



SAACE – Client Information Sheet

INFORMATION SHEET No 1 in a Series LIMITATION OF LIABILITY

STANDARD CONTRACTS AVAILABLE FROM THE SAACE

SAACE has a number of standard contracts that suit different situations. These are available from the Directorate.

- **SAACE Form of Agreement for Consulting Engineer Services (see note *)**
- **Trilogy of Documents (Guidelines for the Engagement of Consulting Engineers).**
- **FIDIC Guidelines for Selection of Consultants.**
- **FIDIC Client/Consultant Agreement**
- **FIDIC Short Form Agreement**

* Note: All equivalent CIDB documentation such as the CIDB Professional Services Contract (March 2004), are available from the CIDB directly.

FIND A CONSULTING ENGINEER

SAACE offers a service for clients looking for a suitable consulting engineer through its website or by phoning the office and discussing your needs with staff. A list of firms in your area who may be available to help can be provided.

WHAT IT MEANS TO USE A SAACE CONSULTANT

SAACE members are firms managed by qualified professionals who undertake to abide by a code of ethics, and modern business practice to provide clients with quality service.

The South African Association of Consulting Engineers CONTACT SAACE

Phone +27 (011) 463-2022
Fax +27 (011) 463-7383
PO Box 68482, Bryanston, 2021
Email general @saace.co.za,
www.saace.co.za

Why Clients Should Limit the Liability of their Consulting Engineer

Clients engage Consulting Engineers to provide engineering and related professional services. Based on their advice, clients can invest in an asset, the value of which may be 10 to 1000 times greater than the engineers' fee.

In the unlikely event that the engineer is found to be negligent, the cost of rectifying the error may be several times greater than the original fee. This constitutes a risk to the client. How best to manage and mitigate that risk is the subject of this and subsequent bulletins.

An initial reaction by some clients is to attempt to transfer the risk to the Engineer by requiring high, or even unlimited liability. This is not the safest, nor the most cost effective way of managing such risk.

Appropriate methods to mitigate risk include:

- Preparing a brief with the scope of work and services well defined;
- Making consultant selection competitive, but based primarily on quality and experience rather than price;
- When appropriate, arranging for peer reviews of the consultant's work;
- Setting a commercially viable limit of liability;
- Requiring the consultant to maintain Professional Indemnity (PI) insurance to match the agreed limit of liability.

In order to maintain necessary skills, consultants need to operate businesses or partnerships that are commercially viable. If there is no reasonable limit on liability, consulting engineers have a number of unsatisfactory options, such as:

- Risk their business on the job through the potential liability being greater than their PI insurance and the value of their company. This usually means not offering some services or offering services with conditions;
- Strip their company of assets such that a claim above the insured sum will not be worthwhile to the claimant;
- Not provide services to clients who insist on unlimited or unreasonable liability;
- Play it safe by providing overly conservative advice, which will have greater financial impact on the client.

The "liability" of the consultant is only a safeguard for the client if it is backed up by PI insurance. Professional Indemnity premiums are expensive and increasing. Insurance providers worldwide are limiting the size and types of risk that they will cover. In some locations and for some services, PI cover is no longer available. Insurers often argue the engineer was not liable or not covered for that action.

A commercial balance is required to provide clients with security, and consultants with viability, backed by insurance. The general rule of thumb that has developed over time, internationally, is that the limit of liability should be about twice the fee. This level:

- Has substance in the event of errors made by the consultant;
- Covers virtually all legitimate claims that arise;
- Is commercially sensible for both the client and consultant.

Even so, this level is demanding from the Consultant's point of view. In many industries (eg IT), damages are limited to the value of goods or services only.