

# Intrax Standard Terms & Conditions

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## Intrax Standard Terms and Conditions

### 1 Definitions & interpretation

1.1 In these conditions, unless expressed or implied to the contrary:

- a. "Account Application Form" means the Account Application Form of Intrax from time to time;
- b. "ACL" means the Australian Consumer Law as applicable as a law of the Commonwealth and in each State and Territory of Australia;
- c. "Background IP" means any Intellectual Property Rights in connection with the Services developed by Intrax independently of a Contract and or prior to the date of a Contract;
- d. "Business Day" means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;
- e. "Claim" includes actions, proceedings, suits, causes of action, arbitrations, verdicts and judgements either at law or in equity or arising under a statute, debts, dues, demands, claims of any nature, costs and expenses;
- f. "Conditions" means these Standard Terms and Conditions;
- g. "Contract" means the contract for the supply by Intrax to the Client of Services which is formed by the acceptance by Intrax of any order for services or acceptance of a Fee Proposal received from a Client, and which incorporates these Conditions and any other terms and conditions set out in any other document forwarded by Intrax to the Client;
- h. "Client" means, as the context requires, the applicant named in the Account Application Form, the person who submits an order for Services or accepts a Fee Proposal, or the purchaser of the Services;
- i. "Deliverables" means all documents delivered by Intrax to the Client as part of the Services under a Contract;
- j. "Fee Proposal", means the document, however titled, including any document titled "Quote" or similar, given to the Client explaining the Services being provided by Intrax to the Client and the pricing for each;
- k. "GST" has the same meaning given to that in the term in the GST Act, "GST Act" means A New Tax System (Goods and Services Tax) Act 1999(as amended);
- l. "Insolvency Event" means an event where the Client suffers an act of bankruptcy or has a receiver, receiver and manager, administrator or controller appointed over any of its assets or goes into liquidation (including provisional liquidation) or any similar event occurs;
- m. "Intellectual Property Right" means all intellectual property and proprietary rights (whether registered or unregistered) including:
  - o copyright and similar industrial or intellectual property rights;
  - o any right to have information (including confidential information) kept confidential; and

- rights in respect of patents, patent applications, inventions, trade secrets, trademarks, technical data, formulae, knowhow and registered designs;
- n. "Interest Rate" means the penalty rate fixed under the *Penalty Interest Rates Act 1983* (Victoria);
- o. "Intrax" means Intrax Consulting Engineers Pty Ltd ABN 31 106 481 252 or any subsidiary or associated entity (as defined in section 9 of the Corporations Act 2001 (Cth));
- p. "Invoice" means the Intrax invoice to the Client for the Services;
- q. "Loss or Damage" means loss or damage however caused whether based in tort, contract or otherwise and includes without limitation any direct, indirect, special or consequential loss or damage, loss of profits, loss of production, loss or corruption of data, loss of trades, opportunity or business reputation, direct or indirect labour costs and overhead expense and damage to property;
- r. "Services" means professional geotechnical, civil, structural, electrical, mechanical, hydraulic, survey, forensic or other engineering or drafting services and any other services named and described on the Fee Proposal and/or the Invoice;
- s. "Variations" means changes to the scope of Services specified in a Fee Proposal or purchase order.

**1.2** Unless the context otherwise requires, in these Conditions:

- a. if a Client consists of more than one person or corporate body, a Contract binds them jointly and each of them severally;
- b. a reference to a person includes a firm, partnership, joint venture, association, corporation or other corporate body; and a person includes the legal personal representatives, successors and assigns of that person;
- c. a reference to the singular includes the plural and vice versa; and a gender includes the other genders; and
- d. headings are inserted for ease of reference and do not affect the interpretation of these Conditions.

## **2 Trade**

Intrax agrees to provide and the Client agrees to purchase Services under these Conditions to the exclusion of any terms and conditions of the Client or any other document. Intrax's agreement to provide the Services does not constitute Intrax's acceptance of any terms and conditions purported to be imposed by the Client. The Services to be provided are set out in the Fee Proposal and in any Variations agreed in writing by Intrax and the Client.

