

Terms and Conditions of Engagement

1. Nelgara Pty Ltd (Nelgara) will provide to the client the services outlined in the accompanying correspondence and such other services as may be agreed in writing between Nelgara and the client from time to time (together referred to in these Terms and Conditions of Engagement as the services) on the terms set out in these Terms and Conditions of Engagement.
2. Nelgara will provide the services in a timely manner and with reasonable skill, care and diligence.
3. The client will provide Nelgara with all necessary briefings, approvals and consents prior to commencing the commission to enable Nelgara to provide the services. Briefings will include the provision to Nelgara of all relevant drawings and other documents and access the client's systems and networks.
4. The client will allow Nelgara a reasonable time to provide the services.
5. The client will pay Nelgara the fees set out in the accompanying correspondence and all disbursements reasonably incurred by Nelgara in providing the services on the terms set out in these Conditions. Disbursements will be charged in accordance with the schedule of disbursements below.
6. The Daily rates of Nelgara stated in the accompanying correspondence are subject to escalation. Nelgara reviews and adjusts staff salaries to reflect market rates and adjusts charge out rates accordingly.
7. Where a Nelgara staff/contractor is promoted to a higher position the client agrees to pay the higher rate for that individual or a Nelgara staff/contractor of similar position to the original commission will be allocated.
8. Where the client and Nelgara have agreed to perform professional services and be remunerated for these services under a daily rate arrangement, it is understood by the client that the definition of a daily rate consists of eight (8) working hours unless otherwise stated in writing and agreed by both the client and Nelgara. Any additional hours over and above eight (8) hours per day shall be payable by the client at the agreed hourly rates pro rata the daily rate.
9. Agreed rates referred herein mean the hourly rates and/or daily rates stated in the accompanying correspondence or as otherwise agreed in writing between Nelgara and the client.
10. Nelgara will invoice the client every 14 days by tax invoice and the client will pay the tax invoice within 14 days of receipt. Interest will be charged on overdue invoiced amounts at the current WA Supreme Court interest rate.
11. The fees in the accompanying correspondence (unless otherwise noted) exclude GST. Nelgara fees will attract GST (if confirmed by Nelgara). All GST amounts for which Nelgara is liable in respect of the provision of the services will be incorporated in the Nelgara invoices and will be payable by the client in the same manner and at the same time as other amounts payable in accordance with terms of these Conditions.
12. Where the client is required to reimburse Nelgara for an amount Nelgara pays to a third party (e.g. sub-consultants), the amount payable by the client (excluding GST) will be subject to an administration fee. The third-party cost and administration fee will attract GST.
13. Where Nelgara provides a fee estimate, Nelgara does not warrant that the services will be provided for the amount of the estimate. The actual fee may be less or more than the estimate.
14. Where a fixed fee is given, it is based on the scope of work, the services to be provided and the timing of the provision of those services set out in Nelgara's offer.
15. Any variation to the scope of work, the services to be provided or the timing of the provision of services required by the client or caused by the client will result in a variation to the fee payable by the client to Nelgara.
16. Any variation to the services to be provided by Nelgara to the client will be charged, subject to the terms of these Conditions, as to the time charges at the Daily / hourly rates stated in the accompanying correspondence or as otherwise agreed in writing between Nelgara and the client. In the event that there are no such hourly rates, the ACEA. scale of hourly rates will apply. Disbursements will be charged for variations in accordance with the schedule of disbursements below.
17. The liability of Nelgara to the client in respect of the project for loss or damage caused to the client by Nelgara will be limited to the cost of rectification of the loss or damage or \$1 whichever is the less. The client will be entitled to reimbursement of the amount of such loss or damage by Nelgara only if it makes a claim against Nelgara within 6 months of completion of the project in respect of which the services are provided. Where both the client and Nelgara contribute to the loss or damage, the liability of Nelgara to the client in respect of that loss or damage will be limited to the extent of the loss or damage caused by Nelgara and as set out above.
18. The client will indemnify Nelgara against all liabilities, costs and expenses which Nelgara incurs

