

# Terms and Conditions

**CERMAK PETERKA PETERSEN PTY LTD**

**UPDATED: 21 MAY 2020**

PLEASE CAREFULLY READ THE TERMS & CONDITIONS BELOW.  
YOU MUST ACCEPT THESE TERMS & CONDITIONS BEFORE USING  
CERMAK PETERKA PETERSEN'S SERVICES.

**1. TERMS OF OFFER:** The provision of services by Cermak Peterka Petersen Pty. Ltd. ("CPP") is in accordance with these Standard Terms and Conditions set forth herein and also Australian Standard 4122 – 2010, "General Conditions of Contract for Engagement of Consultants" as detailed and/or modified by:

- Project contract details as required under AS4122-2010 ANNEXURE Part A (below).
- Deletions, amendments and additions as per AS4122-2010 ANNEXURE Part B (below).

## AS 4122-2010 ANNEXURE Part A

Item	Details	
Item 1 - The Brief is comprised of the following documents:	Client's Brief	As per Scope in this CPP Offer of services <b>Error! Reference source not found.</b> dated <b>Error! Reference source not found.</b>
	Scope of Work	As per Scope in this CPP Offer of services <b>Error! Reference source not found.</b> dated <b>Error! Reference source not found.</b>
	Project Inputs	As per Scope in this CPP Offer of services <b>Error! Reference source not found.</b> dated <b>Error! Reference source not found.</b>
	Project Outputs	As per Scope in this CPP Offer of services <b>Error! Reference source not found.</b> dated <b>Error! Reference source not found.</b>
Item 2 - The Client or Principal is:	a) Name:	<b>Error! Reference source not found.</b>
	b) Address, ABN,ACN:	<b>Error! Reference source not found.</b> <b>Error! Reference source not found.</b> ABN XX XXX XXX XXX ACN XXX XXX XXX
Item 3 - The Consultant is:	a) Name:	Cermak Peterka Petersen Pty. Ltd.
	b) Address, ABN,ACN:	Unit 2, 500 Princes Highway, St. Peters, NSW 2044 ABN 30 125 146 072 ACN 125 146 072
Item 4 - The law applicable is that of the State or Territory of:	New South Wales, else the State or Territory where the services are carried out.	
Item 5 - The Contract documents are	The Brief being the documents stated in Item 1. These General Conditions of Contract as supported by General Conditions of Contract for Engagement of Consultants AS 4122-2000. Additional Special Conditions of Contract Acceptance Agreement (refer this proposal) Standard Price Schedule	
Item 6 - Consultant Program	As per Schedule in this CPP Offer of Services <b>Error! Reference source not found.</b> dated <b>Error! Reference source not found.</b>	
Item 7 - Key Personnel	Project Director	Peter Bourke
	Project Manager	Joe Paetzold
Item 8 - Fees and charges to satisfy Legislative Requirements payable by the Consultant.	As per Terms and Fees in this CPP Offer of Services <b>Error! Reference source not found.</b> dated <b>Error! Reference source not found.</b>	
Item 9 - The Client's representative is:	a) Name:	As above
	b) Address, ABN,ACN:	ABN: ACN:
Item 10 - The Consultant's representative is:	a) Name:	Cermak Peterka Petersen Pty. Ltd.
	b) Address, ABN,ACN:	Unit 2, 500 Princes Highway, St. Peters, NSW 2044 ABN 30 125 146 072 ACN 125 146 072
Item 11 - Intellectual Property Rights	As per AS 4122 Clause 21.3 Alternative 1. Also see Condition 11 below under these Standard Terms and Conditions.	
Item 13 - Additional Purposes for which Contract Material may be used	None	
Item 14 - The Consultant's liability is limited as follows:	The total quotation (excluding expense items) provided under Terms and Fees in this CPP Offer of Services <b>Error! Reference source not found.</b> dated <b>Error! Reference source not found.</b>	
Item 15 - Professional Indemnity Insurance	a) Amount of professional indemnity insurance shall not be lesser than:	As per Insurance in this CPP Offer of Services <b>Error! Reference source not found.</b> dated <b>Error! Reference source not found.</b>
	b) The period for which professional indemnity insurance shall be maintained is:	7 years after the date of completion of the Services
Item 16 - The amount of public liability insurance shall not be less than:	As per Insurance in this CPP Offer of Services <b>Error! Reference source not found.</b> dated <b>Error! Reference source not found.</b>	
Item 17 - Claims for payment shall be made	As per Terms and Fees in this CPP Offer of Services <b>Error! Reference source not found.</b> dated <b>Error! Reference source not found.</b> and Condition 3 below under these Standard Terms and Conditions.	

