

INSTITUTE OF INDEPENDENT ARTS CONSULTANTS – GUIDANCE NOTE

FACTORS WHICH CAN INFLUENCE THE CONDUCT OF AN ARTS CONSULTANCY

INTRODUCTION

DISCLAIMER

N.B. By using the following notes, you acknowledge the matters set out below.

The information on this website is for the exclusive use of Institute Members and their client and relates to the arts consultancy relationship between them.

While the Institute has taken reasonable care in creating the information, the information should not be relied on as a substitute for professional advice. Institute Members and their clients should seek professional advice when drawing up their arts consultancy contracts. To the fullest extent possible, the Institute excludes all warranties, terms, conditions and any duty of care which otherwise may arise or be imposed on it. Where it is not possible to totally exclude liability, liability is limited to the re-supply of corrected information to you. In no event shall the Institute be liable for any indirect, incidental, special or consequential loss and/or damage arising out of the use of the information. This statement is not intended to exclude or limit any rights under the Commonwealth Trade Practices Act or equivalent State Laws.

Australian Standard	These notes are intended to complement the Australian Standard AS 4122-2000 – (General Conditions of Contact for Engagement of Consultants) and place the terms and conditions in that document into a more specific arts context. Such contextual matters should be added into Part B of the AS.
Definitions	Readers might wish to note that the terms used in consultancy processes, as defined by the Institute of Independent Arts Consultants, are available on their website www.iiac.com.au . The Institute advises its members to use these definitions in tenders and reports to avoid misunderstandings.
Type of agreement	Readers might wish to note that the contract between a consultant and a client is usually a contract for service and not of employment and consequently it remains the province of the consultant to decide the methodology, timescale, and location of work on the project and to provide the relevant skills and materials.
Scope of agreement	It is advisable that the scope of work is set out either in the consultants' proposal and it may be amended as circumstances require during the project. However the consultant should not incur greater fees or expenses than stated in the proposal without prior negotiation with the client.
Subcontractors	Unless otherwise negotiated prior to contract the client should deem that the terms of the contract should also apply to agreements between the consultant and the consultant's sub-contractors.
Insurances	Consultants will be aware that clients are now asking for both Professional Indemnity and Public Liability Insurance: consultants are advised to seek advice if they wish to omit or vary the cover sought by the client.

CONTEXT OF THE CONSULTANT'S SERVICES

- Scope of advice** The consultant's proposal should contain a current curriculum vitae indicating the skills and qualifications of the consultant. In accepting the consultant's proposal the client therefore indicates an acceptance of the limitations of the consultant's skills and experience and acknowledges the need to engage other personnel to place the consultant's advice into a context (such as through the engagement of a quantity surveyor, structural engineer, architect or other suitably qualified professional).
- Independent advice** The client should accept that, as an entity independent of the client, the consultant has the right to provide advice with which the client might not agree, or which is contrary to statements made prior to the project by the client, but which the consultant deems is in the best interests of the client and/or the project in question.
- Funding applications** In the matter of projects which are part of a longer process and which leads to funding applications, no responsibility should be assigned to the consultant for the failure or reduction in the outcome of the funding applications.
- Copyright** Processes developed by the consultant should remain the intellectual property of the consultant but the copyright of material produced for a project usually remains with the client. However, the consultant should require the client to acknowledge that, with respect to material produced:
- the consultant is always credited when the material is used
 - none of the material is quoted out-of-context
 - the consultant is kept apprised of the development of the project
- Use in publicity** Clients should acknowledge that the consultant might wish to refer to the project in his or her publicity material and to use copies of the material which the consultant has produced in these publications.
- Infringements** The consultant should agree to indemnify the client against any claims for copyright infringement made against the client or the consultant by the owners of material to which the consultant has referred during the project and in written material.

