

THIS AGREEMENT IS COMPRISED OF OUR LETTER OF OFFER (INCLUDING THE ATTACHED SERVICES SCHEDULE) AND THESE STANDARD TERMS

1. PERFORMANCE

1.1 Architect's Responsibility

The Architect must:

- (a) perform the Services with the professional skill, care and diligence that would be expected of a professional architect experienced in providing services for projects similar to the Project;
- (b) promptly notify the Client of each matter of which the Architect becomes aware that could have a material impact on the Services or the Architect's ability to perform them;
- (c) report to the Client, at least monthly, as to the progress of the Services; and
- (d) keep accurate records (including financial records) relating to the performance of the Services and give the Client access to those records on reasonable notice.

1.2 Client's Responsibility

The Client must:

- (a) appoint the Architect as the Client's agent to the extent necessary for the Architect to perform the Services;
- (b) in a timely manner:
 - (i) provide all information and documents required by the Architect to perform and complete the Services; and
 - (ii) cooperate fully with the Architect to ensure the efficient performance of the Services;
- (c) directly engage any specialist consultants reasonably requested by the Architect, and pay all fees and expenses associated with their engagement; and
- (d) allow the Architect to erect signage at the Project site.

1.3 Provision of equipment and materials

The Architect's obligations under this agreement exclude (and the Fee does not cover) providing equipment, material or services not expressly referred to in the Services Schedule.

1.4 Prior Services

The terms of this agreement apply to any Services performed by the Architect prior to the date of this agreement.

1.5 Stages

- (a) Subject to clause 1.4, the Client consents to the Architect performing any Concept Design, Design Development or Construction Documentation forming part of the Services:
 - (i) concurrently or otherwise at the Architect's discretion; and
 - (ii) on and from the date of this agreement.
- (b) The Architect:
 - (i) must obtain the Client's consent before performing any Contractor Selection forming part of the Services; and
 - (ii) may thereafter sequentially perform any Contract Administration forming part of the Services without seeking the Client's consent.

1.6 Design

- (a) Subject to clause 1.6(b), the Services must comply with:
 - (i) the Client's requirements for the Project;
 - (ii) the law, including any authority having jurisdiction in respect of the Services or the Project; and
 - (iii) the National Construction Code.

- (b) The Architect gives no warranty (express or implied) that the design will be fit for the Client's purposes.

2. COST OF WORKS

The Cost of Works stated in the Services Schedule:

- (a) is indicative only and the Architect bears no liability if it is found to be in error in any respect;
- (b) includes:
 - (i) the final adjusted contract price (excluding GST) in accordance with any building contract;
 - (ii) the equivalent final cost (excluding GST) of any work or items supplied to the building contractor by the Client as if provided by the building contractor under the building contract; and
 - (iii) the final cost (excluding GST) of any part of the Project provided otherwise than under the building contract; and
- (c) excludes:
 - (i) removal and relocation costs;
 - (ii) professional fees;
 - (iii) authority fees and charges; and
 - (iv) finance charges.

3. VARIATIONS

3.1 Agreement to Vary

The Client may vary the scope of the Services only by agreement with the Architect and confirmed by the Architect in writing detailing:

- (a) the scope of the variation; and
- (b) the:
 - (i) Fees for the variation;
 - (ii) rates to apply to the variation; or
 - (iii) some other mechanism for valuing the variation.

3.2 No Prior Agreement to Vary

If, in the Architect's reasonable opinion, the Client has given the Architect a direction:

- (a) that will result in a variation to the scope of the Services; and
- (b) without the matters referred to in clause 3.1 first having been agreed upon in writing,

the Architect must, before complying with the direction, provide a written notice to the Client:

- (c) identifying the direction;
- (d) advising the Client:
 - (i) of the Fees for the variation; or
 - (ii) if the Fees cannot reasonably be determined in advance, the mechanism the Architect will use for valuing the variation once it is completed.

3.3 Client Confirmation

If the Client receives a written notice from the Architect under clause 3.2, the Client may, within three business days after the date of the notice:

- (a) direct the Architect in writing:
 - (i) to proceed with the direction; or
 - (ii) not to proceed with the variation; or

(b) give no direction, in which case the Architect must (at the Architect's discretion) advise the Client in writing that the Architect will:

- (i) proceed with the variation; or
- (ii) not proceed with the variation.

3.4 Client Liable for Additional Fees

If the Architect proceeds with a variation under clauses 3.3(a)(i) or 3.3(b)(i), the Client will be liable for the additional Fees referred to in the written notice from the Architect under clause 3.2.

3.5 Deemed Variations

It will be a deemed variation to the scope of the Services if the Architect is delayed in the performance of the Services for any reason beyond the Architect's reasonable control, including any failure by the Client to comply with its obligations under clause 1.2.

3.6 Valuation of Deemed Variations

If there is a deemed variation under clause 3.5, the Architect must promptly provide a written notice to the Client:

- (a) identifying the delay; and
- (b) advising the Client:
 - (i) of the Fees for the deemed variation; or
 - (ii) if the Fees cannot reasonably be determined in advance, the mechanism the Architect will use for valuing the deemed variation once it is completed.

4. TIME

4.1 Performance of the Services

The Architect must:

- (a) provide a timeframe for the provision of the Services; and
- (b) use its best endeavours:
 - (i) to perform the Services in a timely manner and in accordance with the timeframe; and
 - (ii) mitigate any delays in the performance of the Services.

4.2 Architect's Suspension

If the Client fails to pay in full (within the time provided under clause 5.3) any one or more of the tax invoices provided by the Architect (under clause 5.2), the Architect may (on giving two business days' written notice):

- (a) suspend the performance of all or part of the Services; or
- (b) exercise its rights under clause 10.2.

