

1. Definitions

- 1.1 "Consultant" means Coastline Building Certification Group Pty Ltd, its successors and assigns or any person acting on behalf of, and with the authority of, Coastline Building Certification Group Pty Ltd.
- 1.2 "Client" means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting the Consultant to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one (1) Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client's executors, administrators, successors and permitted assigns.
- 1.3 "Services" means all Services provided by the Consultant (including but not limited to issuing of Construction Certificate) to the Client at the Client's request from time to time, and includes any Documentation provided as part of the Services.
- 1.4 "Documentation" means any documents, designs, drawings, details, specifications or other materials provided, utilised or created incidentally by the Consultant in the course of it conducting, or providing to the Client, any Services.
- 1.5 "Proposal" means the letters or other documents prepared by the Consultant and submitted to the Client to describe the scope of Services to be provided, the personnel and equipment proposed to be utilized, and the amount or method of calculation of the Fee and reimbursable expenses.
- 1.6 "Occupation Certificate" means an Occupation Certificate within the meaning of the Environmental Planning and Assessment Act 1979 (NSW) and the Sustainable Planning Act 2009, the Building Act 1975 (QLD).
- 1.7 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "**Personal Information**" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.8 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. **If the Client does not wish to allow Cookies to operate in the background when ordering from the website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Services via the website.**
- 1.9 "Fee" means the price payable (plus any GST were applicable) for the Services as agreed between the Consultant and the Client in accordance with clause 7 of this contract.
- 1.10 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this contract, either party's Intellectual Property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information and pricing details.
- 1.11 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for, or accepts Services provided by the Consultant.
- 2.2 In the event of any inconsistency between the terms and conditions of this contract and any other prior document or schedule that the parties have entered into, the terms of this contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this contract may only be amended in writing by the consent of both parties.
- 2.4 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 (NSW) and Section 14 of the Electronic Transactions (Queensland) Act 2001 (whichever is applicable), or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors & Omissions

- 3.1 The Client acknowledges and accepts that the Consultant shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by the Consultant in the formation and/or administration of this contract; and/or
 - (b) contained/omitted in/from any literature (hard copy and/or electronic) supplied by the Consultant in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of the Consultant; the Client shall not be entitled to treat this contract as repudiated nor render it invalid.

4. Change in Control

- 4.1 The Client shall give the Consultant not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, change of trustees or business practice). The Client shall be liable for any loss incurred by the Consultant as a result of the Client's failure to comply with this clause.

5. The Commonwealth Competition and Consumer Act 2010 ("CCA") and Fair Trading Acts ("FTA")

- 5.1 Nothing in this contract is intended to have the effect of contracting out of any applicable provisions of the CCA or the FTA in each of the States and Territories of Australia (including any substitute to those Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable.

6. Client's Responsibilities

- 6.1 The Client shall (at their own cost) as soon as practicable:

- (a) make available to the Consultant all relevant information, documents, drawings, certificates of title, plans, survey information and other particulars relating to the Client's requirements for the Services, and the Consultant is entitled to rely thereon. The Consultant shall not be liable whatsoever for any errors in the Services that are caused by incorrect or inaccurate information being supplied by the Client;
 - (b) make arrangements to enable the Consultant to enter upon the intended site (and other premises as necessary) to enable the Consultant to provide the Services;
 - (c) ensure that a Construction Certificate or Complying Development Certificate has been issued prior to the commencement of any Services.
- 6.2 The Client acknowledges and agrees:
- (a) that they will use their best endeavours to respond promptly to any request or query from the Consultant and attend any meetings if required;
 - (b) to provide the Consultant with the estimated date of practicable completion;
 - (c) to comply with any Notice of Intention to Serve an Order that the Consultant issues;
 - (d) to ensure compliance with all conditions of the Development Consent relating to any demolition works prior to the issue of any Occupation Certificate;
 - (e) not to engage any other certifying authority after the Consultant has been appointed pursuant to this contract has been engaged. A breach of this condition will entitle the Consultant to recover any losses or cost of whatsoever nature that flow from such breach.
- 6.3 If the Client becomes aware of any matter which may change the scope or timing of the Services, then the Client will give written notice of same to the Consultant.