Item	Details	
Item 18 – Consultant's Fee	a) The Consultant's fee shall be determined as follows:	As per Terms and Fees in this CPP Offer of Services <b>Error! Reference source not found.</b> dated <b>Error! Reference source not found.</b> and Condition 2 under these Standard Terms and Conditions
	b) The expenses and disbursements to be reimbursed to the Consultant shall be:	As per Terms and Fees in this CPP Offer of Services <b>Error! Reference source not found.</b> dated <b>Error! Reference source not found.</b> and Condition 2 under these Standard Terms and Conditions
Item 19 – The times and place for payment shall be:	No later than 30 days after the date of submission of a claim for payment. Also as per Condition 4 below under these Standard Terms and Conditions.	
Item 20 – The rate of interest on overdue payments is:	Eighteen (18) percent per annum. Also as per Condition 4 below under these Standard Terms and Conditions.	
Item 21 – The deemed frustration date if Services are not completed:	12 months from signing the Acceptance Agreement	

#### AS4122-2010 ANNEXURE Part B

DELETIONS, AMENDMENTS and ADDITIONS
The following Clauses or parts of Clauses have been deleted from the General Conditions in AS 4122-2010:
The following Clauses have been amended and differ from the corresponding Clauses in AS 4122-2010:
The following Clauses have been added to those of AS 4122-2010:

No other modification shall be effective unless in writing and signed by an authorised representative of CPP. In case of conflict between the provisions of these Standard Terms and Conditions and those of a written proposal, contract or agreement executed by an authorised representative of CPP, the provisions of the other document shall prevail over the provisions of these Standard Terms and Conditions. All offers and proposals made by CPP are valid for 90 days from issuance unless otherwise specified in writing.

These Standard Terms and Conditions, together with any Letter of Agreement, Proposal, and other related documents constitute the agreement between the parties, and are collectively referred to herein as the "Agreement".

**2. PRICES:** Client shall pay CPP for its goods and services in one of the two following methods:

- a. Fixed Price. For any portion (or all) of the scope of service, which is proposed by CPP for a fixed price, the Client shall pay CPP that fixed price for that portion (or all) of the scope of work proposed.
- b. Time and Materials. For any portion (or all) of the proposed scope of service, which is not proposed by CPP for a fixed price, the Client shall pay CPP for the services provided on a time-and-materials basis at the rates specified in CPP's current Standard Price Schedule.

CPP may review and revise its standard rates from time to time and the Standard Price Schedules shall reflect any changes, including the addition or removal of employee categories or equipment categories. CPP reserves the right to increase or decrease the rates charged to the Client as necessary to reflect changes in its standard rates. If the payment terms under this Agreement include time-and-materials charges, CPP shall provide notice to Client of any changes to the standard rates. The effective date for such changes shall be 30 days following notice to Client.

**Not-To-Exceed Amounts.** Although CPP prepares budget estimates for the time-and-materials portions of the scope of work in good faith, the unpredictable nature of the service can result in actual charges to Client that may be greater than or less than the estimated budget amount. Not-to-exceed amounts are set by contract and modified by mutual consent to establish a budget limit, which shall not be exceeded without prior consent of Client. Client shall not be liable for charges exceeding the not-to-exceed amount agreed to by the parties. CPP shall not be liable for performance of work that would result in charges exceeding the not-to-exceed amount agreed to by the parties.

**3. INVOICING AND PAYMENT:** Invoices shall be rendered upon completion of milestones, and are payable in Australian dollars within 30 days of receipt. Charges for services contracted on a fixed-price basis shall be invoiced in proportion to the percentage of the service fee as certified by CPP. Charges for services contracted on a time-and-materials basis shall be invoiced as accrued through the end of the accounting period being invoiced in accordance with the current Standard Price Schedule. Fees paid to CPP are nonrefundable.

