

MELBOURNE QUANTITY SURVEYORS PTY LTD**TRADING TERMS AND CONDITIONS****1. DEFINITIONS**

- 1.1. **The Practitioner** is Melbourne Quantity Surveyors Pty Ltd (ACN 635 662 725) of 2B Webb Street Warrandyte 3113 in the State of Victoria.
- 1.2. **The Client** includes any person engaging the Practitioner on behalf of and with the authority of the person or entity that the Services are to be provided for.
- 1.3. **The Services** are the cost planning, quantity surveying, consultancy and associated services to be carried out by the Practitioner, and includes any advice or recommendations given.
- 1.4. A reference to **“the plans”** refers to the blueprints, architectural design, engineering drawings, and/or technical specifications from which the Practitioner’s fee proposal and scope of works is based.
- 1.5. Any reference to **“the SOP Act”** refers to the *Building and Construction Industry Security of Payment Act 2002 (Vic)*.
- 1.6. Reference to **loss and damage** includes indirect, reliance, special or consequential loss and/or damage including i) any loss of income profit or business; ii) any loss of good will or reputation; iii) any loss of value of intellectual property.
- 1.7. **Major failure** is as defined under the *Competition and Consumer Act 2010 (Cth)*.
- 1.8. **GST** refers to Goods and Services tax under the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

2. GENERAL

- 2.1. These terms and conditions together with the Practitioner's fee proposal and the plans constitute the whole agreement between the Practitioner and the Client ("**the agreement**").
- 2.2. The agreement may not be varied unless expressly agreed to by the parties in writing. In the event that an inconsistency exists and/or arises between these terms and a request of the Client it is acknowledged that these terms and conditions will prevail.
- 2.3. The terms and conditions are binding on the Client and the Client's heirs, assignees, executors, trustees and where applicable, any liquidator, receiver or administrator.
- 2.4. In these terms and conditions, the singular shall include the plural, the neuter gender shall include the masculine and feminine and words importing persons shall apply to corporations and vice versa.
- 2.5. Where more than one Client completes this agreement, each shall be liable jointly and severally.
- 2.6. 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 and the offending provision shall be deemed as severed from these terms and conditions.
- 2.7. The failure by a 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.
- 2.8. The Client acknowledges that the Practitioner may detail these terms and conditions on its website. In this event, the terms and conditions on the Practitioner's website shall apply to any future dealings as between the Parties and the Client is deemed to have notice of any such terms and conditions and/or amendments.

3. FEE PROPOSAL

- 3.1. The Practitioner will provide to the Client a fee proposal detailing *inter alia* the scope of the Services ("**the scope**") to be provided to the Client, a fixed fee for providing the Services included in the scope and disclosing the Practitioner's prevailing rate(s) for the Services.
- 3.2. As a condition of acceptance, the Practitioner may require the Client to pay a deposit in respect of the fixed price detailed within the fee proposal. The Practitioner shall not commence providing the Services until such time as the deposit has been paid, and details of any applicable deposit to be paid shall be contained within the fee proposal.
- 3.3. The Practitioner does not represent that it will provide any Services except those Services expressly included in the fee proposal and scope therein, however the Practitioner may agree to provide on request from the Client, additional Services not included or expressly excluded in the scope. In this event, the Practitioner will be entitled to charge its prevailing rate(s) for any such additional Services and shall provide the Client with a further fee proposal reflecting the scope of any additional Services sought
- 3.4. The Client acknowledges and agrees that any Services performed by the Client after the fee proposal has been provided are performed on the basis that the Client agrees to the terms of the agreement as disclosed in the fee proposal and the Practitioner's prevailing rate for the Services.
- 3.5. The Client acknowledges and agrees that the Practitioner may vary its prevailing rate(s) for Services from time to time by providing written notice to the Client. Any subsequent request for Services (whether or not such Services are included in the scope) shall be charged to the Client at the Practitioner's new prevailing rate(s).