7. Consultant's Obligations

- 7.1 The Consultant shall issue a Construction Certificate: -
- (a) once the Consultant is satisfied that the design of the building work(s) complies with the Development Consent and the Regulations and;
 - (b) once the Consultant is satisfied that the design as depicted on the drawings and specification comply with the Building Code of Australia and;
 - (c) once the Client pays the Consultant any money owed for work associated with the issuing of a Construction Certificate.
- 7.2 The Consultant shall provide the council with a Notice Determination within two (2) days of the determination.
- 7.3 During the assessment of the application for a Construction Certificate, the Consultant may request as many Certificates or statements from any Certifying Authority or any other party that the Consultant considers necessary.

8. Fee and Payment

- 8.1 At the Consultant's sole discretion, the Fee shall be either:
- (a) as indicated on any invoice furnished by the Consultant to the Client for Services provided; or
 - (b) the Consultant's Fee at the date of provision of the Services, calculated on the Consultant's current labour rates; or
 - (c) the Consultant's quoted price (subject to clause 8.2) which will be valid for the period stated in the Proposal or otherwise for a period of ninety (90) days and (unless otherwise specified in writing) excludes Reimbursable Expenses.
- 8.2 The Consultant reserves the right to change the Fee:
- (a) to include any Reimbursable Expenses as per clause 9;
 - (b) if a variation to the Proposal (including any variation to the Client's brief/specifications) is required or requested, or where additional costs are incurred by the Consultant due to unexpected delays, or receipt of approvals or permits, additional inspections, access to an assessment area not being available as was agreed or when pre-arranged. Variations will be charged for on the basis of the Proposal, and will be detailed in writing, and shown as variations on the Consultant's invoice. The Client shall be required to respond to any variation submitted by the Consultant within ten (10) working days. Failure to do so will entitle the Consultant to add the cost of the variation to the Fee. Payment for all variations must be made in full at the time of their completion.
- 8.3 Time for payment for the Services being of the essence, the Fee will be payable by the Client on the date/s determined by the Consultant, which may be:
- (a) prior to provision of the Services;
 - (b) by way of instalments/progress payments in accordance with the Consultant's payment schedule;
 - (c) fourteen (14) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Consultant.
- 8.4 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and the Consultant.
- 8.5 The Client shall not be entitled to set off against, or deduct from the Fee, any sums owed or claimed to be owed to the Client by the Consultant nor to withhold payment of any invoice because part of that invoice is in dispute.
- 8.6 Unless otherwise stated the Fee does not include GST. In addition to the Fee the Client must pay to the Consultant an amount equal to any GST the Consultant must pay for any provision of Services by the Consultant to the Client under this contract or any other contract. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Fee. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Fee except where they are expressly included in the Fee.
- 8.7 The Client acknowledges and agrees that the Client's obligations to the Consultant for the provision of the Services shall not cease (and where it is intended that any ownership of the Documentation shall pass, it shall not pass) until:
- (a) the Client has paid the Consultant all amounts owing for the particular Services; and
 - (b) the Client has met all other obligations due by the Client to the Consultant in respect of all contracts between the parties.
- 8.8 Receipt by the Consultant of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Consultant's ownership or rights in respect of the Services, and this contract, shall continue.

9. Reimbursable Expenses

- 9.1 The Consultant shall be reimbursed for all expenses reasonably and properly incurred in connection with the provision of the Services, except where such expenses are specifically stated in writing by the Consultant as being non-reimbursable. All reimbursable expenses (e.g. travelling costs, government and application fees, search fees, photocopies, advertisements and notices, air freight and courier services, rental of special equipment, parking and fares, accommodation, telephone, facsimile and other incidental costs and expenses, etc.) will be charged at the cost involved (excluding GST) to the Consultant, plus an administration fee of five percent (5%) thereof.