## **3 Credit Facilities**

- 3.1** A credit account is only available to the Client if the Client has completed an Account Application Form which has been processed and approved by Intrax. Until an Account Application Form is approved or where no Account Application Form has been submitted, all trade for the provision of Services are strictly on a cash prior to delivery basis, or in accord with any other written agreement made at the time of the acceptance of the order.
- 3.2** Payment for Services supplied under the credit account must be received by Intrax as per the trading terms granted. Any amount outstanding 30 days from the date of invoice may be subject to an interest charge.
- 3.3** Intrax reserves the right to require earlier settlement of accounts.
- 3.4** Intrax will charge interest on overdue accounts at the Interest Rate calculated on a daily basis.

- 3.5** The provision of a credit account to a Client may be withdrawn at any time without notice to the Client.
- 3.6** If the Client fails to make any payment due under Condition 3, all debt recovery costs, including legal costs or a solicitor/own client basis and any mercantile agent costs and expenses, will form part of the monies owing by the Client to Intrax.
- 3.7** If payment of account is made by credit card a 1.1% surcharge will apply.

#### **4 PPSR**

- 4.1** If Intrax agrees to provide Services on credit, this Condition 4 applies.
- 4.2** The Client acknowledges that these Conditions and each Contract will comprise a Security Agreement for the purposes of the PPSA.
- 4.3** The Client acknowledges that until such time as Intrax receives full payment in cleared funds for all Services supplied to the Client, these Conditions and each Contract creates a Purchase Money Security Interest in the Deliverables as security for the Client's obligations to Intrax under these Conditions and each Contract, registrable on the Personal Property Securities Register.
- 4.4** Until Intrax has been paid in full for Services provided under a Contract:
- a.** the legal and equitable rights in the Deliverables will remain with Intrax;
  - b.** if a receiver is appointed over the assets or undertaking of the Client or winding up order is made against the Client or the Client goes into voluntary liquidation or calls a meeting of, or makes any arrangement or composition with creditors or commits any act of bankruptcy the Client will place the Deliverables at the disposal of Intrax who will be entitled to enter upon any premises of the Client for the purpose of removing such Deliverables and to remove such Deliverables from the premises.
- 4.5** For the purpose of this Condition 4:
- a.** "Personal Property Securities Register", "Purchase Money Security Interest", "Security Agreement" and "Security Interest" each have the meanings given in the PPSA.
  - b.** "PPSA" means the Personal Property Securities Act 2009

#### **5 Price**

- 5.1** Services will be charged to the Client at the amount specified in the Fee Proposal or, to the extent that any Services provided are outside the scope of work set out in the Fee Proposal, at the amount specified in the then current Intrax price list, and will be listed in each invoice with details of the work completed to that date.
- 5.2** Any Fee Proposal given by Intrax to the Client will remain valid and capable for acceptance by the Client for a period of 30 days from the date when the Fee Proposal was given or such other period as nominated in the Fee Proposal.
- 5.3** A Client may accept a Fee Proposal by returning to Intrax a copy of the Fee Proposal signed by the Client, or by otherwise advising Intrax in writing that the Fee Proposal is accepted.

#### **6 GST**

- 6.1** The price payable for the Services is exclusive of GST unless the Contract states otherwise.
- 6.2** If the price set out in an invoice or Fee Proposal is exclusive of GST, the price payable by the Client will be increased by the applicable amount of GST.

#### **7 Acceptance of order**

Unless, within five Business Days of Intrax receiving a Client's purchase order for Services or acceptance of a Fee Proposal, Intrax advises the Client in writing that the purchase order or Fee Proposal is not accepted, Intrax shall

be deemed to have accepted the purchase order or Fee Proposal.

## **8 Cancellation of Order**

- 8.1** Subject to Condition 10, a Contract can only be cancelled by a Client where written request for cancellation has been made by the Client and accepted by Intrax.
- 8.2** Cancellation will only be accepted by Intrax if the Client accepts full liability for all commissions, fees, costs, work produced to that date, and administration costs incurred by Intrax arising out of such cancellation.

