WEATHERPROOF CONSULTING

Terms of Engagement

ABN: 35 521 264 045
Version: 10.3 | 9 October 2026
Jurisdiction: New South Wales (primary)

Consultant	Weatherproof Consulting
Services Covered	Including but not limited to Building Consulting · Waterproofing Audits · Building Inspections · Forensic Analysis · Peer Review · Expert Witness · Design Coordination · Scope Development · Project Management · Superintendent Services · Drone Inspections
Contact	info@weatherproofconsulting.com.au

IMPORTANT NOTICE TO CLIENTS

By signing a Proposal, confirming an engagement by email, or instructing Weatherproof Consulting to commence Services, you agree to be bound by these Terms of Engagement in their entirety. Please read this document carefully. You are encouraged to obtain independent legal advice before accepting these Terms.

1. Definitions and Interpretation

1.1 Definitions

In these Terms of Engagement, unless the context requires otherwise:

"Agreement"	means the contract formed between the Consultant and the Client, comprising these Terms of Engagement and any associated Proposal, scope letter, or written confirmation of engagement.
"Business Day"	means a day other than a Saturday, Sunday, or public holiday in New South Wales.
"Client"	means the person or entity that engages the Consultant to provide Services, and where more than one person or entity is named, each of them jointly and severally.
"Confidential Information"	means all non-public, commercially sensitive, or proprietary information disclosed by either party in connection with the Services but excludes information that: (a) is or becomes publicly available other than through a breach of this Agreement; (b) was already known to the receiving party at the time of disclosure; or (c) is required to be disclosed by law or professional obligation.
"Consultant"	means Weatherproof Consulting (ABN 35 521 264 045), its directors, employees, subcontractors, and authorised representatives.
"Contract Sum"	means the total value of the construction contract between the Client and the contractor for the works, as adjusted from time to time by any approved variations, extensions of time with cost implications, or other amendments agreed in writing between the Client and the contractor, exclusive of GST unless stated otherwise. For the avoidance of doubt, the Contract Sum is not reduced by any retention withheld, liquidated damages, or other set-offs applied under the construction contract.
"Deliverables"	means any reports, expert witness reports, findings, opinions, data, drawings, or other outputs produced by the Consultant as part of the Services.
"Design Coordination Services"	means advisory, coordination, briefing, review and scope development services that do not constitute Regulated Design and are not capable of being relied upon for construction.
"Design Practitioner"	means a person registered under the Design and Building Practitioners Act 2020 (NSW).
"Expert"	means an individual nominated by the Consultant to provide expert witness services, being a person appropriately qualified to give expert evidence in the relevant field.
"Fee"	means the amount payable by the Client for the Services, as set out in the Proposal or otherwise agreed in writing.
“Fee Schedule”	means the schedule of rates, fees, or charges issued by the Consultant to the Client, whether as part of a Proposal or separately, setting out the pricing applicable to the Services.
"Force Majeure Event"	means any event beyond the reasonable control of a party, including but not limited to acts of God, fire, flood, earthquake, pandemic, epidemic, government-mandated restrictions, acts of terrorism, industrial disputes not involving the party's own employees, or the adjournment or cancellation of court or tribunal proceedings by order of the court or tribunal.
"GST"	means Goods and Services Tax as defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
“PCBU”	means a person conducting a business or undertaking, as defined in the Work Health and Safety Act 2011 (NSW).
“Project Value”	means the estimated value of the works, project, or property to which the Services relate, as stated in the Proposal or otherwise reasonably determined by the Consultant at the time of the relevant Services, where no Contract Sum applies.
"Proposal"	means the written fee proposal or engagement letter issued by the Consultant to the Client.
“Regulated Design and Regulated Building Work"	have the meanings given in the Design and Building Practitioners Act 2020 (NSW).

"Services"	means the professional services provided by the Consultant as described in the Proposal, which may include building consulting, waterproofing audits, building inspections, design coordination, project management, superintendent services, forensic analysis, peer review, expert witness services, and drone or aerial inspections.
"Third Party Contractor"	means third party contractors or consultants engaged by the Client or otherwise not engaged by the Consultant.
"Variation"	means any change to the scope, timing, or nature of the Services from what is described in the Proposal, whether initiated by the Client or the Consultant.

1.2 Interpretation

In this Agreement, unless the context otherwise requires:

a) the singular includes the plural and vice versa;
b) a reference to a statute includes all regulations, amendments, and substitutions made under it;
c) headings are for convenience only and do not affect interpretation; and
d) 'including' and similar expressions are not words of limitation.

2. Acceptance of Agreement

2.1 Acceptance

By signing a Proposal, confirming an engagement by email, or instructing the Consultant to commence Services, the Client agrees to be bound by these Terms of Engagement. Acceptance includes acceptance via an online quoting or invoicing platform (including Xero).

The version of the Terms of Engagement in force at the date of acceptance applies to the Services, unless otherwise agreed in writing.

2.2 Joint and Several Liability

Where more than one Client is named, all Clients are jointly and severally liable for all payment obligations under this Agreement.

2.3 Entire Agreement and Variations

These Terms of Engagement may only be varied by written agreement signed by an authorised representative of the Consultant. They supersede all prior oral or written communications between the parties relating to the subject matter of this Agreement.

Services are provided solely on these Terms of Engagement. Any terms or conditions in the Client's order or correspondence that conflict with or purport to override these Terms are excluded, unless expressly agreed in writing by the Consultant.

The Client must notify the Consultant in writing at least 14 days in advance of any material change to the Client's ownership, name, contact details, or legal structure that may affect this Agreement or the Consultant's ability to deliver the Services.