10. Provision of the Services

- 10.1 Both parties shall make all reasonable effort to ensure the Services are provided in accordance with this contract and take all necessary reasonable steps to minimise any possible delay thereto. However, any time specified by the Consultant for provision of the Services is an estimate only, and the Consultant will not be liable for any loss or damage incurred by the Client as a result of any delay. In the event that the Consultant is unable to provide the Services as agreed solely due to any action or inaction of the Client, then the Client shall pay to the Consultant a reasonable sum of money to cover the consequential costs and expenses suffered by the Consultant as a result of the delay.
- 10.2 The commencement date will be put back and/or the duration of the Services extended by whatever time is reasonable in the event that the Consultant claims an extension of time (by giving the Client written notice as per clause 10.3) where provision the Services is delayed by an event beyond the Consultant's control, including but not limited to any event under clause 23.7, or any failure by the Client to:
- (a) provide clear and adequate specifications and/or instructions to the Consultant; or
 - (b) have the intended site ready for the Services (including any delay caused by the non-completion of prerequisite work performed by third parties); or
 - (c) notify the Consultant that the intended site is ready.
- 10.3 Notwithstanding clause 10.2, if the Consultant becomes aware that they will be delayed in providing the Services in accordance with this contract, the Consultant must immediately notify the Client in writing of the cause and nature of the delay. The Consultant is to detail in the notice the steps they will take to contain the delay and the anticipated duration of the delay.
- 10.4 The Client acknowledges and accepts that:
- (a) the Consultant:
 - (i) will communicate electronically (e-mail), unless otherwise instructed. The Client accepts this form of communication maybe subject to inherent hazards in electronic distribution and as such the Consultant cannot warrant against delays or errors in transmitting data between the Client and the Consultant, and you agree that to the maximum extent permitted by law, the Consultant will not be liable for any losses which the Client suffers as a result of internet interruptions beyond the Consultant's control that may cause delays or errors in transmitting instructions and/or confirmations;
 - (ii) will only carry out non-destructive tests. In the event the Client specifically requests the Consultant to carry out tests of a destructive nature, the Consultant shall require the Client, or their authorised representative, to authorise commencement of the Services in writing. The Consultant shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.
 - (b) the outcome of any inspection shall be as is at the date thereof. The Consultant shall not be liable for any further inspections in the event of any variation to the Client's brief as per clause 8.2(b), and any additional Services will be charged accordingly under clause 8.2.

11. Nominated Consultants

- 11.1 The Consultant may (if they consider it appropriate to do so) recommend the engagement of third-party consultants, who shall be engaged by the Client at the Client's own expense, and the Consultant does not warrant the accuracy or quality of the consultant's work, or warrant that the recommendations of the consultants are appropriate or adequate, or are fit for their purpose, or that they are not given negligently. The Client agrees that they shall not make any demand on the Consultant or commence any legal proceedings against the Consultant, and the Consultant shall have no liability, whether in negligence or otherwise, to the Client in relation to any services performed by the consultants.

12. Compliance with Laws

- 12.1 Both the Client and the Consultant agree that they will at all times ensure that they comply with the provisions of all statutes (including but not limited to, Environmental Planning and Assessment Act 1979), regulations and bylaws of government, local and other public authorities that may be applicable to the Goods and any other relevant safety standards or legislation.
- 12.2 The Consultant shall issue an Occupation Certificate for the building work(s) when the Consultant is satisfied that: -
- (a) all conditions of a Local Development Consent or a Complying Development Certificate has been complied with;
 - (b) the building work(s) are suitable for occupation or use in accordance with their classification under the BCA; and
 - (c) a Fire Safety Certificate has been issued (if required); and
 - (d) as at the date this contract is executed, the building does not pose any danger for the occupants in the case of an Interim Occupation Certificate.
- 12.3 In the event the Consultant cannot fulfil the obligations required by the Act, due to a resignation from his/her employment position with Coastline Building Certification Group Pty Ltd or because he/she is unavailable due to leave of any description or because of illness and a transfer of that role is required, the Client will agree to the transfer of that role to another accredited certifier employed by Coastline Building Certification Group Pty Ltd.
- 12.4 In the event that an Occupation Certificate is requested following a period greater than twelve (12) months after the undertaking of a Final Inspection an additional Fee will apply and shall be charged to the Client of the premises, as determined by the Consultant in accordance with clause 8.2.