## **9 Services Provided to Deadline**

- 9.1** Intrax will use its best endeavours to provide Services to the Client by any date specified in a purchase order or Fee Proposal.
- 9.2** The Client acknowledges that Intrax does not warrant or represent that the Service will be delivered on that date.
- 9.3** Where a site visit is required, and access to the site by Intrax's employees is delayed, hindered or prevented:
- a.** by an act, default or omission the Client; or
  - b.** because the site is not ready for the Services to be undertaken; or
  - c.** due to climatic conditions; or
  - d.** by any person, including any Authority, or employee, subcontractor, agent or consultant of the Client; or
  - e.** because of an agreed variation to the Services; or
  - f.** because the condition of the site poses an unacceptable risk to Intrax employees;
- the Client acknowledges that Intrax's ability to deliver to deadline may be impeded and, if such circumstances require additional site visits to be undertaken by Intrax employees, Intrax reserves the right to impose one or more additional site visit fees as applicable.
- 9.4** The failure to deliver the Services by the date required will not:
- a.** avoid or give the Client the right to avoid the Contract; or
  - b.** to the extent permitted by law, render Intrax liable for any Loss or Damage.

## **10 Force Majeure**

- 10.1** Intrax is not liable for any delay or failure to perform an obligation (other than to pay money) under a Contract caused by:
- a.** act of God;
  - b.** war, riot, insurrection, vandalism or sabotage;
  - c.** strike, lockout, ban, limitation of work or other industrial disturbance; or
  - d.** law, rule or regulation of any government or governmental agency and executive or administrative order or act of general or particular application.
- 10.2** Intrax must notify the Client as soon as practical of any anticipated delay or failure caused by an event referred to in Condition 10.1 ("**Event**").
- 10.3** The performance of Intrax's obligation is suspended for the period of delay caused by the Event.
- 10.4** If:
- a.** performance of an obligation is prevented by an Event; or

- b. a delay caused by the Event exceeds 60 days;

either Intrax or the Client may terminate a Contract at the expiration of not less than five Business Days notice to the other party.

- 10.5** Intrax is not in breach of the Contract and is not liable to the Client for any Claim arising as a result of force majeure as described in Condition 10.1 under the Contract, in tort, statute or otherwise.

## **11 No Warranty**

If the Client is a consumer under the ACL, the Client also has extensive rights under the ACL including consumer guarantees and remedies. Nothing in these Conditions limits those rights and remedies in any way. Except as required by law, all warranties beyond those expressly given in these Conditions, whether expressed or implied and whether statutory or otherwise, with regard to the Services are excluded.

## **12 Liability**

- 12.1** Nothing in these Conditions are to be read as excluding, restricting or modifying the application of any legislation which by law cannot be excluded, restricted or modified.
- 12.2** The liability of Intrax for a breach of a Condition or warranty implied by law in relation to the supply of Services is limited, at Intrax's option, to the provision of equivalent Services, the payment of the cost of making rectification to the structure or the payment of the cost of acquiring equivalent Services.
- 12.3** Without limiting the generality of Conditions 12.3 and to the extent permitted by law, Intrax will not be liable to the Client for any Loss or Damage suffered by the Client as a result of any negligence or default of Intrax under the Contract or otherwise or any other act or omission whatsoever of Intrax, its employees, agents or sub-contractors.

## **13 Provision of information**

The Client warrants to Intrax that Intrax will be able to rely on all information, advice or other material provided by or on behalf of the Client without any obligation to verify its accuracy or completeness.

## **14 Indemnity**

To the extent permitted by law, the Client indemnifies and shall keep indemnified Intrax, its employees, contractors, agents or sub-contractors on demand for and against any Loss or Damage suffered or incurred by any of them relating to or arising out of:

- a. any enforcement by Intrax of a Contract or these Conditions;
- b. any breach by the Client of a Contract or these Conditions or of the warranty given by the Client in Condition 13;
- c. any Claim by a third party in respect of personal injury, death or damage to property whether or not they relate to an error in the Services;
- d. any false, misleading or deceptive conduct; representation or statement made by the Client to any person relating to the supply of the Services;

except to the extent any act, omission, or infringement of Intrax has contributed to such Loss or Damage.