3. Scope of Services

3.1 Standard of Services

The Consultant will provide the Services described in the Proposal in a professional manner consistent with applicable industry legislation, including but not limited to:

a) The relevant Australian Standards
b) The National Construction Code (NCC), current applicable edition
c) The Expert Witness Code of Conduct under Schedule 7 of the Uniform Civil Procedure Rules 2005 (NSW) (for expert witness engagements)
d) The Services are specialist professional consulting services ordinarily acquired for business, commercial, regulatory, insurance, strata, remedial, or litigation purposes. Nothing in these Terms excludes, restricts, or modifies any right or guarantee that cannot lawfully be excluded under the Australian Consumer Law or any other applicable legislation.

3.2 Nature of Services

The Consultant provides general building consulting and specialist professional services, which may include inspections, assessments, investigations, advice, reporting, project management services, expert witness services, peer review services and related professional services, as described in the applicable Proposal.
Where specified in the Proposal, the Services may include preliminary, non-destructive visual assessments limited to areas reasonably accessible at the time of attendance and to observable conditions only.
Project management services, expert witness services and peer review services are provided only where expressly identified in the applicable Proposal and do not form part of the Services unless specifically agreed in writing.
The precise nature, scope, and extent of the Services for each engagement are defined by the applicable Proposal.

3.3 Availability and Timeframes

Services are provided subject to the Consultant's availability. Any commencement dates or timeframes provided are indicative only and do not constitute a guarantee. Timeframes may be affected by factors outside the Consultant's control, including client responsiveness, site access, weather conditions, third-party dependencies, regulatory requirements, or court or tribunal timetables.

3.4 Excluded Services

The following exclusions clarify the limits of the Consultant's role and do not affect the Consultant's obligation to exercise due care and skill in performing the Services.

Unless expressly included in the Proposal, the Services do not include:

a) Legal, financial, architectural, structural, or engineering advice
b) Asbestos identification, asbestos management planning, or pest management services
c) Testing, commissioning, or certification of mechanical services, electrical installations, or appliances
d) Liaison with councils, Sydney Water, utility providers or other regulatory authorities
e) Services performed outside normal business hours (8:00 am – 5:00 pm, Monday to Friday), unless expressly agreed in writing
f) Third-party certification, approval, authority, or statutory fees and charges
g) Site allowances, liquidated damages, penalties, or delay-related costs
h) Removal of furniture, fixtures, fittings, soil, or vegetation
i) Inspection of non-accessible areas (by reference only to the definition of 'accessible areas' in AS 4349.1)
j) Destructive, invasive, or intrusive investigation, including opening up, removal, or dismantling of building elements
k) Design, execution, supervision, certification, or warranty of rectification or remedial works
l) Detailed cost estimates, bills of quantities, tender pricing, or contractor selection
m) Any guarantee or warranty that the Services will identify all defects or that a building or element is fit for purpose
n) Ongoing monitoring, re-inspection, or assessment of future performance
o) Responsibility for site-wide health and safety, PCBU obligations, or construction methodology, except in respect of the Consultant's own acts or omissions

3.5 Use of Sub-Consultants

Where specialist input is required, the Consultant may, with the Client's prior written approval (not to be unreasonably withheld), engage suitably qualified sub-consultants to assist with the Services. Sub-consultant costs will be passed through at cost plus 20% + GST for coordination and management, unless otherwise agreed in writing.

3.6 No Guarantee of Outcome

The Consultant does not warrant or guarantee that the Services will identify all building defects or fully resolve water penetration issues. The diagnosis of water ingress and related defects is inherently complex and may require staged or iterative investigation. The Client acknowledges that further investigation, testing, or remedial work may be required and may result in additional cost.

3.7 Scope Based Limitations

The Consultant has no obligation to identify or advise on risks, defects, or issues outside the agreed scope of Services, even if such matters are observed during the course of the engagement.

4. Design Services and Design Coordination

(Applies only where Design Coordination or Project Management Services are included in the Proposal.)

4.1 Nature of Design Services

Where the Services include design-related services, those services are limited to design coordination, scope development, performance-based documentation, advisory input, review, and project support services only, unless expressly stated otherwise in the Proposal.

The Consultant does not provide architectural, structural, civil, fire, mechanical, electrical, hydraulic, façade engineering or other regulated professional design services unless expressly agreed in writing and delivered by an appropriately registered practitioner.

4.2 Regulated Design

For the purposes of the Design and Building Practitioners Act 2020 (NSW) (DBP Act), the Consultant is not a Design Practitioner and does not provide:

a) Regulated Designs;
b) Design compliance declarations;
c) Regulated Building Work declarations; or
d) NSW Planning Portal lodgements.

Any Regulated Design required for the project must be prepared, declared, and lodged by an appropriately registered Design Practitioner engaged by the Client or, where agreed in writing, by the Consultant as a subcontracted service provider.

4.3 Scope of Design Services

For Class 1 residential buildings, Class 10 structures (including garages, carports, fences, retaining walls and swimming pools) and other non-regulated building types, the Consultant may provide scope development, waterproofing specifications, scope documents and diagrammatic drawings (not engineering or structural drawings), design coordination and project management services, where those services do not constitute Regulated Design under the Design and Building Practitioners Act 2020 (NSW).

4.4 Advisory Nature of Documents

Where the Consultant prepares waterproofing specifications, scope documents or diagrammatic drawings for non-regulated buildings, those documents:

a) constitute advisory and performance-based documentation only;
b) do not constitute Regulated Design, engineering certification or a design compliance declaration;
c) are not capable of being relied upon for structural or engineering purposes; and
d) must be reviewed and validated by an appropriately qualified and registered practitioner before use in construction, where required by law.

4.5 Class 2, 3 and 9 Buildings

For Class 2, Class 3 and Class 9 buildings where Regulated Design is required, the Client acknowledges and agrees that:

a) Regulated Design services will be provided by an appropriately registered Design Practitioner engaged by the Consultant as a subcontractor; and
b) the Consultant's role is limited to Design Coordination Services, project management and advisory services only.

