruments made under such legislation or subordinate legislation;
Moral Right	means the rights defined as 'Moral Rights' in the <i>Copyright Act 1968</i> (Cth);
Scope	is described in <i>Item 4</i> (as varied from time to time in accordance with this <i>Contract</i>);
Services	means the <i>Services</i> described in or reasonably inferred from the <i>Scope</i> , including the supply of the <i>Deliverables</i> ;
Variation	means a change to the <i>Services</i> whether or not it is a change to the <i>Scope</i> .

1.2 Interpretation

In this *Contract*, except where the context otherwise requires,

- (a) 'person' includes an individual, the estate of an individual, a body politic, a corporation, a statutory or other authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (b) 'includes' is not a word of limitation;
- (c) a reference to *Legislative Requirements* includes all amendments, re-enactments and replacements to *Legislative Requirements*;
- (d) if a word is defined, another part of speech or grammatical form of that word has a corresponding meaning; and
- (e) words in the singular include the plural and words in the plural include the singular, according to the requirements of the context.

1.3 Contra Proferentem

In the interpretation of this *Contract*, no rule of construction applies to the disadvantage of one party on the basis that the party put forward or drafted this *Contract* or any provision in it.

1.4 Joint and Several

To the extent permitted by law, if either party consists of one or more persons, this *Contract* binds such persons and their respective executors, administrators, successors and permitted assigns jointly and severally and this *Contract* must be read and construed accordingly.

- 1.5 Headings and guidance notes are provided for information or convenience and do not form part of this *Contract*.

2 CONSULTANT TO PERFORM SERVICES

The *Consultant* must perform the *Services* in accordance with this *Contract*.

3 CLIENT TO PAY

The *Client* must pay the *Consultant* in accordance with this *Contract*.

4 STANDARD OF CARE

The *Consultant* must perform the *Services* to the standard of skill, care and diligence expected of a skilled and competent professional practising in the particular fields relevant to the *Services*, or such higher standard as the *Consultant* has represented in writing to the *Client* in relation to this *Contract*.

5 SCOPE

- 5.1 The *Consultant*, exercising skill, care and diligence to the standard of care required in clause 4, has examined the *Scope* and agrees that the *Services* will be suitable, appropriate and adequate for the purpose stated in *Item 5*, except to the extent that, prior to commencement of work on the *Deliverables*:
- (a) the *Consultant* notified the *Client* in writing of any ambiguity, error, omission, discrepancy, insufficiency or inconsistency in the *Scope* which would prevent the *Services* from being suitable, appropriate and adequate for the purpose stated in *Item 5*, and its proposed solution; and
 - (b) the *Client* has not amended the *Scope* to the extent necessary, if at all, to address the concern notified under clause 5.1(a).
- 5.2 After commencement of work on the *Deliverables*, the *Consultant* must promptly notify the *Client* if and to the extent the *Consultant* becomes aware that any *Client Information* contains an ambiguity, error, omission, discrepancy, insufficiency or inconsistency or is otherwise insufficient to enable the *Consultant* to perform the *Services*.
- 5.3 If the *Consultant* gives notice under clause 5.2, the *Client* must either:
- (a) direct an appropriate amendment to the *Scope*; or
 - (b) direct the *Consultant* to proceed notwithstanding its advice.

- A1 | 5.4 The *Consultant* is entitled to an adjustment to the *Fee* and/or time for performing the *Services* in relation to a *Direction* under clause 5.3:
- (a) where the *Consultant* has given notice under clause 5.2; and
 - (b) it was not reasonably practicable for the *Consultant* to identify any ambiguity, error, omission, discrepancy, insufficiency or inconsistency necessitating amendment to the *Scope* prior to commencement of work on the *Deliverables*.

6 CLIENT'S REPRESENTATIVE AND CONSULTANT'S REPRESENTATIVE

- 6.1 The *Client* appoints the person named in *Item 6* to act as the *Client's* representative to exercise the *Client's* functions under this *Contract*.
- 6.2 The *Consultant* appoints the person named in *Item 7* to act as the *Consultant's* representative to exercise the *Consultant's* functions under this *Contract*.
- 6.3 Either party may terminate the appointment of its representative by notice in writing to the other party. The notice must identify and provide contact details for the party's new representative.
- 6.4 Unless the *Client* objects to the *Consultant's* proposed representative on reasonable grounds in writing, within 3 *Business Days*, or as otherwise agreed in writing, the termination and new appointment will take effect 4 *Business Days* after service of the notice.

7 INFORMATION

The *Client* must promptly provide the *Consultant* with *Client Information* sufficient to enable the *Consultant* to perform the *Services*.

8 DIRECTIONS

- A1 | 8.1 The *Client* may give *Directions* to the *Consultant* at any time.
- 8.2 A *Direction* may be given orally by the *Client* except where this *Contract* otherwise provides.
- 8.3 The *Client* must give the *Consultant* *Directions* necessary for the performance of the *Services* in a timely manner.
- 8.4 The *Consultant* must comply with all *Directions* given under this *Contract*.

- 8.5 If the *Consultant* in writing requests the *Client* to confirm an oral *Direction*, the *Consultant* is not bound to comply with the *Direction* until the *Client* confirms it in writing.

9 VARIATIONS

- 9.1 The *Client* may direct the *Consultant* to perform a *Variation*. All such *Directions* must be in writing and specify that they direct a *Variation*.
- 9.2 If the *Consultant* considers any *Direction* requires a *Variation* but the *Direction* is not in writing or does not specify that it directs a *Variation*, then the *Consultant* must promptly notify the *Client* in writing setting out why the *Consultant* considers the *Direction* requires a *Variation*. In that case the *Consultant* must not comply with the *Direction* unless the *Consultant* receives a written:
- (a) *Direction* specifying a *Variation*; or
 - (b) notice that the *Client* disagrees, stating its reasons.
- If a notice is issued under clause 9.2(b), the *Consultant* must comply with the *Direction* but may, within 20 *Business Days*, dispute the *Client's* notice under clause 9.2(b) by notice given under clause 32.
- 9.3 The *Fee* must be adjusted for each *Variation*. Unless the amount of the adjustment is agreed, the adjustment must be calculated by the *Client* on the basis of applicable rates or fees in this *Contract* or, if none, then reasonable rates or fees.
- 9.4 The *Consultant* is not obliged to perform a *Variation* that is outside the general *Scope* of the *Services*.

10 PAYMENT

- 10.1 The basis for payment to the *Consultant* is stated in *Item 8*.
- 10.2 The *Consultant* is only entitled to payment for disbursements set out in *Item 9*, and any other disbursement if approved in writing by the *Client* (such approval not to be unreasonably withheld or delayed) prior to the disbursement being incurred.
- 10.3 The *Consultant* must claim payment in writing at the times stated in *Item 10*, or if no times are stated, by the last *Business Day* of each month. If no time is stated, only one payment claim may be made each month.
- 10.4 The payment claim must:
- (a) in respect of the *Services*:
 - (i) identify the *Services* to which the payment claim relates;