## **15 Termination**

- 15.1** Intrax may on written notice immediately terminate a Contract and/or the Client's credit account if the Client:
- a. fails to pay an invoice when due;
  - b. breaches these Conditions or a Contract; or
  - c. becomes or threatens to become insolvent or subject to any form of external administration.

- 15.2** If Intrax terminates a Contract, under this Condition 15 or either party terminates a Contract under Condition 10:
- a. Intrax's obligations under it are at an end;
  - b. Intrax's accrued rights and remedies are not affected;
  - c. Intrax may retain all monies paid under it; and
  - d. Intrax may invoice the Client, and the Client must pay, for all services provided up to the termination date.

## **16 Dispute Resolution**

- 16.1** If a difference or dispute between the parties arises in connection with a Contract and/or Services, then either party can provide the other party with written notice of dispute.
- 16.2** If a notice of dispute has been issued, then representatives of the parties with the authority to agree will meet within 10 Business Days to try and resolve the dispute.
- 16.3** If the dispute has not been resolved within 20 Business Days of the notice of dispute, then that dispute can be referred by either party to, and finally resolved by, arbitration administered by the Australian Disputes Centre ("ADC").
- 16.4** The arbitration shall be conducted in Melbourne in accordance with the ADC Rules for Domestic Arbitration operating at the time the dispute is referred to ADC ("Rules")
- 16.5** The terms of the Rules are hereby deemed incorporated into these Conditions.
- 16.6** Unless otherwise agreed in writing, each party shall bear its own costs and pay for half of all fees in relation to the arbitration, with the determination of the arbitrator being binding on both parties.
- 16.7** Nothing herein shall prejudice the right of a party to institute proceedings to enforce payment due under a Contract or to seek injunctive or urgent declaratory relief.

## **17 Inconsistency**

To the extent that there is an inconsistency between a provision in any of the documents comprising a Contract and another provision in such document or between a provision in any of those documents and a provision in any other document comprising a Contract:

- a. a specific provision takes precedence over a general provision
- b. otherwise, to the extent necessary to resolve the inconsistency, the following order of precedence applies:
  - o an agreed Variation;
  - o a Fee Proposal
  - o these Conditions.

## **18 Governing Law and Jurisdiction**

A Contract is governed by and is to be construed in accordance with the laws of Victoria. Intrax and the Client irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of Victoria and waive any right to object to proceedings being brought in these courts.

## **19 Severance**

If a provision in a Contract is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unforeseeable. If it is not possible to read down a provision as required in this Condition, then that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in the Contract.

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**20 Intellectual Property Rights**

- 20.1** Intrax retains all copyright and all other Intellectual Property Rights in the Background IP and everything of general application that Intrax develops in the course of providing the Services, including, but not limited to, methodologies, development tools, processes, procedures, designs, data, know-how, software and working papers.
- 20.2** Upon payment of all moneys due to Intrax under the Contract, Intrax grants to the Client a non-exclusive, royalty free licence to use the Deliverables but only to the extent necessary for the Client to obtain the benefit of the Services provided.
- 20.3** When using computations, drawings, designs and the like delivered by Intrax as part of the Services, the Client must comply with the law including, without limitation, copyright laws.

**21 Entire Understanding**

A Contract contains the entire understanding between the parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by the Contract and have no effect.

**22 Notices**

Any notice or communication under a Contract will be effective if it is in writing, signed and delivered to the Intrax or the Client as the case may be, at the address or facsimile number set out in the Fee Proposal or any purchase order.

**23 Variation to these Conditions**

Intrax may in its absolute discretion change these Conditions at any time by publication on its website [www.intrax.com.au](http://www.intrax.com.au). The change will take effect from the time specified in the publication.

**24 Privacy Policy**

Intrax may collect, use and disclose personal information about the Client and any guarantor of the Client in accordance with Intrax's privacy policy. A copy of the privacy policy is available from the Intrax website at [www.intrax.com.au](http://www.intrax.com.au).