- as a result of any breach by the client of the terms of these Conditions.
- obligations under these Conditions or the accompanying correspondence, which breach has not been remedied within 30 days of written notice to the client from Nelgara requiring the breach to be remedied, or
19. Copyright in all documents and electronic material produced by Nelgara in connection with the services remains the property of Nelgara.
 20. Subject to Clause 21 of these Conditions, the client alone will have a license to use all the documents and material referred to in Clause 19 of these Conditions, for the purpose of completing the project.
 - b. upon the expiration of 60 days written notice from Nelgara to the client of its intention to terminate those obligations.
 21. If the client is in breach of any obligation to make a payment to Nelgara, then Nelgara may revoke the license referred to in Clause 20 of these Conditions and the client must immediately return to Nelgara all the documents and material referred to in Clause 19 of these Conditions.
 22. Subject to Clause 23 of these Conditions, if any dispute arises between the client and Nelgara, the party claiming the existence of a dispute must set out in writing the issues and its contentions in respect of them and must submit that written material to the other party within 14 days of the dispute arising. The other party must respond in writing within 14 days. If this does not resolve the dispute, it will be referred to the Chief Executives of each organisation who will meet within a further 14 days in an attempt to resolve the issues. If the issues are not resolved at that meeting, or within such further time as the parties agree, the party claiming the existence of the dispute may institute legal action.
 23. Nothing in these Conditions prevents Nelgara from instituting legal action at any time to recover monies owed to it by the client.
 24. Subject to Clause 26 of these Conditions, the client may terminate its obligations under these Conditions and the accompanying correspondence:
 - a. In the event of substantial breach by Nelgara of its obligations under these Conditions or the accompanying correspondence, which breach has not been remedied within 30 days of written notice from the client to Nelgara requiring the breach to be remedied, or
 - b. Upon the expiration of 60 days written notice from the client to Nelgara of its intention to terminate those obligations.
 25. Subject to Clause 26 of these Conditions, Nelgara may suspend or terminate its obligations under these Conditions and the accompanying correspondence:
 - a. in the event:
 - i. monies payable to Nelgara under these Conditions are outstanding for more than 30 days;
 - ii. there is other substantial breach by the client of its
 26. Termination under either Clause 24 or 25 of these Conditions of obligations under these Conditions and the accompanying correspondence or suspension of such obligations under Clause 25 of these Conditions will not affect the rights and obligations of the parties existing at the time of the termination or suspension. Neither party may assign, transfer or sublet any obligation under these Conditions and the accompanying correspondence without the written consent of the other. Unless stated in writing to the contrary, no assignment, transfer or subletting will release the assignor from any obligation under these Conditions or the accompanying correspondence.
 27. The client must not directly or indirectly employ Nelgara staff or contractors for a period of 12 months after the expiration of that agreement. If the client breaches this clause, then the client must immediately pay Nelgara a recruitment fee of 60% of the total annual salary package or equivalent, paid by Nelgara to that employee or contractor in the 12 months immediately preceding the expiration of that agreement or 6 months full time fee at the staff member's current billable rate, whichever is the higher.
 28. Where Nelgara staff or contractors are required to work in a client's office or on a site owned or managed by the client or its agent or contractor, the client will be responsible for providing safe working conditions for Nelgara staff/contractors and for inducting Nelgara staff/contractors on the site into the client's WHS System.
 29. Where the services include contract administration the following conditions apply:
 - a. Nelgara is authorised to act as agent of the client to carry out those services;
 - b. All communications by the client with the contractor, specialist consultants or others falling within the duties of Nelgara under these Conditions or the accompanying correspondence will be made by or through Nelgara;
 - c. Nelgara may make such decisions and issue such instructions as are, in its opinion, necessary for the safety of persons or property, or the proper execution of the project;
 - d. Nelgara may make all decisions, which it is empowered or required to make under

