

# Ant Consult (Pty) Ltd. Standard Short Form of Agreement

## 1. DEFINITIONS

- 1.1. The following words and expressions shall have the meanings assigned to them except where the context requires otherwise: -
- 1.2. "Agreement" means this Short Form of Agreement, and includes the terms and conditions of the document to which it is attached, namely Proposal XXX.
- 1.3. "Client" means the contracting party named in the agreement, who appoints Ant Consult (Pty) Ltd.
- 1.4. "Ant Consult (Pty) Ltd" means the contracting party named in the agreement, who is appointed by the client to perform the services.
- 1.5. "Contract" means the agreement or agreements between the client, or his designated representative, and the contractor(s) for the execution of all or a portion of the works by the contractor(s).
- 1.6. "Contractor" means any person or legal person under contract to the client to execute the works or part thereof and includes any sub-contractor to whom any part of the works has been sub-let by a contractor.
- 1.7. "Party" and "parties" mean the client and Ant Consult (Pty) Ltd and "third party" means any other person or entity, as the context requires.
- 1.8. "Project" means the project named in the agreement for which the services are to be performed.
- 1.9. "Services" means the service or services to be performed by Ant Consult (Pty) Ltd in accordance with the agreement.
- 1.10. "Works" means the activities on a project for which contractors are under contract to the client to perform or are intended to be performed, including the supply of goods and equipment.

## 2. OBLIGATIONS OF ANT CONSULT (PTY) LTD

- 2.1. Ant Consult (Pty) Ltd shall perform the services in accordance with this agreement with reasonable professional skill, care, and diligence.
- 2.2. Where the services described in this agreement include acting as the employer's agent (or such similar term which shall have the same meaning depending on the applicable form of contract) in terms of the contract with the powers to certify, decide or exercise discretion, then Ant Consult (Pty) Ltd shall act in accordance with the contract.
- 2.3. Ant Consult (Pty) Ltd shall designate in writing a person to act as his representative and such person shall have complete authority to receive instructions and to give information to the client on behalf of Ant Consult (Pty) Ltd.
- 2.4. Ant Consult (Pty) Ltd shall co-operate with any third parties who are appointed by the client and who are involved with the project. Ant Consult (Pty) Ltd will not be responsible for any aspect of the performance of such third parties.
- 2.5. Ant Consult (Pty) Ltd shall monitor any construction as described the project proposal. The consulting engineer cannot ensure the performance of the contractor nor guarantee

against any failure by the contractor to perform the contractor's work in accordance with the contract.

### 3. OBLIGATIONS OF THE CLIENT

- 3.1. The client shall timeously provide to Ant Consult (Pty) Ltd in writing, free of cost, all information that may be reasonably required for the performance of the services and shall give his decision on all matters properly referred to him in writing by Ant Consult (Pty) Ltd. Ant Consult (Pty) Ltd shall be entitled to rely on the accuracy and completeness of such information furnished by or on behalf of the client.
- 3.2. The client shall pay Ant Consult (Pty) Ltd for the services in accordance with clause 5 of this agreement.
- 3.3. The client shall designate in writing a person to act with his complete authority to give instructions and receive information on his behalf.
- 3.4. The client shall obtain all approvals, licences, and permits from national, regional, and local authorities having jurisdiction over the project.

### 4. DURATION OF AGREEMENT AND SUSPENSION /TERMINATION

- 4.1. The commencement date of this agreement shall be the date of signature of this Short Form of Agreement or from the date when Ant Consult (Pty) Ltd commences to perform any of the services provided for in this agreement, whichever is the earlier.
- 4.2. The agreement shall be completed when Ant Consult (Pty) Ltd has performed the services in accordance with this agreement and has rendered the final account and has received payment in full, whichever is the later.
- 4.3. The client may suspend all or part of the services by giving at least fourteen (14) calendar days' written notice with reasonable reasons to Ant Consult (Pty) Ltd who shall immediately make arrangements to stop the services and minimise further expenditure. The client may terminate the services by giving at least thirty (30) calendar days' written notice with reasonable reasons to Ant Consult (Pty) Ltd who shall immediately make arrangements to stop the services and minimise further expenditure.
- 4.4. Ant Consult (Pty) Ltd may suspend or terminate the agreement by giving at least seven (7) calendar days written notice when Ant Consult (Pty) Ltd has not received payment within thirty (30) calendar days after the due date for payment of any invoice, or when the services have been suspended under this clause and the period of suspension has exceeded ninety (90) calendar days, or when it is clear to Ant Consult (Pty) Ltd that it will be impossible or impractical to resume the suspended services before the period of suspension has exceeded ninety (90) calendar days.
- 4.5. Either party may terminate the agreement immediately if it is shown that the other party is in breach of Clause 8.3.