13. Personal Property Securities Act 2009 ("PPSA")

- 13.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

- 13.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in:
- (a) all Documentation previously provided, or that will be provided in the future, by the Consultant to the Client;
 - (b) all the Client's present and after acquired property being a charge, including anything in respect of which the Client has at any time a sufficient right, interest or power to grant a security interest in for the purposes of securing repayment of all monetary obligations of the Client to the Consultant for Services – that have previously been provided and that will be provided in the future by the Consultant to the Client.
- 13.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Consultant may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 13.2(a)(i) or 13.2(a)(ii);
 - (b) indemnify, and upon demand reimburse, the Consultant for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any registration made thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of the Consultant;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the registration in favour of a third party without the prior written consent of the Consultant.
- 13.4 The Consultant and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 13.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 13.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 13.7 Unless otherwise agreed to in writing by the Consultant, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 13.8 The Client must unconditionally ratify any actions taken by the Consultant under clauses 13.2 to 13.5.
- 13.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

14. Security and Charge

- 14.1 In consideration of the Consultant agreeing to provide the Services, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 14.2 The Client indemnifies the Consultant from and against all the Consultant's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Consultant's rights under this clause.
- 14.3 The Client irrevocably appoints the Consultant and each director of the Consultant as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Client's behalf.

15. Intellectual Property

- 15.1 The Consultant shall retain ownership of the copyright to all Documentation and know-how produced by the Consultant during the course of the Services. The Consultant grants to the Client a non-exclusive, royalty-free and irrevocable licence to use the Documentation arising out of the provision of the Services, but only for the site for which it was intended. The Client shall not use or make copies of any intellectual property without the prior written consent of the Consultant.
- 15.2 The Client warrants that all designs, specifications, information and instructions to the Consultant will not cause the Consultant to infringe any patent, registered design or trademark in the execution of the Client's order. Furthermore, the Client agrees to indemnify, defend, and hold the Consultant harmless from all loss incurred or suffered by the Consultant arising from any claims (including third party claims) or demands against them where such loss was caused by any infringement or alleged infringement of any person's intellectual property rights by the Client during its use of the Services.

16. Confidentiality

- 16.1 Subject to clause 16.2, each party agrees to treat as confidential the other party's Confidential Information, and agree not to divulge it to any third party, without the other party's written consent.
- 16.2 Confidential Information excludes information:
- (a) generally available in the public domain (without unauthorised disclosure under this contract);
 - (b) received from a third party entitled to disclose it or by the written consent of the other party;
 - (c) that is independently developed;
 - (d) is required to be disclosed by law, regulations or administrative order.

17. Default and Consequences of Default

- 17.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Consultant's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 17.2 If the Client owes the Consultant any money the Client shall indemnify the Consultant from and against all costs and disbursements incurred by the Consultant in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Consultant's contract default fee, and bank dishonour fees).
- 17.3 Further to any other rights or remedies the Consultant may have under this contract, if the Client has made payment to the Consultant, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs

incurred by the Consultant under this clause 17 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this contract.

- 17.4 Without prejudice to the Consultant's other remedies at law the Consultant shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Consultant shall, whether or not due for payment, become immediately payable if:
- any money payable to the Consultant becomes overdue, or in the Consultant's opinion the Client will be unable to make a payment when it falls due;
 - the Client has exceeded any applicable credit limit provided by the Consultant;
 - the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

18. Termination

18.1 Either party may suspend or termination this contract by giving the other party no less than fourteen (14) days prior written notice of their intention to do so, and in this case:

- the Client shall pay to the Consultant all amounts owing to Consultant for Services provided up to the date of termination; or
- the Consultant shall not be obligated to refund any deposit paid by the Client to the Consultant for the Services prior to the termination of this contract; and
- the Consultant shall not be liable for any loss or damage whatsoever arising from such termination.

18.2 Either party may terminate this contract by written notice to the other party if the other party:

- commits a material breach of any of its obligations under this contract, and if such breach is capable of remedy, defaulting party does not remedy the breach, such as:
 - the Construction Certificate or Complying Development Certificate is not capable of being issued within one hundred and eighty (180) days or six (6) months (whichever is the lesser) from the date of application; or
 - the building works do not commence within sixty (60) days from the date the Construction Certificate or Complying Development Certificate was issued; or
 - the failure of the Client to complete any works and as a result does not permit the Consultant to issue the Occupation Certificate within sixty (60) days from the date of practicable completion, occupation or use of the proposed development; or
 - the Client, for any other reason, does not permit the Consultant to issue the Occupation Certificate within sixty (60) days from the date of practicable completion, occupation or use of the proposed development; or
 - the Client does not permit the Consultant to issue the Occupation Certificate within sixty (60) days from the date of practicable completion; or
 - the building works have commenced without the issuing of a Construction Certificate; or
 - within two (2) years of the date of Issue of the Construction Certificate or Complying Development Certificate, the Consultant has not been advised by the Client, in writing, that the building works have been completed or if an Occupation Certificate has not been issued by the Consultant;
- within twenty-eight (28) days after the date on which written notice of the breach is provided by the other party (or such other period as is agreed between the parties);
- where any event under clause 18.2 applies.

