

Trading Terms

1. PARTIES:

The Supplier: Troy Walters Consulting Pty Ltd (ACN 127 552 292) trading as TWC Group
The Customer: [COMPANYNAME] _____

2. DEFINITIONS

- 2.1. The Supplier is TROY WALTERS CONSULTING PTY LTD (ACN 127 552 292) TRADING AS TWC GROUP
- 2.2. The Customer is the Persons or Company either detailed above or listed as the "owner/agent of owner" on the Building Permit Application Form.
- 2.3. The Services includes all building surveyor work done by the Supplier as detailed in the Terms of Appointment.
- 2.4. The Price is the purchase or quotation price of the Services referred to in the Fee Schedule/Quotation.
- 2.5. Indirect, Special or Consequential loss or damage includes i) any loss of income profit or business; ii) any loss of good will or reputation; iii) any loss of value of intellectual property.

3. GENERAL

- 3.1. An Order placed by the Customer is deemed to be an Order incorporating these Terms & Conditions notwithstanding any inconsistencies which may be introduced in the Customer Orders or acceptance unless expressly agreed to by the Supplier in writing.
- 3.2. No subsequent correspondence or document including any Order by the Customer shall modify or otherwise vary these Terms & Conditions unless such variation is in writing and signed by the Supplier.
- 3.3. The Terms & Conditions are binding on the Customer, his heirs, assignees, executors, trustees and where applicable, any liquidators, receivers or administrators.
- 3.4. In these Terms & Conditions, the singular shall include the plural, the masculine shall include feminine and neuter, words importing persons shall apply to corporations, heirs, assignees, executors, trustees and where applicable, any liquidators, receivers or administrators.
- 3.5. Where more than one Customer completes this agreement each shall be liable jointly and severally.
 - 3.6. If any provision of these Terms & Conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
 - 3.7. The Supplier reserves the right to review these Terms & Conditions at any time. If, following any such review, there is to be any change to these Terms & Conditions, then that change will take effect from the date on which the Supplier notifies the Customer of such change but shall not relate back to the period prior to such notification.
 - 3.8. The failure by the Supplier to enforce any provision of these Terms & Conditions shall not be treated as a waiver of that provision, nor shall it affect the Supplier's right to subsequently enforce that provision.
 - 3.9. These Terms & Conditions are to be read in conjunction with the *Building Act 1993* (Vic), the *Building Interim Regulations 2017* (Vic), Terms of Appointment and Fee Schedule.
 - 3.10. In accordance with Clause 3 of Schedule 2 of the *Building Act 1993*, if additional information or a document or an amended application required to be supplied by an applicant is not supplied within 30 days of the request being made by the Relevant Building Surveyor the building permit application will be refused.

4. CONSULTANCY AGREEMENTS

- 4.1. At The time of preparing this quotation, no proposed consultancy agreement, Deed of Novation, novated contract or similar such document has been made available for review.
- 4.2. The Supplier will not be bound to signing such agreement nor can failure to sign such agreement, be grounds for termination of services.
- 4.3. Fees for the review and execution of Consultancy Agreements including but not limited to legal fees, insurance company review etc will be changed accordingly

5. LIMITATION OF LIABILITY

- 5.1. Direct and Indirect Loss
 - 5.1.1. The liability of the Supplier to the any party arising out of the performance or non-performance of the services, whether under the law of contract, tort or otherwise shall be limited to the cost of rectifying the works which are the subject of the commission.
- 5.2. Maximum amount of Liability
 - 5.2.1. The maximum liability of the supplier to the any party arising out of the performance or non-performance of the Services, whether under the law of

contract, tort or otherwise, shall be the lesser of 3 x the quoted fee or \$300,000.00.

5.3. Duration of Liability

- 5.3.1. The supplier shall be deemed to have been discharged from all liability in respect of the Services, whether under the law of contract, tort or otherwise, at the expiration of the period specified one year from the completion of the Services, and the Client (and persons claiming through or under the Client) shall not be entitled to commence any action or claim whatsoever against the Supplier (or any employee of the Supplier) in respect of the Services after that date.
- 5.4. The Supplier does not give any warranty nor accept any liability in relation to the performance or non-performance of the Services except to the extent, if any, required by law or specifically provided for in this Agreement. If apart from this Clause any warranty would be implied whether by law, custom or otherwise, that warranty is to the full extent permitted by law hereby excluded.
- 5.5. Nothing herein, contained shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of any goods or services pursuant to this Agreement of all or any of the provisions of Part V of the Trade Practices Act 1974 (as amended) or any relevant State Act or Territorial Ordinance which by law cannot be excluded, restricted or modified.

6. QUOTATIONS

- 6.1. Any verbal or written quotation given by the Supplier shall expire thirty (30) days after the date it was given.
- 6.2. An Order is made when the Customer signs a Fee Proposal Acceptance, Building Permit Application Form or the Terms of Appointment and agrees to be bound by the clauses set therein.