## 5. REMUNERATION AND PAYMENT

- 5.1. The client shall remunerate Ant Consult (Pty) Ltd for services performed and for costs and expenses necessarily incurred by Ant Consult (Pty) Ltd in connection with the performance of the services. The amount of the remuneration for services performed and costs and expenses shall be as stated in the agreement and Appendix A2. Ant Consult (Pty) Ltd may render interim monthly invoices for professional fees and costs and expenses based on progress throughout the duration of the services.
- 5.2. The client shall make payment in full without any set-off and the client waives all rights to any such set-off.
- 5.3. Amounts due to Ant Consult (Pty) Ltd shall be paid in full within thirty (30) calendar days of the date of issue of any invoice failing which interest shall be paid to Ant Consult (Pty) Ltd at the prevailing prime overdraft rate of Ant Consult (Pty) Ltd's bank plus two (2) percentage points per annum compounded monthly calculated from the date of the invoice.
- 5.4. If the whole or any part of the services is suspended or terminated under Clause 4.3 or Clause 4.4 or if the project, or works is suspended, postponed, cancelled or abandoned for a period of more than ninety (90) calendar days, payment shall be made to Ant Consult (Pty) Ltd for the services performed, and costs and expenses, prior to the suspension, termination, postponement, cancellation or abandonment plus a surcharge of ten percent (10%) of the full fee payable to Ant Consult (Pty) Ltd for the total services.
- 5.5. Unless otherwise stated all monetary amounts in this agreement exclude tax, including Value Added Tax or any other statutory tax or levy applicable to the agreement.

## 6. VARIATIONS

- 6.1. The client may order variations to the services in writing or may request Ant Consult (Pty) Ltd to submit proposals, including the time and cost implications, for variations to the services.
- 6.2. In the event of circumstances arising which could not have been reasonably foreseen by the Ant Consult (Pty) Ltd or in the event of changed requirements by the client which require alterations to completed designs, specifications, drawings or other documents prepared by Ant Consult (Pty) Ltd, the whole of the cost of revising, amending, or reproducing such designs, drawings, or documents to bring the work up to the stage at which it was modified shall be the subject of additional remuneration in accordance with this agreement. The time for completion of the services shall also be extended.
- 6.3. If circumstances arise, including but not limited to force majeure, for which Ant Consult (Pty) Ltd is not responsible and which make it impractical or impossible for Ant Consult (Pty) Ltd to perform the services in accordance with the agreement in whole or in part, then Ant Consult (Pty) Ltd shall promptly notify the client. If in those circumstances certain services have to be suspended, the time for completion shall be extended by a reasonable period and the client shall pay to Ant Consult (Pty) Ltd such additional fees and expenses as may be agreed as appropriate to the work undertaken by Ant Consult (Pty) Ltd in performing the necessary additional services.

## 7. LIABILITY AND INSURANCE

- 7.1. Notwithstanding the terms of the Prescription Act No 68 of 1969 (as amended) or any other applicable statute of limitation neither the client nor Ant Consult (Pty) Ltd shall be held liable for any loss or damage resulting from any occurrence unless a claim is made within a period of twelve (12) months from the date of termination or completion of the services in terms of this agreement.
- 7.2. The maximum amount of compensation payable by either party to the other in respect of liability arising out of or in connection with this agreement is limited to the amount of the fee payable to Ant Consult (Pty) Ltd under this agreement, excluding all disbursements and expenses.
- 7.3. Notwithstanding the limit described in clause 7.2, neither party shall be liable to the other party for any indirect, incidental, special, punitive, consequential, or exemplary loss or damages suffered and/or incurred by the other party pursuant to this agreement.
- 7.4. Ant Consult (Pty) Ltd shall arrange and maintain professional indemnity and other insurance cover in
- 7.5. respect of the services provided under this agreement for the duration stated in clause 7.1.
- 7.6. The client shall indemnify Ant Consult (Pty) Ltd against the adverse effects of all claims by third parties which arise after the duration of the liability period in clause 7.1 or which exceed the limit of compensation in clause 7.2.