4.6 Not a Design Practitioner

For the avoidance of doubt, the Consultant does not provide regulated designs, design compliance declarations, compliance certificates or NSW Planning Portal lodgements.

4.7 Reliance on Design Practitioners

The Consultant is entitled to rely upon all designs, declarations and certifications provided by a Design Practitioner and has no obligation to audit, interrogate or independently confirm compliance with those documents. The Consultant's liability where it has relied in good faith on information or certifications provided by a Design Practitioner is limited in accordance with clause 14.

4.8 Subcontractor Insurance Requirements

All subcontractors and subconsultants engaged by the Consultant, including registered Design Practitioners, must hold and maintain: (a) Professional Indemnity insurance appropriate for their scope of services; and (b) Public Liability insurance with a limit of indemnity not less than the limit carried by the Consultant under its Public Liability policy from time to time. Evidence of such cover must be provided to the Consultant upon request and prior to the commencement of any works.

4.9 Limitation of Responsibility

The Consultant is not responsible for:

a) design decisions requiring registration under the DBP Act;
b) errors or omissions in Regulated Designs prepared by others; or
c) construction outcomes resulting from reliance on advisory or non-regulated documentation prepared by the Consultant.

5. Project Management and Superintendent Services (Where applicable)

5.1 Application

This clause applies only where the Project Management or Superintendent Services are expressly included in the Proposal.

5.2 Authority

Where the Consultant is engaged to perform superintendent services, the Consultant is authorised to act as agent of the Client to carry out those services. All communications by the Client, Third Party Contractors, or others relevant to the Services will be made to or through the Consultant. The Consultant may make such decisions and issue such instructions as are in its opinion necessary for the administration of the contract or compliance with the applicable building contract requirements including:

a) administration of relevant contracts;
b) decisions on claims under relevant contracts made by Third Party Contractors or the Client;
c) decisions relating to the interpretation of contract documents, subject to reasonable consultation with the Client regarding any material time and cost impacts; and
d) obtaining or issuing all certificates required or permitted by relevant contracts administered by the Consultant.

5.3 Superintendent Impartiality

Where acting as Superintendent, the Consultant performs administrative and contractual functions in accordance with the applicable building contract. Decisions are made impartially in accordance with that contract, having regard to the Client's interests. No duty of care is owed by the Consultant to contractors or subcontractors in the performance of the superintendent role. The Consultant's impartial role as Superintendent does not diminish the Consultant's obligations to the Client under this Agreement.

The Consultant's impartiality as Superintendent does not create, and is not intended to create, a fiduciary duty to any contractor or subcontractor.

5.4 Limitation of Superintendent Role

The Consultant's project management and superintendent services:

a) do not constitute supervision of Regulated Design or Regulated Building Work for statutory purposes;
b) do not involve control over construction means, methods, sequencing or workmanship; and
c) do not make the Consultant a person having management or control of a workplace for the purposes of work health and safety legislation.

For Class 2, Class 3 and Class 9 buildings, the Consultant's project management role is limited to coordination, programming and communication services operating alongside the scope of a Design Practitioner engaged to provide Regulated Design. In such engagements, the Consultant does not assume, and the Client acknowledges the Consultant does not hold, responsibility for Regulated Design decisions, design compliance declarations or the performance of Regulated Building Work.

5.5 Contractor Responsibilities

The relevant Third Party Contractor is responsible for the proper execution of work under the relevant contract. The superintendent services are not rendered for the benefit of, nor does the Consultant undertake a duty of care towards, any Third Party Contractor. The Consultant is not responsible for, and the Client agrees not to hold the Consultant liable for, loss or damage which would normally be the responsibility of a building contractor, including but not limited to: defective workmanship; use of non-conforming materials; construction sequencing errors; failure of installed works; and structural defects arising from the execution of building works.

5.6 Practical Completion

Unless noted otherwise in the Proposal, the superintendent services are completed upon the works reaching practical completion as that term is defined in the relevant contract between the Client and the Third Party Contractor.

5.7 Client Indemnity — Third Party Contractors

The Client indemnifies the Consultant in respect of any claim made as a consequence of, or arising out of, a Third Party Contractor performing or failing to perform their work under the relevant contract. The Consultant is not responsible to the Client for the means, methods, techniques, sequences, procedures, use of equipment, design, specification or use of materials employed by any Third Party Contractor or others in executing any phase of a project.

This indemnity does not apply to the extent the claim arises from the negligent acts or omissions of the Consultant and is subject to clause 14.

5.8 Delay and Programme

If there are delays or extensions that cumulatively exceed 6 months from the commencement date of project management services for reasons outside the control of the Consultant, the Consultant may vary the Fees applicable to those services with 10 Business Days' prior written notice to the Client.

6. Drone Use and Aerial Inspections

6.1 Use of Drones

The Consultant may use drones or remotely piloted aircraft to assist with visual inspections, photography and data collection where appropriate to the Services.

6.2 Operational Parameters

Drone operations will be carried out in accordance with applicable aviation laws and the operational conditions required by the Consultant's public liability insurer, including restrictions relating to:

a) aircraft weight not exceeding 5 kilograms including any camera equipment.
b) maximum altitude of 500 metres above ground level.
c) daylight operation only.
d) no operation within 5 miles (8 kilometres) of any operational airfield.
e) geographic limitation to Australia only; and
f) operator qualifications or specific device training as required by the Civil Aviation Safety Authority (CASA).

6.3 Limitations of Drone Data

Drone inspections are non-invasive and visual only. Any images, video or data captured are provided for observational purposes only and do not constitute:

a) Regulated Design;
b) engineering certification;
c) a compliance assessment; or
d) a substitute for physical inspection, testing or invasive investigation.

The Consultant does not warrant the accuracy, completeness or suitability of drone imagery for construction, fabrication or rectification purposes.