- relevant contracts, including decisions on claims made by contractors or the client as required, and decisions relating to the interpretation of documents pertaining to those contracts;
- e. Nelgara may issue all certificates required or permitted by relevant contracts which it administers;
 - f. The relevant contractor alone is responsible for the proper execution of the work;
 - g. The contract administration services are not rendered for the benefit of the contractor and Nelgara does not undertake a duty of care towards the contractor;
 - h. Nelgara is not responsible to the client for the means, methods, techniques, sequences, procedures and use of equipment, whether approved by Nelgara or not, which are employed by the contractor or others in executing any phases of the project.
30. Where the services include the secondment of Nelgara staff or contractors, then the client will assume responsibility for those personnel, and its personnel, and it's agreed that any statements or documents produced by those personnel will not be a statement or document of Nelgara and that the client will pay Nelgara such amount as is agreed between them in relation to the secondee.
 31. Where Nelgara staff/contractors are engaged on the project for longer than 6 months, Nelgara reserves the right to reassign those individuals to other projects.
 32. If any terms of these Conditions or the accompanying correspondence are held to be invalid or unlawful by a court having jurisdiction, that term will be severed from the remaining terms, which will continue to be valid to the fullest extent of the law.
 33. Nelgara may sub-contract the provision of all or part of the services provided the client consents to that. The client must not unreasonably withhold its consent.
 34. Nelgara and the client will each keep confidential information received by them from the other which is confidential. Information will be confidential unless:
 - a. It is in the public domain other than as a result of disclosure by the recipient, its Directors, employees, agents, consultants or contractors in breach of these Conditions; or
 - b. It is already known to the recipient prior to disclosure to it by the disclosing party; or
 - c. It is information that the recipient is required to disclose by any applicable law or order of any judicial or regulatory body.
 35. Nelgara will immediately notify the client in the event that Nelgara believes that it may have a conflict of interest. The matter will then be resolved by discussion between the parties or, failing resolution, by Nelgara ceasing to provide the services to the client in relation to the project in question.
 36. It is agreed by the client that Nelgara shall have the option to resolve a potential conflict of interest by use of an information barrier, whereby different clients are serviced by different Directors and staff, provided that all Directors and staff involved with each client sign an 'Information Barrier Protocol'. A copy of this document is available on request.
 37. The failure at any time of a party to the agreement arising from these Conditions and the accompanying correspondence to insist on performance of any provision of either of those documents is not a waiver of its right at any time to insist on performance of that or any other provision of those documents.
 38. These Conditions are to prevail in the event of any ambiguity or discrepancy between them and the accompanying correspondence.
 39. Notice in writing may be given by personal delivery, fax, registered mail or the like or by prepaid post. Notice may not be given by email.
 40. The agreement arising from these Conditions and the accompanying correspondence is governed by the laws of the State of WA and the parties agree to submit to the jurisdiction of the courts in WA.

Schedule of Disbursements

(Excluding GST)

Item No.	Description	Rate
1	Payments to Third Parties	Invoice Cost + 10%
2	Photocopying (Per Page)	<u>Black & White:</u> <ul style="list-style-type: none"> A4 = \$0.20 A3 = \$0.45 <u>Colour:</u> <ul style="list-style-type: none"> A4 = \$1.70 A3 = \$2.90
3	Recovery of Documents from Storage	\$150 Per Recovery
4	Air Travel: <ul style="list-style-type: none"> Business Class for flights greater than 7 hours duration. Otherwise all staff travel economy class on flights within Australia and Business Class on international flights unless otherwise agreed with the client 	
5	Vehicular Travel: <ul style="list-style-type: none"> Use of personal vehicles is charged per km. 	\$0.77 per km
6	Rates for Consultants: <ul style="list-style-type: none"> Consultant (Perth Based) – Nick Noonan Consultant (Perth Based) – Peter Hooks 	\$1,500.00/Day \$1,450.00/Day
7	Other Fees: <ul style="list-style-type: none"> Work undertaken on an hourly basis 	\$175/Hr