18.3 If this contract is terminated for any reason then termination however caused does not affect any accrued rights or remedies in which the non-defaulting party possesses pursuant to the term of this contract, at law or pursuant to any applicable legislation.

18.4 If a party terminates this contract in accordance with clause 18.3 then the defaulting party is liable for and indemnifies the non-defaulting party against any loss of whatever nature incurred by the non-defaulting party.

18.5 Without prejudice to any other remedies the Consultant may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Consultant may suspend or terminate the provision of Services to the Client. The Consultant will not be liable to the Client for any loss or damage the Client suffers because the Consultant has exercised its rights under this clause.

19. Privacy Policy

19.1 All emails, documents, images or other recorded information held or used by the Consultant is Personal Information, as defined and referred to in clause 19.3, and therefore considered Confidential Information. The Consultant acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). The Consultant acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Clients Personal Information, held by the Consultant that may result in serious harm to the Client, the Consultant will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.

19.2 Notwithstanding clause 19.1, privacy limitations will extend to the Consultant in respect of Cookies where transactions for purchases/orders transpire directly from the Consultant's website. The Consultant agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:

- IP address, browser, email client type and other similar details;
- tracking website usage and traffic; and
- reports are available to the Consultant when the Consultant sends an email to the Client, so the Consultant may collect and review that information ("collectively Personal Information")

- In order to enable / disable the collection of Personal Information by way of Cookies, the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via the Consultant's website.
- 19.3 The Client agrees for the Consultant to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Client in relation to credit provided by the Consultant.
- 19.4 The Client agrees that the Consultant may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 19.5 The Client consents to the Consultant being given a consumer credit report to collect overdue payment on commercial credit.
- 19.6 The Client agrees that personal credit information provided may be used and retained by the Consultant for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Services; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Services; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Services.
- 19.7 The Consultant may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 19.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 19.3 above;
 - (b) name of the credit provider and that the Consultant is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and the Consultant has been paid or otherwise discharged and all details surrounding that discharge(e.g. dates of payments);
 - (g) information that, in the opinion of the Consultant, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 19.9 The Client shall have the right to request (by e-mail) from the Consultant:
- (a) a copy of the Personal Information about the Client retained by the Consultant and the right to request that the Consultant correct any incorrect Personal Information; and
 - (b) that the Consultant does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 19.10 The Consultant will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this contract or is required to be maintained and/or stored in accordance with the law.
- 19.11 The Client can make a privacy complaint by contacting the Consultant via e-mail. The Consultant will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.

20. Other Applicable Legislation

- 20.1 At the Consultant's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payments Act 1999 (New South Wales) or the Building Industry Fairness (Security of Payment) Act 2017 (Queensland), may apply.
- 20.2 Nothing in this contract is intended to have the effect of contracting out of any applicable provisions of the any of the Acts listed in clause 20.1 (each as applicable), except to the extent permitted by the Act where applicable.

21. Limitation of Liability

- 21.1 The Consultant undertakes to act in all professional matters as a faithful consultant to the Client, whose interests will be watched over with skill and care. Notwithstanding, the Consultant shall only be liable to the Client for the consequences of any negligent act, omission or statement of the Consultant, and then only to the extent and limitations referred to in clause 21.2.
- 21.2 Subject to clause 5:
- (a) the loss and damage for which the Consultant is so liable, and the recompense to be made by the Consultant to a Client for such liability as specified in clause 21.1, shall be limited in aggregate to the amount specified in the Proposal in respect of any single act, omission or statement, but shall be limited to damages which under no circumstances shall exceed the Consultant's Professional Indemnity Insurance in place; and
 - (b) the extent of any claim or otherwise against the policy held by the Consultant or the Consultant's agent in any way shall be limited to five (5) times the value of the Service Fee paid to the Consultant or the Consultant's agent for the Services provided and no more; and