4.3 Resuming Performance after Suspension

The Architect may, on giving two business days' written notice, resume the performance of the Services or the relevant part.

4.4 Consequences of Suspension

If the Architect exercises its rights under clause 4.2, the:

- (a) Client may not terminate this agreement under the general law (or otherwise); and
- (b) the licence granted under clause 9(b) is revoked, during the period of the suspension.

4.5 Suspension Costs

(a) The Client must pay the Architect a reasonable amount agreed or determined under clause 4.5(b) in respect of the Architect's costs (including losses and expenses) incurred in any way in connection with any suspension under clause 4.2.

- (b) The amount payable under clause 4.5(a) must be:
 - (i) agreed by the parties; or
 - (ii) failing agreement, determined by the Architect acting reasonably.

5. PAYMENT

5.1 General

The Client must:

- (a) pay the Architect the Fees (as adjusted under this agreement) and the Reimbursable Expenses incurred (including any administration fee set out in the Services Schedule); and
- (b) otherwise perform its obligations, in accordance with this agreement.

5.2 Tax Invoices

The Architect may (on or after the day set out in the Services Schedule) provide a tax invoice to the Client setting out:

- (a) the total value of the Services performed; and
- (b) the Reimbursable Expenses incurred (including any administration fee set out in the Services Schedule),

by the Architect in respect of the Project less the payments received to date.

5.3 Payment Due to the Architect

The Client must pay the Architect:

- (a) the amount of each tax invoice referred to in clause 5.2 within the time provided for in the Services Schedule; and
- (b) interest at the rate set out in the Services Schedule on any overdue payments.

6. RELEASE

The Client releases the Architect from any liability or obligation to the Client (or anyone claiming through or on behalf of the Client) in respect of:

- (a) physical loss, or damage to, any real or personal property;
- (b) personal injury, disease or illness to, or death of, persons; or
- (c) financial loss, expense, or damage, arising out of or in connection to the performance of the Services and the Architect's other obligations under this agreement.

7. INSURANCE

The Architect must maintain:

- (a) public liability insurance (provided such insurance is available upon reasonable commercial terms); and
- (b) professional indemnity insurance, covering legal liability in connection with the Architect performing the Services and its other obligations under this agreement.

8. LIMIT OF LIABILITY

(a) The Architect's maximum aggregate liability to the Client (or anyone claiming through the Client) arising out of or in connection with this agreement (including liability for breach of contract, for tort including negligence, or on any other legal basis) is limited to the greater of:

- (i) \$1,000; or
- (ii) insurance proceeds actually recovered (if any).

(b) If any part of clause 8(a) is void, the Architect's liability is (at the Architect's discretion) limited to:

- (i) supplying the relevant Services again; or
- (ii) payment of the cost of having the Services supplied again.

9. COPYRIGHT

- (a) All copyrights coming into existence in connection with the performance of the Services vest in and are owned by the Architect.
- (b) Subject to clause 4.4(b), the Architect grants to the Client a revocable, non-transferrable licence to use the documents created by the Architect once only for the construction of the Project.

- (c) The Architect (or any nominee) may:
 - (i) after giving reasonable notice, take such records, including photographic records; and
 - (ii) publish such materials,
 in respect of the Project as the Architect considers desirable.
- (d) The Services exclude the provision of any documents in digital formats other than Portable Document Format.

10. TERMINATION

10.1 Generally

This agreement may be terminated:

- (a) at any time by mutual agreement of the parties in writing;
- (b) by either party at its sole discretion (without giving reasons) by giving no less than 15 business days' written notice to the other party; or
- (c) immediately by the Architect in writing if, in the Architect's professional judgment, the provision of the Services (or any part of the Services) requires the Architect to act:
 - (i) in a manner the Architect considers unethical; or
 - (ii) in contravention of the law.

10.2 Default

If:

- (a) the Architect:
 - (i) considers that the Client is in breach of its obligations under this agreement; and
 - (ii) gives the Client a written notice identifying the breach and the time within which it must be rectified; and
- (b) the Client fails to remedy the breach within the time provided for (which may not be less than two business days after the date of the notice),

the Architect may by further written notice terminate this agreement.

10.3 Insolvency

Either party may terminate this agreement, with immediate effect, by written notice to the other party if any of the following occurs with respect to that other party:

- (a) it is, or states that it is, insolvent as defined in the *Corporations Act 2001* (Cwlth);
- (b) it is placed under any form of external administration; or
- (c) it fails to comply with a statutory demand.

10.4 Consequences

- (a) If the agreement is terminated under clauses 10.1, 10.2 or 10.3 (or otherwise), the Architect may submit a tax invoice showing:
 - (i) the total value of the Services performed and Reimbursable Expenses incurred (including any administration fee set out in the Services Schedule) up to the date of the termination less the payments received to date; and
 - (ii) all other costs incurred (or anticipated to be incurred) by the Architect in bringing the Services to an end.
- (b) The Client must pay the Architect:
 - (i) the amount of the tax invoice referred to in clause 10.4(a) within the time provided for in the Services Schedule; and
 - (ii) interest at the rate set out in the Services Schedule on any overdue payment.

11. TAXES

- (a) The parties acknowledge that, unless otherwise expressly stated, all amounts of monetary consideration in this agreement are exclusive of GST.
- (b) If GST is or becomes payable on a supply made by a party (**Supplier**) under or in connection with this agreement, the party providing consideration for the supply must pay an additional amount to the Supplier equal to the GST payable by the Supplier in relation to the supply.
- (c) Any amount payable under clause 11(b) will be paid to the Supplier at the same time as the consideration for the supply is paid to the Supplier.