7. PROVISION OF SERVICES

- 7.1. The Supplier reserves their right to:
 - 7.1.1. Decline requests for any Services requested by the Customer.
- 7.2. Subject to otherwise complying with its obligations under this agreement, the Supplier shall exercise its independent discretion as to its most appropriate and effective manner of providing the Services and of satisfying the Customer's expectations of those Services.
- 7.3. In the discharge of its duties, the Supplier shall comply with all reasonable resolutions, regulations and directions of the Customer that may lawfully be given from time to time as to the nature and scope of the service to be provided.
- 7.4. Nothing in the above clause shall effect the Supplier's right to exercise its own judgment and to utilise its skills as it considers most appropriate in order to achieve compliance with the said resolutions, regulations and directions or otherwise with its obligations under this agreement.
- 7.5. The Customer authorises access to the premises and warrants that the Customer is the owner or is authorised to request the work to be done.
- 7.6. Where relevant, the Customer shall ensure that the Supplier, its servants and agents have full and safe access to the Customer's property for the purpose of providing the Services.

8. TERMINATION OF SERVICES

- 8.1. Subject always to the provisions of the Building Act 1983 (as amended), the Customer may by notice in writing served on the Supplier terminate the Supplier's engagement under these Terms of Engagement:
 - 8.1.1. If the Supplier is in breach of the provisions of these Terms of Engagement and the breach has not been remedied within twenty-eight (28) days (or such longer period as the Customer may allow) of the service by the Customer on the Supplier of a notice requiring the breach to be remedied; or
 - 8.1.2. If the Customer serves on the Supplier a notice requiring that these Terms of Engagement be terminated on a date specified in the notice being not less than sixty (60) days after from the date of issue of the notice.
- 8.2. Subject always to the provisions of the Building Act 1993 (as amended), the Supplier may by notice in writing served on the Customer terminate the Supplier's obligations under these Terms of Engagement:
 - 8.2.1. If the Customer is in breach of the conditions of any part of Section 4 hereof and the breach has not been remedied within seven (7) days (or such longer period as the Supplier may allow) of the service by the Supplier on the Customer of a notice requiring the breach to be remedied; or
 - 8.2.2. If the Customer is in breach of the provisions of any other clause hereof and the breach has not been remedied within twenty-eight (28) days (or such longer period as the Supplier may allow) of the service by the Supplier on the Customer of a notice requiring the breach to be remedied; or
 - 8.2.3. If the Supplier serves on the Customer a notice requiring that these Terms of Engagement be terminated on a date specified in the notice being not less than sixty (60) days after the date of the notice.

- 8.3. Termination shall be without prejudice to any claim which either party may have against the other in respect of any breach of the provisions of these Terms of Engagement which occurred prior to the date of determination.
- 8.4. If the Supplier's obligations are terminated, then the Customer shall pay for all work-in-progress performed by the Supplier up until the date of termination.

9. GOODS AND SERVICES TAX

- 9.1. GST refers to Goods and Services tax under the *Goods and Services Act 1999* ("GST Act") and terms used herein have the meanings contained within the GST Act.
- 9.2. It is hereby agreed between the Customer and the Supplier that the consideration for the Supplier expressed in this agreement is exclusive of the Supplier's liability of GST.
- 9.3. On sale:
 - 9.3.1. The Customer will pay to the Supplier, in addition to the total purchase Price, the amount payable by the Supplier of GST on the taxable supply made by the Supplier under this agreement;
 - 9.3.2. The Supplier shall deliver to the Customer a Tax Invoice for the supply in a form which complies with the GST Act and Regulations.

10. PRIVACY ACT 1988

- 10.1. The Customer agrees for the Supplier to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by the Supplier.
- 10.2. The Customer agrees that the Supplier may exchange information about the Customer and with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
 - 10.2.1. To assess an application by Customer;
 - 10.2.2. To notify other credit providers of a default by the Customer;
 - 10.2.3. To exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers;
 - 10.2.4. To assess the credit worthiness of Customer.
- 10.3. The Customer consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit (*Section 18K(1)(h) Privacy Act 1988*).
- 10.4. The Customer agrees that personal credit information provided may be used and retained by the Supplier for the following purposes and for other purposes as shall be agreed between the Customer and Supplier or required by law from time to time:
 - 10.4.1. Provision of Goods and Services;
 - 10.4.2. Marketing of Goods by the Supplier, its agents or distributors in relation to the Goods;
 - 10.4.3. Analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to provision of Goods and Services;
 - 10.4.4. Processing of any payment instructions, direct debit facilities and/or credit facilities requested by Customer;
 - 10.4.5. Enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods and Services.
- 10.5. The Supplier may give information about the Customer to a credit reporting agency for the following purposes:
 - 10.5.1. To obtain a consumer credit report about the Customer;
 - 10.5.2. Allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.

11. DISHONOUR OF CHEQUE

- 11.1. If any cheque issued by the Customer or by any third party in payment is dishonoured:
 - 11.1.1. The Supplier may refuse to supply any further Goods and Services until satisfactory payment is received in full, including bank fees and charges;
 - 11.1.2. The Supplier is entitled to treat the dishonour of the Customer's cheque as a repudiation of this agreement and to elect between terminating this agreement or affirming this agreement, and in each case claiming and recovering compensation for loss or damage suffered from the Customer.
 - 11.1.3. The Customer may be liable for a dishonoured cheque fee of \$30.00.