- (c) the liability of the Consultant shall cover only direct loss or damage in respect of the Services, or other matters arising directly from the scope of the Services agreed in the Proposal, and then only to the maximum limit specified as per sub-clause (a). All references herein to loss or damage shall be deemed to exclude loss or damage sustained by any third party in respect of which the Client is liable and responsible (as between the Client and the third party) whether by statute, contract tort or otherwise.
- 21.3 The liability of the Consultant to the Client shall expire three (3) months from the issue of the last invoice relevant to the particular Services, unless in the meantime the Client has made a claim in writing to the Consultant, specifying a negligent act, omission or statement said to have caused alleged loss or damage sustained or sustainable.
- 21.4 Notwithstanding clauses 21.1 to 21.3, the Consultant shall not be liable for any loss or damage sustained or sustainable by a Client in relation to:
- (a) errors occurring in plans, designs or specifications not created or prepared by the Consultant;
 - (b) errors occurring during the course of any services which are not provided by, nor the responsibility of, the Consultant;
 - (c) the use of any Documentation or other information of advice without the approval of the Consultant.
- 21.5 The Client agrees to indemnify the Consultant, its partners, associates, employees, contractors and any other person who may be sought to be made liable in excess of the limit of liability described in clause 21.2 in respect of any activity arising from or connected with these terms in respect of any claim of whatever kind, including negligence, that may be made by any person and any costs and expenses that may be incurred by the Consultant.

22. Dispute Resolution

- 22.1 Where a dispute arises between us, it will be referred to the Consultant and Client directors for resolution. The Consultant and Client agree to solve any disputes amicably and in good faith and on a without prejudice basis and not begin court proceedings or mediation or arbitration proceedings until the dispute resolution channel provided in this clause has been exhausted.
- 22.2 The dispute resolution process will be as follows:
- (a) a party may give notice to the other party about the nature of the dispute (a "Dispute Notice") and the parties will seek to reach settlement amongst themselves within ten (10) Business Days of receipt of the Dispute Notice ("Negotiation Period"). Should the Parties fail to determine the dispute within the Negotiation Period, the Parties may seek within a further period of ten (10) Business Days (or such longer period as agreed in writing between the Parties) to reach Agreement on:
 - (i) a mediation procedure out of courts and arbitration proceedings, (such as mediation, reconciliation or expert determination process);
 - (ii) the steps to be taken by each Party and the timing of those steps;
 - (iii) who will be the independent person/body conducting the mediation process and who will pay for such independent person's/ body's professional fees and expenses.
 - (b) if the parties fail to solve the entire dispute or fail to reach agreement on any of the matters described above within twenty (20) days (or any other period agreed in writing) from the date of the Dispute Notice, either the Consultant or the Client may commence court proceedings or arbitration proceedings to resolve the dispute;
 - (c) both parties will remunerate the mediator on a 50/50% basis regardless of any alleged fault and regardless of the outcome.

23. General

- 23.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and 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.
- 23.2 These terms and conditions and any contract to which they apply shall be governed by the laws of either Queensland or New South Wales, being whichever state the Services were provided by the Consultant to the Client however, in the event of a dispute that deems necessary for the matter to be referred to a Magistrates or higher Court then jurisdiction will be subject to the courts in the state of New South Wales in which the Consultant has its principal place of business.
- 23.3 Subject to clauses 5 and 21, the Consultant shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Consultant of these terms and conditions (alternatively the Consultant's liability shall be limited to damages which under no circumstances shall exceed the Fee).
- 23.4 The Consultant may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.
- 23.5 The Client cannot licence or assign without the written approval of the Consultant.
- 23.6 The Consultant may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Consultant's sub-contractors without the authority of the Consultant.
- 23.7 The Client agrees that the Consultant may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for the Consultant to provide Services to the Client.
- 23.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 23.9 Both parties agree that the obligations created under clauses 15 and 16 shall survive the termination or cancellation of this contract.
- 23.10 Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them and supersedes and overrides any other documents or oral representations upon which the parties may seek to rely to generate any legal effect or to imply any contractual obligation.