7. Expert Witness Services

7.1 Paramount Duty

The Expert's paramount duty is to the court, tribunal, or other adjudicative body before which they are engaged to give evidence. This duty overrides any obligation the Expert may have to the Client, including any obligation arising from this Agreement. The Client acknowledges and accepts that:

a) The Expert is not an advocate for the Client and will not act as one;

b) The Expert's opinions are and must remain independent, objective, and impartial;

c) The Expert may be required to revise, qualify, or retract opinions if new evidence becomes available or if compliance with the Expert Witness Code of Conduct requires it;

d) The Expert will not be liable to the Client for any adverse consequence arising from the Expert's compliance with the Expert Witness Code of Conduct or any court or tribunal direction;

e) No instructions from the Client, including instructions to change or soften an opinion, will be acted upon by the Expert if they would compromise the Expert's independence or contradict the Expert's genuine professional opinion.

7.2 Applicable Codes of Conduct

Expert witness services are conducted in accordance with the relevant expert witness code of conduct applicable to the proceedings, including:

a) Schedule 7 of the Uniform Civil Procedure Rules 2005 (NSW) — NSW Supreme Court, District Court, and Local Court proceedings;

b) Schedule 4 of the Civil and Administrative Tribunal Act 2013 (NSW) and the NCAT Rules — NCAT proceedings;

c) Uniform Civil Procedure Rules 1999 (Qld) r429N — Queensland proceedings;

d) Federal Court Rules 2011 (Cth) r23.12 — Federal Court proceedings.

Where proceedings are in a jurisdiction not listed above, the Consultant will apply the applicable code of conduct for that jurisdiction.

7.3 Conflicts of Interest

Prior to accepting any expert witness engagement, the Consultant will conduct a conflict-of-interest assessment. The Client must disclose to the Consultant all relevant parties to the proceedings, including opposing parties, their legal representatives, and all other experts engaged, to enable this assessment.

If a conflict of interest is identified or arises after commencement of the engagement:

a) The Consultant will notify the Client immediately in writing.

b) The Consultant may be required to withdraw from the engagement.

c) Fees and expenses incurred to the date of withdrawal remain payable by the Client.

d) Where the conflict arises from information not disclosed by the Client at the time of engagement, the Client will be liable for all costs associated with the withdrawal and any consequential engagement of a replacement expert.

7.4 Retainer and Cancellation

Expert witness engagements, including attendance at hearings, mediations, expert conclaves, and pre-trial conferences, require advance booking. The following terms apply:

a) A retainer of 50% of the estimated fees for the relevant engagement block is required upon confirmation of booking, unless otherwise agreed in writing. The retainer is applied against fees for work performed and time reserved for the engagement; any unused balance is refunded, subject to the cancellation fees set out in this clause.

b) Cancellation of a hearing booking must be made in writing at least 10 Business Days prior to the scheduled date

c) Cancellations made more than 2 but within 10 Business Days of the scheduled date will incur a fee reflecting the Consultant's reasonable, genuine estimate of loss arising from the cancellation, having regard to the ability to redeploy the reserved time, up to 50% of the estimated time reserved for the hearing

d) Cancellations within 2 Business Days of the scheduled hearing date will incur a fee reflecting the Consultant's reasonable, genuine estimate of loss arising from the cancellation, having regard to the ability to redeploy the reserved time, up to a maximum of the Consultant's standard daily rate applicable at the time of the engagement.

e) If proceedings are adjourned by the court or tribunal, the Consultant will endeavour to reschedule without additional charge, subject to availability

f) The Client remains liable for expert witness fees in full regardless of any costs order made in the proceedings or any direction by a court or tribunal limiting recoverable expert costs

g) Expert witness related court attendance is charged on a minimum of 8-hour basis

7.5 Scope of Expert Opinion

The Expert's opinion is limited to the scope defined in the instructions agreed with the Client. The Consultant is not required to address matters outside the agreed scope, and no additional opinions or analyses will be provided without a separate written instruction and fee agreement.

Any changes to the expert witness report requested by the Client will be charged at the Consultant's standard hourly rate. The Consultant retains sole discretion as to whether any requested change is consistent with the Expert's independence and duty to the court.

7.6 Release of Expert Witness Reports

Expert witness reports will be released to the Client only upon payment in full of all outstanding invoices. The Consultant does not release reports directly to any court, tribunal, opposing party, or legal representative without the Client's written consent, except where required by law or court order.

7.7 Expert Unavailability

If the Consultant is unable to continue providing expert witness services due to illness, incapacity, or death, the Consultant may nominate a suitably qualified replacement expert using reasonable endeavours. Where no replacement is available, the Consultant may terminate the expert witness component of the Services by written notice, and all fees and expenses incurred to that date shall remain payable. The Consultant will have no further obligation in relation to the expert witness services.

8. Peer Review and Forensic Services

8.1 Peer Review Services

Peer review services involve independent assessment of third-party reports, specifications, or findings and does not constitute the Consultant's adoption or endorsement of the views expressed in the reviewed materials.

8.2 Forensic Investigation Services

Forensic analysis services include detailed investigation of building failures and defects through site inspections, testing, historical document review, and analysis of third-party data. The Consultant's findings are based on conditions observable at the time of investigation.

8.3 Forensic Investigations Limitations

The Consultant will not be liable for matters that could not reasonably have been identified during the forensic investigation, including latent defects concealed within building fabric, conditions that manifest only under specific environmental or operational conditions, or conditions existing in inaccessible areas.

8.4 Intrusive Testing

Where destructive or intrusive testing is required, the Consultant will obtain the Client's prior written consent before proceeding. The cost of any make-good or reinstatement following testing is the Client's responsibility unless otherwise agreed in writing.

The Client is responsible for all required isolations, permits, approvals, and for ensuring site conditions are safe for reinstatement works.