12. PAYMENT

- 12.1. The Supplier will provide the Customer with an invoice for Building Certification and Inspection services upon receipt of a Building Permit Application Form or after the provision of the Services.
- 12.2. Invoices issued by the Supplier shall be due and payable within fourteen (14) days from date of issue or prior to a Building Permit being issued, whichever is earlier.
- 12.3. All invoices will be issued to, and payable by the Customer as listed above or the "owner/agent of owner" as detailed on the Building Permit Application Form.
- 12.4. The Supplier reserves it right to exercise Clause 1 of Schedule 2 of the Building Act 1993 and require any Building Permit application to be accompanied by the fees determined by the Supplier, appropriate lodgement fees, reporting authority fees and building levies.

13. DEFAULT IN PAYMENT

- 13.1. Invoices issued by the Supplier shall be due and payable within fourteen (14) days from date of issue ("Default Date"). Without prejudice to any other rights of the Supplier, the Customer may be charged account keeping fees of \$30.00 monthly on any payment in arrears over sixty (60) days from the date of the invoice.
- 13.2. If the Supplier does not receive the Outstanding Balance, on or before the Default Date, the Supplier may, without prejudice to any other remedy it may have, forward the Customer's outstanding account to a debt collection agency for further action. The Customer acknowledges and agrees that:
 - 13.2.1. After the Default Date, the Outstanding Balance shall include, but not limited to, all applicable fees and charges under this agreement;
 - 13.2.2. The Supplier may incur commission costs charged by the debt recovery agency on the Aggregate Sum (as defined below) at an applicable rate agreed between the Supplier and the debt recovery agency ("Commission Rate");
 - 13.2.3. The Customer will be responsible for payment of the aggregate of the Outstanding Balance on the Customer's account and all commission costs incurred by the Supplier ("Aggregate Sum"), the intention of the parties being that the Supplier will receive the whole outstanding balance after the deduction of commission costs and other expenses;
 - 13.2.4. The Aggregate Sum will be calculated as follows:

$$\text{Aggregate Sum} = \frac{\text{Outstanding Balance}}{(1 - \text{Commission Rate})}$$
 - 13.2.5. The Aggregate Sum may be referred to a debt collection agency for further action;
 - 13.2.6. The Aggregate Sum will be payable as a liquidated debt on demand.
- 13.3. The Customer is also responsible for all expenses in relation to the collection of the Aggregate Sum including, but not limited to, all charges and fees, legal costs on an indemnity basis, and disbursements.

14. LIABILITY

- 14.1. The Customer acknowledges that there may be risk involved in the provision of Services to the Customer.
- 14.2. The Supplier shall not be liable for and the Customer releases the Supplier from:
 - 14.2.1. Physical or financial injury, loss or damage or consequential loss or damage of any kind arising out of the performance of Services.

15. CLAIMS

- 15.1. If the Customer does not advise the Supplier in writing of any failure of the Services to comply with the description and quality ordered made pursuant to these conditions within thirty (30) days of the provision of the Services by the Supplier:
 - 15.1.1. The Customer is deemed to have accepted the Services and is deemed to agree that the Services comply with terms of contract made pursuant to these Terms & Conditions;
 - 15.1.2. If the Customer disputes the whole or any portion of the amount claimed in an invoice submitted by the Supplier, then it shall pay that portion of the amount stated in the account which is not in dispute. If it is established that some or all of the amount in dispute ought properly to have been paid to the Supplier at the time it was first claimed, then the Customer shall pay the amount finally established together with account keeping fees in accordance with Clause 10.1

16. JURISDICTION

- 16.1. This agreement is deemed to be made in the State of Victoria and all disputes hereunder shall be determined by the relevant Victorian Court.

17. INSURANCE

- 17.1. The Customer is responsible to effect whatever insurance cover he requires at his own expense.

18. SET-OFF

- 18.1. The Customer shall have no right of set-off in any suit, claim or proceeding brought by the Supplier against the Customer for default in payment.
- 18.2. The Customer acknowledges that the Supplier can produce this clause in bar of any proceeding for set-off.

19. ENTIRE AGREEMENT

- 19.1. The conditions set out in this agreement constitute the whole agreement made between the Customer and the Supplier.
- 19.2. This agreement can only be amended in writing signed by each of the parties.
- 19.3. All prior discussions and negotiations are merged within this document and the Supplier expressly waives all prior representations made by him or on his behalf that are in conflict with any clauses in this document in any way.
- 19.4. Nothing in this Terms & Conditions is intended to have the effect of contravening any applicable provisions of the *Commonwealth Trade Practices Act 1974* or the *Fair Trading Acts* in each of the States and Territories of Australia or the *Building Act 1993* (Vic) and, the *Building Interim Regulations 2017* (Vic).

I understand and agree to be bound by the Terms & Conditions set out herein.

NAME:

SIGNATURE:

DATE:/...../2020