**4. LATE PAYMENTS:** If any payment is not paid by the Client within thirty (30) days of the date of invoice, it shall be deemed to be delinquent, and the unpaid balance shall accrue interest at one and one-half percent (1.5%) per month until paid (this is an effective annual rate of 18 percent). Where this interest exceeds the maximum allowable by law, the maximum allowable by law shall prevail. CPP may, without penalty, stop work on accounts that are deemed to be delinquent. In such case, the Client shall remain responsible for payment (in accordance with

the provisions of these Standard Terms and Conditions, unless other conditions have been defined in the body of the Proposal) for all work performed by CPP through the time CPP stops work.

5. **NEW CLIENTS:** Unless the parties have agreed mutually to new clients, client shall provide 50% deposit on the project received prior to the beginning of work. Such deposit will be credited to the beginning of the project. Additionally, final payment must be received by CPP prior to issuance of final report and/or data.
6. **TAXES AND DUTIES:** CPP performs work for clients in a wide variety of locations around the world. It is impractical for CPP to remain apprised of all various taxes, customs duties, etc. Accordingly, all customs duties, fees for permits, taxes and similar charges applicable to services provided and tangible or intangible items delivered to Client are not included in prices quoted by CPP and shall be paid by Client in addition to any of CPP's charges. All projects completed in Australia for Australian clients are quoted with Goods and Services Tax as a separate line item. It is Client's responsibility to pay such charges directly to the relevant authorities. However, if CPP is obligated by law and pays such charges, CPP shall have the right to recover said charges from Client. CPP shall invoice the Client and Client shall pay all such charges in accordance with Sections 3 and 4 above.
7. **SCHEDULING REQUIREMENTS:** CPP schedules the necessary project resources (which include, but are not limited to, drafting time, model fabrication time and materials, tunnel schedule and staffing, and engineering personnel) on a first come, first served basis. Before such resources are scheduled or reserved for Client's project, Client shall provide to CPP:
  1. written authorisation to proceed on a project  
and
  2. a sufficiently complete and accurate set of data, drawings, and information, as determined by CPP, required to perform the work.

CPP shall not initiate the project schedule until CPP affirms that it has received items 1 and 2 above.

To enable CPP to meet the schedule, milestones or delivery dates specified within this Agreement, Client shall complete all necessary reviews of information or drawings, and shall inform CPP of the results of such review, within one (1) business day following the delivery by CPP of such information or drawings for review, unless otherwise specified by CPP's project manager or project director. Client shall respond to any questions or requests for information from CPP within one (1) business day following such inquiry or request, unless otherwise specified by CPP's project manager or project director. Failure of Client to meet the conditions in this section shall release CPP from the requirements of the project schedule and any related milestones or delivery dates. For avoidance of doubt, the performance of Client in providing timely, accurate, and complete drawings, reviews, answers, and information is prerequisite to CPP's obligation to meet the agreed project schedule.

Within the above requirements, CPP will act in good faith to perform the work as expeditiously as is consistent with professional skill and care and the orderly progress of the project. No other warranty of timeliness is valid unless agreed to in writing and signed by an authorised representative of CPP.

8. **CORRECT INFORMATION:** CPP shall not be liable for losses or delays that result from late, outdated, incomplete or inaccurate data, drawings, or information received from the Client, the Client's agents, representatives, or other subcontractors. Client warrants that all items furnished to CPP regarding the project are current, complete and accurate for the purposes of this work, as defined in the Proposal, and agrees to hold CPP harmless in the event the information, data, and materials are not current, complete and accurate. If Client requires CPP to perform additional work or rework due to late, outdated, incomplete or inaccurate data, drawings, or information, such work shall be deemed additional services, and CPP shall be entitled to additional compensation, consistent with Section 10, below.
9. **UNFORESEEN CIRCUMSTANCES:** CPP shall not be in default of its obligations to the extent that its performance is delayed or prevented by causes beyond its control, including but not limited to natural disasters, acts of God, delays in delivery by vendors, strikes or other labor disturbances, acts of war, or actions of a public enemy.
10. **CHANGES AND ADDITIONAL SERVICES:** Changes or additions to CPP's services, as defined under this Agreement, shall require consent by both parties and written approval from Client. Services provided under this Section shall entitle CPP to additional or modified Compensation. CPP shall disclose to Client any requested additions or modifications to Compensation for services under this Section. Client's authorisation of additional or modified Compensation shall be a precondition to CPP's performance of services under this Section.