The Consultant is not the PCBU for site-wide safety and does not assume responsibility for overall site safety, except in respect of the Consultant’s own acts or omissions.

9. Client Responsibilities

9.1 Site Access and Facilities

The Client must:

a) Provide the Consultant with clear, safe, and unrestricted access to the site at all times required to perform the Services, including during public holidays where applicable to the engagement.
b) Provide one reserved parking space for the Consultant's personnel. If free parking is not available, parking costs will be charged to the Client at cost + 20% + GST.
c) Provide water, electricity, and sanitary facilities on site where site attendance is required.
d) Provide all documentation, records, correspondence, and other information reasonably required by the Consultant to perform the Services, in a timely manner.
e) Ensure the site is safe, compliant with applicable work health and safety legislation, and suitable for the performance of the Services.
f) Access to all relevant areas identified for inspection must be provided. Where required, access to surrounding or adjoining properties must also be arranged by the Client on the day of inspection, having regard to the nature and location of the issue.

9.2 Safety and Site Conditions

The Consultant may suspend or delay Services, without liability, if site conditions in its reasonable opinion pose a risk to health or safety or prevent the Services from being performed to the required standard.

9.3 Delays and Restricted Access

If the Consultant is denied access to a site, is instructed or advised by the Client or the Client's legal representatives not to attend a hearing, inspection, or other scheduled attendance, or cannot gain access without risk of injury, trespass, or breach of applicable safety requirements, the Consultant is not obligated to deliver the affected Services and may recover all fees and expenses reasonably incurred up to that point.

Delay fees will apply at the Consultant's standard hourly rate for time lost due to failed, restricted, or unreasonably delayed access, including travel time of consultants and sub-consultants in attendance.

10. Reports and Deliverables

10.1 Scope and Purpose of Reports

Reports and Deliverables will address the instructions and scope set out in the Proposal. The Consultant is not required to address matters outside the agreed scope.

10.2 Reporting and Fees

Where the Services include the preparation of a written report, the report forms part of the Services.

The cost of report preparation will be charged in accordance with the fee structure set out in the applicable Proposal, which may include time-based (hourly), lump-sum, capped, or other agreed pricing arrangements.

Unless expressly stated otherwise in the applicable Proposal, report preparation is not included in any lump-sum site attendance, inspection, or assessment fee.

10.3 Special-Purpose Reports

Reports may be updated or added to if new information comes to light, if the Client changes their instructions, or if the Consultant is required to make changes to meet their legal obligations as an expert witness.

10.4 Release of Deliverables

Unless expressly stated otherwise, reports produced by the Consultant are special-purpose reports prepared in response to specific instructions. They are not pre-purchase reports and do not express any opinion as to property value. Reports are prepared solely for the Client's use and reliance for the specific purpose set out in the Proposal.

Deliverables are prepared solely for the Client's use and reliance for the agreed purpose.

Reports and Deliverables may be withheld until all outstanding Fees and expenses relating to the Services have been paid in full, except to the extent prohibited by law or inconsistent with any applicable court or tribunal direction.

No third party may rely on any Deliverable without the Consultant's express written consent, and the Consultant accepts no responsibility to any such third party.

10.5 Verbal Findings

Reports must be ordered, and the relevant scope confirmed, prior to any site attendance taking place.

Where no report is requested prior to attendance, findings may be communicated verbally on the day. Any requirement for a written report following verbal findings will attract additional fees.

10.6 Scope Limitation on Reports

Reports do not address matters outside the agreed scope of Services.

10.7 Cost Estimates

Cost estimates contained in reports (including but not limited to expert witness reports) are indicative only and are not suitable for construction, procurement, or contractual purposes. The Client must engage a suitably qualified quantity surveyor for any detailed construction cost analysis, at the Client's own expense.

10.8 Inspection Limitations

The Consultant is not liable for defects or conditions:

a) that are not visible or reasonably detectable at the time of inspection
b) that are in areas not accessed or not reasonably accessible during the inspection
c) that are apparent only in different weather, environmental, or operational conditions
d) that are unrelated to the scope of the engagement
e) that consist of minor cosmetic defects (including hairline plaster cracks, minor door or window operation issues, or similar)

The Services are limited to inspections, and all findings are limited to matters reasonably observable at the time of inspection, without intrusive investigation, testing, or dismantling, unless expressly agreed in writing.

10.9 Testing and Investigation Limitations

While all reasonable care will be taken during any forensic analysis we deem suitable and required, including but not limited to leak detection and water penetration testing, the Consultant does not guarantee that all results including but not limited to water leaks will be identified. The Consultant accepts no liability for dye staining, water marks, or damage resulting from diagnostic testing, including where reasonable precautions have been taken.

11. Variations

11.1 Variations

Any Variation to the agreed scope of services must be confirmed in writing by both parties before the varied Services commence. Neither party may unilaterally vary the scope of Services without written agreement from the other.

11.2 Additional Services

Services requested beyond the original scope, including additional site visits, extended testing, further expert witness preparation, conference attendance, or supplementary reporting will be charged at the Consultant's prevailing rates or as separately quoted.

Performance of additional work by the Consultant without a written Variation order does not constitute a waiver of the Consultant's right to charge for that work at the applicable rates.

11.3 Urgent Instructions

Where the Client requests urgent additional services that cannot reasonably be delayed, the Consultant may proceed based on the Client’s instruction. The Consultant will confirm the scope of those services and the applicable fees in writing as soon as practicable.

11.4 Effect on Timeframes

Variations may affect the timeframe for delivery of Deliverables. The Consultant will advise the Client of any revised timelines upon written acceptance of the Variation.

12. Fees and Payment

12.1 Fees

All Fees are exclusive of GST unless stated otherwise in the Proposal. GST will be added to all invoices at the applicable rate.

12.2 Fee Structure

The Consultant's Services may be provided on a lump-sum, time-based (hourly), capped, or mixed fee basis, as set out in the applicable Proposal or Fee Schedule.

