Consult Australia is pleased to announce the release of the new Australian Standard for General Conditions of Contracts for Consultants (AS4122).

Current contracting practices in the Australian building and construction industry are driving poor risk management behaviours which are exposing parties to the possibility of project failure and unforeseen costs. The lack of standardisation of contractual terms across both the public and private sector has created a need for repeated negotiations of what should constitute core contractual terms, resulting in increased costs and lost time.

Consult Australia firmly believes that this will change with the publication of an all new AS4122. In recognising the need for an up to date, contemporary, and relevant standard agreement, Consult Australia made an application to Standards Australia for AS4122-2000 to be redrafted. Consult Australia along with Association of Consulting Architects Australia, Australasian Procurement and Construction Council, Australian Constructors Association, Australian Institute of Architects, and Master Builders Australia Ltd drafted AS4122 to meet the needs of the building and construction industry and governments through the fair and proportionate allocation of risk in line with current industry best practice.

AS4122 will:

- Reduce the time and resources spent negotiating contractual terms and conditions of engagement;
- Reduce the need for external legal advice;
- Streamline the process for the engagement of consultants;
- Improve clarity and certainty of contractual terms and conditions between consultants and clients; and
- Reduce disputes between clients and consultants based on contractual terms.

Consult Australia endorses AS4122 and believes that the commercial terms are fair and reasonable and will be widely utilised by both private and public sectors. Consult Australia is committed to promoting AS4122 to see its use across industry grow.

It is important that AS4122 be used by both private and public sector industries for the benefits to be felt by the building and construction industry more broadly. To further ensure wide uptake of AS4122, the AS4122-2000 is no longer available for purchase.

The Australian building and construction industry stands to benefit greatly through having greater access to a standard form of contract. Under AS4122, both purchasers and providers of services now have a contract that is both fair, reasonable and in line with current industry practice.

AS4122-2010 with amendment is now available from Standards Australia's distributor, SAI Global at www.saiglobal.com
AS4122 is a completely new edition of the AS 4122-2000 General Conditions of Contracts for Consultants, and has been drafted to be more relevant and to take into account the evolution of the building and construction industry. AS4122 has been developed with input from the architect, consultant, contractor, and government representative bodies which has allowed for it to be a truly balanced document accounting for the needs of all contracting parties. Consult Australia will be working to ensure that AS4122 will have wide uptake across the industry, but consultants will also play a vital role.

The main differences in the contracting principles drafted in AS4122 as compared to the previous version are as follows:

- **Duty of care**
  
  It was widely recognised that AS4122-2000 had been inadequately drafted in relation to duty of care. To address this, AS4122 has been re-drafted to be, at minimum, in line with common law (tort and contract) principles.

- **Reasonable limitation to liability**
  
  AS4122 ensures that the level of risk and liability is appropriate and that any cap on liability of a consultant must have (reasonable) carve outs.

- **Intellectual Property Rights**
  
  AS4122 recognises the value of copyright, independent of the services being provided.

- **Clear payment rights and obligations**
  
  Under AS4122 the profit/outcome must be predictable with a clear outline of current obligations and processes for variations. Under this new standard, variations will require fair and reasonable remuneration, and progress payments are now able to be made to the consultant.

- **Clear scope**
  
  The scope in the new standard well defined so as to avoid extraneous matters.

- **Risk allocation**
  
  The risk allocation has been drafted to be commensurate with the level of control. This means that the party best able to control a risk holds responsibility for bearing that risk.

“The new edition of AS4122 was produced with the intention of being concise, clear and reflective of acceptable current industry expectations and requirements of consultants. It is considered to be fair and balanced overall to both clients and consultants,” said Mario Siles, Senior Legal Counsel Aurecon and Chair of the Consult Australia Liability and Contracts Roundtable.

Consult Australia strongly recommends that where appropriate, professional services consultants, public sector agencies, governments and private sector clients should be requesting that AS4122 be used.

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