THE CONSULTANCY PROCESS

- Appointments** Appointments made by others on the consultant's behalf should not be deemed confirmed until the consultant has approved the start and stop times of the appointments, location and facilities, travel times to and from the appointments and appropriate rest and meal breaks.
- Client's information** The consultant should reserve the right to vary the methodology of the project, and to renegotiate any related fees and expenses, should the client either not provide information when agreed, or provide information which subsequently proves insufficient or inaccurate in any way. (This material could include address lists of people to be consulted, up-to-date and accurate drawings, and reports and minutes of related meetings.)

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Accuracy	The consultant should agree to employ reasonable measures to ensure the accuracy of material brought into the project from others but, should this material prove inaccurate then the consultant should accept no responsibility for the consequences of the said inaccuracies or other defects.
Environment	The consultant should reserve the right to postpone or suspend work on a daily basis if the working environment is adversely affected by extremes of temperature or other difficulties. The consultant should also reserve the right to limit his or her working day and relate this to the start time of work on the following day. Generally this means that work should not start before 7am and should not continue after 11pm unless special circumstances apply.
Client contact	The client should provide one person with whom the consultant can liaise about all matters during the project and, in the event that the said person becomes unavailable for any reason then the client should provide a substitute without the loss of cover.
Consultants used	The consultant should guarantee that the persons intended in the proposal as being those who will carry out the project will carry out the project. In the event that the said persons become unavailable for any reason then the consultant should reserve the right to offer the client a substitute or to delay the project, without liability, until the said consultant becomes available. This latter situation may occur for example, as a result of illness or through a change in the consultant's work schedule if a significant gap occurs between proposal and acceptance.
Steering Committee	<p>The client should appoint a committee to steer the project. Ideally this committee should comprise no more than six persons appointed by the client and the committee should be available within fourteen days of contract. The committee should meet regularly as agreed between the client and the consultant and the terms of reference of the committee could be:</p> <ul style="list-style-type: none">• To provide guidance and advice to the consultant throughout the project.• To provide strategic direction for the project, including assisting the consultant to prioritise groups and stakeholders with whom to consult.• To provide information to the consultant such as government policy, key stakeholders or initiatives of which the consultants should be aware.• To act as a conduit of information to and from the consultant, client, Councils and the community.
Reporting	It is usual for the consultant to provide a draft report and a final report in accordance with the contract. The client should accept that changes from the draft report to the final should be only concerned with errors, clarifications and the inclusion of any material not to hand when the draft report was written.
Presentations	Unless otherwise agreed and indicated in the contract, the consultant should assume in his or her proposal that he or she will present the draft report in person and by Power Point format but will assume that he or she will not be required to present any subsequent reports in person without additional fee and expenses.

PAYMENT, TERMINATION AND DISPUTES

- Scheduled payments** It is usual to negotiate for a schedule of payments during the project. The following is suggested as a model.
- payment with acceptance of the terms in this letter 30%
 - interim payment to be agreed in the appendix 30%
 - upon delivery of the draft report 30%
 - upon delivery of the final report 10%
- Late payment** The contract should include for a payment period once invoices are rendered. Non payment or late payment of any fee without prior consultation should result in a cessation of work, once suitable attempts to recover fees have been made.
- Expenses** Unless otherwise agreed and itemised in the contract the consultant should include in his or her proposal all the relevant expenses necessary for carrying out the project as proposed. The client should not override the consultant's decisions regarding the expenses. However, should the project be delayed as a result of the client either not providing accurate information, or information later than agreed, and should these occurrences result in the consultant being obliged to incur greater expenditure, then the client should agree to meet the cost of the additional expenditure.
- GST** Unless specifically stated in the fee proposal sales tax (e.g. GST) should be excluded and should be levied at the current rate.
- Arbitration** In the event of a dispute both parties should agree to enter into arbitration and abide by the result provided that the process includes the judgment of the Institute of Independent Arts Consultants or another independent professional body.
- Cancellation** In the event of project cancellation or postponement, fees should be due up to the point of notification to the consultant and in writing, of the postponement.
- Force Majeure** Both parties to this agreement should recognise that the project may be delayed or cancelled as a consequence of matters outside their control, these matters should be defined as Acts of God, effects of weather, war and terrorism, fire and theft.