The inclusion of a Service within the Scope does not mean that the Service is included within any lump-sum fee, unless expressly stated in the applicable Proposal.

12.3 Deposits

Unless otherwise agreed in the Proposal, a deposit of 50% of the estimated Fee is required prior to commencement of Services.

12.4 Invoicing and Payment

All invoices are due and payable within 7 days of the invoice date. Payment is required in full prior to the release of any Deliverables, including reports and other Delieverables.

Payments may be made by electronic funds transfer (EFT), credit card, or any other payment method approved by the Consultant.
The Consultant reserves the right to modify, add, or withdraw available payment methods at any time.
Any reasonable fees, charges, costs, or expenses incurred by the Consultant as a result of dishonoured payments, chargebacks, payment disputes initiated by the Client, or debt recovery actions may be recovered from the Client to the extent permitted by law.

12.5 Late payments

Late payments will incur an administration fee, intended to compensate the Consultant for administrative time, finance cost, and follow-up costs associated with overdue accounts, calculated as simple interest on the outstanding balance from the due date until payment is received in full, at a rate equal to the Reserve Bank of Australia's Cash Rate Target (as published at rba.gov.au) in effect on the invoice due date, plus a margin of 4% per annum, capped at 10% of the invoice value, to the extent permitted by law.

12.6 Expenses

Fees for preparation work; including reading briefing materials, document review, conferences (by telephone or in person), correspondence, communication, affidavit preparation, and attendance at views are charged at the Consultant's standard hourly rate as set out in the Proposal.

Travel time to and from site or hearings is charged at the Consultant's standard hourly rate.

Out-of-pocket expenses, including travel, accommodation, meals, incidentals disbursements will be itemised and charged at cost plus 20% + GST.

12.7 Site Attendance Minimum Charge

Site inspections are charged on a minimum two (2) hour basis per attending consultant. Time spent on site beyond the initial two-hour minimum will be charged in 30-minute increments at the applicable hourly rate set out in the Proposal or Fee Schedule.
All other time-based services, including report preparation, document review, meetings, correspondence, travel time and administration, are charged in 15-minute increments unless otherwise stated in the Proposal or Fee Schedule.

12.8 Regional Travel and Accommodation

Where Services require travel outside the Sydney Metropolitan Area, the Consultant may charge reasonable travel, accommodation, meal and incidental expenses incurred in connection with the Services. Where overnight accommodation is required, the Consultant may invoice such costs at cost plus 20% + GST, unless otherwise agreed in writing. Travel time remains chargeable in accordance with clause 12.6.

12.9 After Hours Services

Services performed outside normal business hours (7:00am to 5:00pm Monday to Friday), including site attendances, meetings, testing, inspections and hearings, may be charged at 1.5 times the applicable hourly rate unless otherwise agreed in writing. Services requested on public holidays may be charged at 2 times the applicable hourly rate.

12.10 Third-Party Payment Platform Administration Fee

Where payment claims, invoices, or related documentation are required to be submitted or managed through an external platform (including PayApps or similar systems), an administration fee will apply as set out in the Fee Proposal or Fee Schedule. This fee reflects the additional administrative resources, processing time, and compliance requirements associated with the use of that platform.

12.11 Fee Reviews

The Consultant may review and amend its Fee proposal or Fee Schedule from time to time. Any revised rates will apply only to new engagements or to ongoing engagements where the Consultant has provided the Client with at least 30 days' written notice of the revised rates.

12.12 Security of Payment

> *Security of Payment: Nothing in this Agreement limits or excludes the Consultant's rights under the Building and Construction Industry Security of Payment Act 1999 (NSW) or equivalent security of payment legislation in applicable jurisdictions. Where the Services constitute construction work or related professional services under that Act, invoices issued by the Consultant may constitute payment claims. The Client's rights to serve a payment schedule and to refer disputes to adjudication are preserved to the extent required by applicable legislation.*

13. Termination

13.1 Cancellation

For standard consulting and inspection engagements, cancellation or rescheduling requires at least one Business Day's written notice. Cancellations made within this period will incur a fee of two (2) hours per attending Consultant at the applicable hourly rate, plus any non-recoverable third-party expenses.

For expert witness engagements, cancellation terms are as set out in clause 7.4.

13.2 Termination by Client

If the Client cancels or terminates Services after commencement, the Client is liable for all fees and expenses incurred to the date of cancellation or termination, including preparation time, report writing, materials, and equipment costs.

13.3 Termination by Consultant

The Consultant may cancel a proposed engagement prior to commencement by giving written notice to the Client. On cancellation in these circumstances, the Consultant will refund any prepaid amounts in respect of cancelled Services and will have no further liability to the Client arising from such cancellation.

The Consultant may terminate this Agreement immediately by written notice if the Client:

a) Fails to make any payment when due and does not remedy that failure within 5 Business Days of written notice;
b) Denies the Consultant access to the site required to perform the Services;
c) Becomes insolvent, enters voluntary administration, has a liquidator or administrator appointed, or ceases to carry on business;
d) Engages in conduct that, in the Consultant's reasonable opinion, requires the Consultant to breach its professional obligations or any applicable code of conduct.

13.4 Consequences of Termination

On termination for any reason, all accrued fees and expenses remain payable by the Client. The Consultant retains all intellectual property in incomplete Deliverables and has no obligation to provide them.

14. Limitation of Liability

14.1 Professional Services Liability Cap

To the maximum extent permitted by law, the Consultant's total aggregate liability to the Client for all claims arising from or in connection with the provision of professional services (including advice, opinions, reports, expert witness services, peer review, forensic analysis or any omission in the performance of those services), whether in contract, tort (including negligence), statute or otherwise, is limited to the lesser of:

a) the total Fees paid by the Client under this Agreement for the specific Services giving rise to the claim; and
b) the amount recoverable by the Consultant under its Professional Indemnity Insurance policy in respect of the claim.