## 8. GENERAL PROVISIONS

- 8.1. Governing Law: This agreement shall be governed by the law of the Republic of South Africa.
- 8.2. Ownership of Data, Designs and Documents

- 8.2.1. Unless expressly stated otherwise in the Specific Data Ant Consult (Pty) Ltd shall retain ownership and copyright of all documents prepared by Ant Consult (Pty) Ltd. The client shall be entitled to use them or copy them only for the project and the purpose for which they are intended and need not obtain Ant Consult (Pty) Ltd's permission to copy for such use.
- 8.2.2. The ownership of data and factual information collected by Ant Consult (Pty) Ltd and paid for by the client shall, after payment by the client, lie with the client.
- 8.2.3. The client shall have no right to use any documents referred to in this clause where any or all of the fees and expenses payable to Ant Consult (Pty) Ltd have not been paid in accordance with this agreement.
- 8.2.4. In the event that the parties agree that the ownership and copyright of the documents shall be ceded to the client then Ant Consult (Pty) Ltd shall not be liable in any way for the use of any of the information other than as originally intended for the project and the client hereby indemnifies Ant Consult (Pty) Ltd against any claim which may be made against him by any party or third party arising from the use of such documentation for other purposes.
- 8.2.5. Ownership of any documents for the purposes of this agreement includes ownership of all intellectual property rights in such documents

- 8.3. Conflict of Interest and Corruption

- 8.3.1. Unless otherwise agreed in writing by the client, Ant Consult (Pty) Ltd and his personnel shall have no interest in nor receive remuneration in connection with the project except as provided for in the agreement. Ant Consult (Pty) Ltd shall not engage in any activity, which may conflict with the interests of the client under the agreement
- 8.3.2. Either party shall be entitled to terminate the agreement with immediate effect if it is shown that the other party is guilty of:
  - 8.3.2.1. offering, giving, receiving, or soliciting anything of value with a view to influencing the behaviour or action of anyone, whether a public official or otherwise, directly, or indirectly in the selection process or in the conduct of the agreement; or
  - 8.3.2.2. misrepresentation of facts in order to influence a selection process or the execution of the project or a Contract.

#### 8.4. Confidentiality

- 8.4.1. Both parties shall keep all information obtained by them in the context of the agreement confidential and shall not divulge it without the written approval of the other party.
- 8.4.2. The client grants permission to Ant Consult (Pty) Ltd to utilize his name and general, non-specific project information for marketing purposes.

#### 8.5. Sole Agreement

- 8.5.1. This agreement together with any attachments and appendices detailed in the agreement constitutes the sole agreement for the services between the parties and no representation not contained herein shall be of any force or effect between the parties. No amendments will be of any force and effect unless reduced to writing and signed by both parties as expressly intended to form part of the agreement.

## 9. SETTLEMENT OF DISPUTES

- 9.1. The parties shall negotiate in good faith with a view to settling any dispute or claim arising out of or relating to this Agreement and may not initiate any further proceedings unless either party has, by fourteen (14) days written notice to the other, declared that such negotiations have failed.
- 9.2. Any such dispute or claim, which cannot be settled between the parties, may be referred by the parties, without legal representation, to mediation or adjudication by a single mediator or adjudicator respectively. The mediator or adjudicator shall be selected by agreement between the parties and failing such agreement, shall be nominated by the president of Consulting Engineers South Africa (CESA) and the rules for the adjudication process shall be as laid down by the president of CESA. The mediator or adjudicator shall deliver a copy of his reasoned opinion to each party within twenty-one (21) days of his appointment, unless an extended period is mutually agreed between the parties. The opinion expressed by the mediator or adjudicator shall be binding on the parties until such dispute is referred to and

determined under arbitration. The costs of the mediation or adjudication shall be borne equally between the parties.

- 9.3. If either party is unwilling to agree to mediation or adjudication or is dissatisfied with the opinion expressed by the mediator or adjudicator, then such party may within fourteen (14) days of the date of a declaration that negotiations in terms of Clause 9.1 have failed, or of the date of receipt of the mediator or adjudicator's opinion, refer the matter to arbitration by an arbitrator or arbitrators to be mutually agreed upon or, failing agreement, to be nominated by the president of CESA. The arbitration shall be in accordance with the provisions of the Arbitration Act of 1965 as amended from time to time. The finding of the Arbitrator shall be final and binding on the parties.
- 9.4. Notwithstanding the above, nothing precludes either party from approaching the court where urgent relief is required.

Signed and agreed at \_\_\_\_\_ on the \_\_\_\_\_

SIGNED: .....

**For: ANT CONSULT (PTY) LTD**

Signed and agreed at \_\_\_\_\_ on the \_\_\_\_\_

SIGNED: .....

**For: XXX CLIENT**