If Client or Client's subcontractors, consultants, agents, clients, or representatives make material changes to the relevant project drawings, designs, data, or information after CPP has initiated work, CPP shall submit a change order to Client, which may include additional Compensation and/or modifications to the project schedule or milestones.

**11. ANNOUNCEMENTS:** Client's use of CPP's name in any variation, its logo(s), trademarks, services marks, or other representations in any form for announcements concerning the project for which CPP's services are performed, for promotional or advertising purposes, or in litigation with third parties shall require CPP's prior written approval.

**12. TERMINATION**

1. **Termination for Convenience:** Client may terminate this Agreement in whole or in part at any time by delivering written notice of Termination for Convenience to CPP. The effective date of such Termination shall be seven (7) days following acknowledged receipt of such notice by CPP. In the event of a Termination for Convenience, CPP shall be paid in accordance with this Agreement for services rendered and expenses incurred or obligated before and including the date of termination. In addition, Client shall compensate CPP in accordance with this Agreement on a time-and-materials basis for services deemed by CPP to be required 1) to adequately document and protect the data gathered and other results of the work performed, 2) to store or dispose of the wind tunnel model or other tangible products of the work, 3) to compensate CPP for the costs of resources purchased for, reserved for, or committed to the project at the time of termination, and 4) to generally bring the work to an organised conclusion.
2. **Termination for Cause:** Either party, by written notice, may terminate this Agreement for cause, in whole or in part, if the other Party fails to comply with any of the material terms of this Agreement or files or has filed against it a petition in bankruptcy. The non-terminating Party shall have ten (10) days (unless the terminating Party authorises a longer period in writing) after receipt of notice of Termination for Cause to cure any failure to comply with material terms of this Agreement. In the event of a Termination for Cause, CPP shall be paid all undisputed compensation in accordance with this Agreement for services rendered and expenses incurred or obligated before and including the date of termination. Client shall compensate CPP in accordance with this Agreement on a time-and-materials basis for services deemed by CPP to be required 1) to adequately document and protect the data gathered and other results of the work performed, 2) to store or dispose of the wind tunnel model or other tangible products of the work, 3) to compensate CPP for the costs of resources purchased for, reserved for, or committed to the project at the time of termination, and 4) to generally bring the work to an organised conclusion.

**13. LEGAL FEES AND COSTS:** If Client defaults under this Agreement, the Client shall pay all costs and reasonable attorneys' fees incurred by CPP as a result of the default, in addition to any other amounts due.

**14. RIGHTS IN WORK PRODUCT:** Each Party shall retain all proprietary rights in their respective products, devices, instruments, computer software, patents, trademarks, trade names, processes and methods involved in or relating to performance of the work under this Agreement, except that the Client shall have the right to use, duplicate, disclose or otherwise dispose of all project data and reports created or compiled by CPP under this Agreement.

**15. TEST MODEL:** Any wind tunnel model constructed in the course of work for the Client shall be the property of the Client, except that if the Client does not take possession or arrange with CPP for storage of the model within 60 days following completion of the work, title shall revert to CPP. Unless otherwise agreed in writing, prices quoted by CPP do not include 1) storage of wind tunnel models more than 60 days following completion of the work, or 2) packing, transportation, or delivery costs for shipment of the model(s).

**16. INDEMNIFICATION:** Client and CPP each agree to indemnify and hold harmless the other party, its directors, officers, agents, representatives, and employees from and against all claims, taxes, losses, damages, liabilities, costs and expenses, including reasonable attorneys' fees and other legal expenses ("**Losses**"), arising directly or indirectly from (i) any negligent, reckless or intentionally wrongful act of the indemnifying party or its employees, assistants, subcontractors (separate from this Agreement), agents, or representatives (ii) any failure of the indemnifying party to perform any requirements of this Agreement in accordance with all applicable laws, rules and regulations.