14.2 Site Attendance and Physical Operations Liability Cap

To the maximum extent permitted by law, the Consultant's total aggregate liability to the Client for all claims arising from or in connection with the Consultant's physical attendance on site (including third-party bodily injury or property damage caused during inspections, testing or other on-site activities), whether in contract, tort (including negligence), statute or otherwise, is limited to the lesser of:

a) the Contract Sum or Project Value to which the site attendance relates; and
b) the amount recoverable by the Consultant under its Public Liability Insurance policy in respect of the claim.

14.3 Exclusions

To the extent permitted by law, the Consultant excludes liability, to the extent permitted by law, for:

a) Indirect, consequential, or economic loss of any kind, including loss of profit, loss of revenue, loss of opportunity, or loss of reputation.
b) Damage to landscaping, driveways, paths, or other external features of a site, unless caused by the proven negligence of the Consultant.
c) Loss or damage arising from the Client's reliance on oral advice given by the Consultant, where the Client has received a written report addressing the same matters.
d) Loss or damage arising from the Client's failure to follow the Consultant's written recommendations.
e) Damage arising from the acts or omissions of third-party contractors, sub-consultants, or suppliers engaged by or on behalf of the Client.

14.4 Third-Party Liability

The Consultant does not accept any duty of care or liability to any third party (including any party that relies on a Deliverable without the Consultant's written consent) except to the extent required by law.

14.5 Non-Excludable Liability

Nothing in this Agreement limits the Consultant's liability for:

a) Death or personal injury caused by negligence.
b) Fraud or fraudulent misrepresentation.
c) Any liability that cannot lawfully be excluded or limited under the Australian Consumer Law (Schedule 2 to the Competition and Consumer Act 2010 (Cth)) or the Civil Liability Act 2002 (NSW).

14.6 Consumer Guarantees

Where the Services are of a kind not ordinarily acquired for personal, domestic, or household use, the Consultant's liability under any applicable statutory guarantee is limited, at the Consultant's election, to resupplying the Services or paying the cost of having the Services resupplied.

14.7 Proportionate Liability

The parties agree that the liability of the Consultant is to be assessed on a proportionate basis where other concurrent wrongdoers have contributed to the Client's loss, in accordance with Part 4 of the Civil Liability Act 2002 (NSW) and equivalent legislation in other jurisdictions.

14.8 Insurance Independence

The liability caps in this Agreement are intended to align with the Consultant's insurance arrangements and do not require the Consultant to assume liability beyond the amount recoverable under any applicable insurance policy, except to the extent required by law.

14.9 Insurance Claims & Costs

Each party bears its own costs associated with the notification, investigation, management and defence of any claim arising out of or in connection with this Agreement, including any insurance notifications made by that party, except to the extent that costs are recoverable pursuant to an order of a court or tribunal or as otherwise required by law.

15. Intellectual Property

15.1 Ownership

All intellectual property rights in Deliverables including reports, drawings, analyses, and forensic findings, vest in the Consultant upon creation and remain the property of the Consultant.

15.2 Licence to Use

Upon payment of all outstanding Fees, the Consultant grants the Client a non-exclusive, non-transferable licence to use the Deliverables for the purposes for which they were commissioned (the Permitted Purpose).

15.3 Restrictions on Use

The Client must not use Deliverables for any purpose other than the Permitted Purpose without the Consultant's prior written consent. In particular, the Client must not:

a) Provide any Deliverable to a third party for a fee or commercial benefit;

b) Use any Deliverable in legal proceedings for which it was not commissioned without obtaining the Consultant's prior written consent (which may be conditional on additional engagement terms);

c) Modify or adapt any Deliverable without the Consultant's written consent.

15.4 Expert Reports

Expert witness reports are produced for use in the specific proceedings identified in the engagement instructions. Any other use requires the Consultant's prior written consent.

15.5 Marketing Use

The Consultant may use anonymised case study materials, images, and photographs (not including Confidential Information) from non-expert-witness engagements for marketing and professional development purposes. This clause does not apply to materials collected in connection with any expert witness engagement or matter subject to litigation or regulatory proceedings.

The Client warrants that any instructions, documents, or materials provided to the Consultant do not infringe any third-party intellectual property right and indemnifies the Consultant against any claim arising from such infringement.

The Client may opt out of marketing use by notifying the Consultant in writing at any time before completion of the Services.

16. Confidentiality

16.1 Confidential Information

Each party agrees to keep confidential all Confidential Information of the other party and not to disclose it to any third party without prior written consent, except:

a) To the party's professional advisers, insurers, and legal representatives, on a confidential basis;

b) As required by law, court order, or the direction of a regulatory authority;

c) To the extent necessary to comply with the Consultant's obligations under any applicable Expert Witness Code of Conduct or professional standards;

d) To the extent necessary to deliver the Services.

16.2 Permitted Disclosure

The Consultant's confidentiality obligations under clause 16.1 do not prevent the Consultant from:

a) Disclosing matters to a court or tribunal in the course of expert witness proceedings;

b) Reporting a matter to a relevant regulatory authority where the Consultant identifies a health and safety risk, following prior notification to the Client where reasonably practicable;
c) Using and retaining file records for professional indemnity and regulatory compliance purposes.

16.3 Regulatory and Legal Disclosure

The Consultant handles personal information in accordance with the Privacy Act 1988 (Cth) and its Privacy Policy. Personal information collected in the course of the Services may be used for service delivery, account management, and where necessary, debt recovery. Information will not be sold or disclosed to third parties for marketing purposes.

16.4 Data Handling and Record Retention

Without limiting clause 16.1 the Client acknowledges that the Consultant may collect, generate, store, and retain documents, data, images, recordings, samples, correspondence, and personal information obtained or created in connection with the Services, including forensic investigations and expert witness engagements.

