








# Intrax Standard Terms & Conditions



-  Structural
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## Document Revision History

Date	Rev	Author	Comments
03.03.2016	1	Laura Papez	New Format Document
17.03.2017	2	Lisa Lloyd	Updated clause 9.3
26.09.2017	3	Lisa Lloyd	Update to Credit Card Surcharge

## Copyright

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This document has been produced expressly for the client. The 'client' is defined as the persons named in this report/proposal or the purchaser of the services.

No part of this report/proposal including the whole or same shall be used for any other purpose nor by any third party without the prior written consent of Intrax Consulting Engineers Pty Ltd.

## Conditions of Use

This document is not intended for use by any other person or third party other than the named client.

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## Intrax Standard Terms and Conditions

### 1 Definitions

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

- a. "Account Application Form" means the Account Application Form of Intrax.
- b. "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.
- c. "Conditions" means these Terms and Conditions of Trade;
- d. "Contract" means the contract for the supply by Intrax to the Client of Services incorporating these Conditions, the invoice and any other terms and conditions set out in any other document forwarded by Intrax to the Client;
- e. "Client" means the applicant named in the Account Application Form or the purchaser of the Services;
- f. "Engineering Services" or "Services" means professional geotechnical, civil, structural or other engineering or drafting services and any other services named and described on the Quotation, Fee Proposal and/or the Invoice;
- g. "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);
- h. "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;
- i. "Intrax" means Intrax Consulting Engineers Pty Ltd ABN 31 106 481 252 or any subsidiary or operating associated company.
- j. "Invoice" means the Intrax invoice to the Client for the Services;
- k. "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;
- l. "Quotation" or "Fee Proposal", means the document given to the Client explaining the Services being provided by Intrax to the Client and the pricing for each.
- m. "Variations" means changes to the initial Quotation of Services which has changed the scope of those Services.

## **2 Trade**

Intrax agrees to provide and the Client agrees to purchase Engineering Services under these terms and conditions to the exclusion of any terms and conditions of the Client or any other document. The Services to be provided are defined in the Quotation and in any agreed Variations.

## **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 beyond 30 days 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 rate of 15% per annum 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** Intrax will retain all rights and ownership of all documents provided as part of the Services until final payment is received.
- 3.8** If payment of account is made by credit card a 1.51% surcharge will apply.

## **4 Price**

- 4.1** Services will be charged to the Client at the amount specified in the Quotation or agreed Intrax price list and will be listed in each invoice with details the work completed to that date.
- 4.2** The price of Services specified in any standard price list of Intrax is subject to change at any time without notice to the Client.
- 4.3** Any Quotation given by Intrax to the Client will remain valid for a period of 30 days from the date when the quotation was given or such other period as nominated in the Quotation or Fee Proposal.

## **5 GST**

- 5.1** The price payable for the Services is exclusive of GST unless the Contract states otherwise.
- 5.2** If the price or quotation for Services is stated as being exclusive of GST, the price payable by the Client will be increased by the applicable amount of GST.

## **6 Service Availability**

Any orders for Services accepted by Intrax will be accepted in good faith but are subject to the availability of resources to complete work at that time.

## **7 Cancellation of Order**

- 7.1** Subject to Condition 7.2, an order placed by the Client can only be cancelled where written request for cancellation has been made by the Client and accepted by Intrax.
- 7.2** 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.

## **8 Services Provided to Deadline**

- 8.1** Intrax will use its best endeavours to provide Services to the Client by any date specified in the Contract, order, or Quotation.
- 8.2** The Client acknowledges that Intrax does not warrant or represent that the Service will be delivered on that date.
- 8.3** 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 for any Loss or Damage.

## **9 Force Majeure**

- 9.1** Intrax may cancel or suspend provision of Services due to any fact, cause, thing or event beyond its reasonable control (including any temporary or permanent unavailability of any Services caused by circumstances beyond the reasonable control of Intrax);
- 9.2** 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 9.1 under the Contract, in tort, statute or otherwise.
- 9.3** Where a site visit is required, and the condition of the site poses an unacceptable risk, Intrax employees are required to terminate the site visit and not return until the risk(s) have been removed. This situation may impede the ability to deliver to deadline and also under these circumstances Intrax reserves the right to impose an additional site visit fee.

## **10 Insolvency**

If the Client fails to make full payment for the Services by the due date for payment or if the Client suffers an Insolvency Event, without affecting any rights of Intrax:

- a. Intrax is entitled by written notice to the Client to terminate the Contract. On termination, Intrax is not obliged to supply any Services, drawings, certification, etc.

## **11 No Warranty**

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 12.2 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 Indemnity**

To the extent permitted by law, the Client must indemnify 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 these Conditions;
- b. Any breach by the Clients of these Conditions;
- 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;

**13.1** Any liability for Loss or Damage or any Claim relating to or arising out of any false, misleading or deceptive conduct; representation or statement made by the Client to any person relating to the supply of the Services.

### **14 Dispute Resolution**

**14.1** If a difference or dispute between the parties arises in connection with the Contract and/or Services, then either party can provide the other party with written notice of dispute.

**14.2** If a notice of dispute has been issued, then representatives of the parties with the authority to agree will meet within 10 business days in order to try and resolve the dispute.

**14.3** If the dispute has not been resolved within 20 business days of the notice of dispute, then that dispute can be referred to Arbitration and Expert Determination by either party.

**14.4** The persons to conduct the Arbitration and Expert Determination will be decided by the Chairperson of the Victorian chapter of the Institute of Arbitrators and Mediators, with that group also to decide on the rules for arbitration. The rules for Expert Determination will be the guidelines for Expert Determination of the Australian Commercial Disputes Centre.

**14.5** Unless otherwise agreed in writing, each party shall bear its own costs and pay for half of all fees in relation to the Arbitrator and Expert, with the determination of the Expert being binding on both parties.

**14.6** Nothing herein shall prejudice the right of a party to institute proceedings to enforce payment due under the Contract or to seek injunctive or urgent declaratory relief.

### **15 Governing Law and Jurisdiction**

The 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.

### **16 Joint and Several**

If a Client consists of more than one person or corporate body, the Contract binds them jointly and each of them severally.

### **17 Severance**

If a provision in the 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.

### **18 Intellectual Property Rights**

All intellectual property rights available on the Services provided, are and remain the exclusive property of Intrax.

When using computations, drawings, designs and the service, you must comply with the law including, without limitation, copyright laws.

### **19 Entire Understanding**

The 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.

**20 Persons**

In these Conditions, 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.

**21 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 upon request.

**22 Number and Gender**

In these Conditions, a reference to the singular includes the plural and vice versa; and a gender includes the other genders.

**23 Clauses and Headings**

In these Conditions, headings are inserted for ease of reference and do not affect the interpretation of these Conditions.