Client agrees to indemnify and hold harmless CPP and its directors, officers, agents, representatives, and employees from and against any direct or indirect Losses to Client resulting in whole or in part from Client's misuse or misapplication of CPP's work product under this Agreement for any purpose other than its intended application, as defined in this Agreement.

CPP agrees to indemnify and hold harmless Client, its directors, officers, agents, representatives, and employees from and against any violation or alleged violation of a third party's rights (including without limitation infringement of copyright or patent rights, or misappropriation of trade secrets) by CPP that result in whole or in part from CPP's performance under this Agreement.

- 17. ACTS AND OMISSIONS:** CPP shall not be responsible for the acts and omissions of Client, Client's employees, agents, or representatives. CPP shall not be responsible for the acts and omissions of Client's other consultants, their agents, employees, representatives, or any third party not under the direct legal responsibility of CPP.

Client shall not be responsible for the acts and omissions of CPP, CPP's employees, agents, or representatives. Client shall not be responsible for the acts and omissions of CPP's consultants, their agents, employees, representatives, or any third party not under the direct legal responsibility of Client.

- 18. ARBITRATION:** Any professional liability claim asserted by Client against CPP arising out of or relating to the subject matter of this Agreement shall be determined by binding arbitration in the State of New South Wales, Australia. The arbitrator shall be a person having at least ten years' experience in the fields of civil engineering, mechanical engineering, wind engineering, meteorology or architecture, and who is designated either as a professional engineer, as a Certified Consulting Meteorologist, or as a Registered Architect by the appropriate governing bodies. The arbitration shall be governed by NSW law. The arbitrator shall, in the award, allocate all of the arbitration costs, including the fees of the arbitrator and the reasonable attorneys' fees of the prevailing party, against the party who did not prevail. The arbitrator shall also have the power to impose any sanction against any party permitted by NSW law. Judgment on the award may be entered in any court having jurisdiction. This arbitration provision is limited to professional liability claims asserted by Client against CPP, and all other claims relating to the subject matter of this Agreement shall not be subject to arbitration unless otherwise agreed to in writing by the parties.

- 19. GOVERNING LAW:** Interpretation, construction, and enforcement of this Agreement shall be pursuant to the laws, statutes, and regulations of the State of New South Wales, Australia. The parties recognised that the services are to be performed in State of New South Wales, Australia, and agree that any suit for enforcement of any obligation arising pursuant to this Agreement shall be brought in State of New South Wales, Australia.

- 20. INSURANCE:** CPP maintains general business insurance and workman's compensation insurance in accordance NSW State law and Australian Federal law. Certificates of insurance coverage are available upon request.

- 21. AUTHORITY:** The signer of this Agreement represents that s/he is a duly authorised representative of the Client and has full power and authority to bind the Client to all provisions of this Agreement.

- 22. ENTIRE AGREEMENT:** This Agreement constitutes the entire final Agreement between the parties and supersedes all prior proposals and agreements.

- 23. LEGAL STATUS OF PARTIES:** This Agreement does not make either party the agent, partner, employee or legal representative of the other party for any purpose whatsoever.

- 24. WAIVER OF BREACH:** No waiver of any breach of this Agreement shall constitute a waiver of any other or subsequent breach.

- 25. NO MERGER:** All covenants, agreements, indemnities, warranties, and representations made by the parties shall survive completion by CPP of the work and payment by the Client for such work.

- 26. BINDING EFFECT:** This Agreement is binding upon, and shall inure to the benefit of the parties, their successors, assigns and legal representatives.

- 27. INVALID PROVISIONS:** If any term or provision of this Agreement is held to any extent invalid or unenforceable, the remaining terms and provisions shall be valid and enforceable to the fullest extent permitted by law.

- 28. SIGNATURE FORMAT AND DELIVERY:** A signed copy of this agreement delivered by facsimile or other electronic means shall be considered an original agreement for all purposes.