The Consultant may retain such records for as long as reasonably required for:

a) compliance with professional standards, court or tribunal requirements, and applicable laws;
b) the defence of any claim, complaint, or proceeding arising out of or in connection with the Services;
c) professional indemnity insurance, regulatory, audit, or risk management purposes; and
d) internal quality assurance and record-keeping.

The Client acknowledges that the Consultant is not required to delete, destroy, or return records where retention is reasonably necessary for the purposes set out above, notwithstanding any request by the Client to do so.

17. Force Majeure

17.1 Force Majeure Events

Neither party will be liable to the other for any delay or failure to perform its obligations under this Agreement to the extent that delay or failure is caused by a Force Majeure Event, provided the affected party:

a) Notifies the other party as soon as practicable after the Force Majeure Event occurs, including a reasonable estimate of its likely duration;
b) Takes all reasonable steps to mitigate the effects of the Force Majeure Event; and
c) Resumes performance as soon as reasonably practicable after the Force Majeure Event ceases.

17.2 Effect on Services

If a Force Majeure Event causes the adjournment or cancellation of court or tribunal proceedings in which the Expert is engaged, the Consultant will endeavour to rebook hearing attendance without additional charge, subject to availability, and will retain any retainer paid in respect of the cancelled hearing and apply it to the rescheduled date.

17.3 Termination for Prolonged Events

If a Force Majeure Event continues for more than 30 consecutive days and the affected party cannot perform its material obligations, either party may terminate the Agreement by 10 Business Days written notice. All fees for Services rendered to the date of termination are immediately payable on termination.

18. Disputes

18.1 Notice of Dispute

Any dispute under this Agreement must be notified in writing by the aggrieved party within 20 days of becoming aware of the facts giving rise to the dispute. Failure to do so may be taken into account in determining the validity and merits of the dispute.

18.2 Negotiation

The parties must attempt to resolve any dispute by good faith negotiation between senior representatives within 20 days of the notice of dispute.

18.3 Fee Disputes

Fee disputes that remain unresolved after the negotiation period may be referred by either party to expert determination by a suitably qualified independent expert, acting as an expert and not as an arbitrator.

Nothing in this clause limits or restricts either party's rights under the Building and Construction Industry Security of Payment Act 1999 (NSW) (or equivalent legislation), including the right to refer a payment dispute to adjudication through an authorised nominating authority.

The costs of any expert determination will be shared equally unless the expert determines otherwise.

18.4 Legal Proceedings

For claims other than fee disputes, including professional liability claims, negligence claims, or contractual disputes not limited to fees, either party may, after the negotiation period, commence proceedings in a court of competent jurisdiction in New South Wales.

18.5 Mitigation and Access

The Client shall permit the Consultant to conduct re-inspections of the property or site, collect samples, perform additional testing, and access all pertinent documents and records, as reasonably required by the Consultant in order to investigate any claim made against it.
The Client must take all reasonable steps to mitigate any loss the subject of a claim. The Client must not carry out, or permit to be carried out, any repair, remedial work, or alteration that may affect the matters in dispute without giving the Consultant at least 10 Business Days prior written notice and the opportunity to inspect.

19. Notices

19.1 Method of Service

Any notice or other communication required or permitted under this Agreement must be in writing and may be given by email to the address set out in the Proposal (or as otherwise notified in writing), or by hand delivery or post to the address set out in the Proposal. A notice is taken to have been received in accordance with clause 19.2.

19.2 Deemed Receipt

A notice is taken to have been received:

a) If sent by email: at the time of transmission, provided no delivery failure notice is received by the sender within 4 hours.
b) If delivered by hand: upon delivery.
c) If sent by post: on the second Business Day after posting.

The Consultant's primary notification address is: info@weatherproofconsulting.com.au.

20. General

20.1 Governing Law

This Agreement is governed by the laws of New South Wales. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales.

20.2 Severability

If any provision of this Agreement is found to be invalid, unenforceable, or illegal, that provision will be severed and the remainder will continue in full force and effect.

20.3 Entire Agreement

This Agreement (comprising these Terms of Engagement and the Proposal) constitutes the entire agreement between the parties and supersedes all prior negotiations, representations, warranties, and understandings, whether oral or written. In the event of any inconsistency, the Proposal prevails to the extent of the inconsistency.

20.4 Waiver

A party's failure to exercise, or delay in exercising, any right under this Agreement does not constitute a waiver of that right. A waiver is only effective if given in writing.

20.5 Assignment

The Client may not assign any right or obligation under this Agreement without the Consultant's prior written consent. The Consultant may assign or novate this Agreement to a related body corporate on notice to the Client.

20.6 Independent Legal Advice

The Client is encouraged to obtain independent legal advice before accepting these Terms. The Consultant does not provide legal advice.

20.7 Costs

Unless otherwise agreed or ordered by a court or tribunal, each party bears its own legal costs and expert witness costs in connection with any dispute under this Agreement.

20.8 Queensland Engagements

For Services delivered in Queensland, references to the Civil Liability Act 2002 (NSW) are to be read as including the Civil Liability Act 2003 (Qld) where applicable, and references to the Building and Construction Industry Security of Payment Act 1999 (NSW) are to be read as including the Building Industry Fairness (Security of Payment) Act 2017 (Qld).

20.9 Survival

Clauses relating to fees and payment, limitation of liability, intellectual property, confidentiality, dispute resolution, governing law, and any other clause which by its nature is intended to survive termination, survive the termination or expiry of this Agreement.

20.10 Relationship of Parties

These Terms of Engagement do not constitute or imply any partnership, joint venture, agency (except as expressly provided in clause 5), fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in this Agreement. Neither party will have, nor represent that it has, any authority to make any commitments on the other party’s behalf, except as expressly authorised under this Agreement.

— End of Terms of Engagement —