4. PROVISION OF THE SERVICES

- 4.1. The Practitioner reserves its right to decline requests for any Services requested by the Client not included in the scope or to cancel or postpone appointments at its discretion.
- 4.2. Unless specified by the Practitioner to the contrary in the fee proposal or otherwise in writing, the Practitioner does not warrant that it will be capable of providing the Services at or before specific times requested by the Client.
- 4.3. Subject to otherwise complying with its obligations under the Agreement, the Practitioner shall exercise its independent discretion as to its most appropriate and effective manner of providing the Services and of satisfying the Client's expectations of those Services.
- 4.4. The Practitioner may license or sub-contract all or any part of its obligations (i.e. to perform the Services) without the Client's consent but the Practitioner acknowledges that it remains at all times liable to the Client in accordance with the terms of the Agreement.

5. INVOICING AND PAYMENT

- 5.1. The Practitioner will send to the Client an invoice upon completion of the Services detailing the Services performed and requesting payment of the Practitioner's prevailing rate(s) for those Services.
- 5.2. The issuing of an invoice by the Practitioner for the Services that the Practitioner is entitled to make pursuant to the agreement constitutes a payment claim pursuant to the SOP Act.
- 5.3. GST will be charged on the Practitioner's prevailing rate(s) for the Services that attract GST at the rate applicable at the time the Practitioner raises its tax invoice for the Services provided.
- 5.4. All Clients must make full payment to the Practitioner within twenty-eight (28) days of receipt of the Practitioner's invoice, unless otherwise agreed between the parties in writing or stated in the fee proposal.

6. DEFAULT

- 6.1. In this clause the “**default date**” is the day after the date by which payment of the Practitioner’s invoice was due to be made by the Client to the Practitioner and the “**outstanding balance**” is the amount detailed on the Practitioner’s invoice less any payments made by the Client prior to the default date.
- 6.2. The Client will be liable for a dishonoured cheque fee of \$40.00 for each cheque issued by the Client and rejected by the Practitioner’s bank.
- 6.3. A signed statement from a duly authorised representative stating the amount due by the Client is sufficient proof of the amount owing by the Client to the Practitioner unless proven otherwise by the Client.
- 6.4. If the Practitioner does not receive the outstanding balance by the default date the Client will be liable for:
 - 6.4.1. Interest on the outstanding balance from the default date at the rate of twelve per centum (12%) per annum calculated on a daily basis;
 - 6.4.2. An account keeping fee of \$15.00 to be charged at the end of each calendar month after the default date until the outstanding balance has been paid;
 - 6.4.3. Any debt collection or recovery costs incurred by the Practitioner; and if the Practitioner’s debt collection agency (“**the agency**”) charges commission on a contingency basis then the Client shall pay as a liquidated debt the commission payable by the Practitioner to the agency, at the agency’s prevailing rate as if the agency achieved one hundred per cent recovery and the following formula shall apply:

$$\frac{\begin{array}{l} \textit{Total Debt} \\ \textit{including} \\ \textit{Commission and} \\ \textit{GST} \end{array}}{100} = \frac{\begin{array}{l} \textit{Original Debt} \times 100 \\ - \textit{Commission \% charged by the} \\ \textit{agency (including GST)} \end{array}}{100}$$

(n.b. in the event where the agency is Prushka Fast Debt Recovery the applicable commission rate for the amount unpaid is as detailed on www.prushka.com.au).

Any charges reasonably made or claimed by the Practitioner’s or the agency’s lawyer for legal costs on the indemnity basis.

7. RISK AND LIABILITY

- 7.1. The Client will ensure that there is sufficient information and documentation to enable the Practitioner to perform the Services and the Practitioner takes no responsibility in the event the Client fails to provide any information or documentation in a timely manner or if such information provided by the Client is incomplete, incorrect or inaccurate.
- 7.2. The Client will ensure that the Practitioner has been provided with the current plans of sufficient detail to enable the Practitioner to provide the Services.
- 7.3. The Practitioner takes no responsibility if the plans provided by the Client are incomplete, incorrect or inaccurate and the Client will be liable in that event for the expenses incurred by the Practitioner for any work required to rectify the Services.
- 7.4. The Client acknowledges that the Practitioner shall not be liable for and the Client releases the Practitioner from any loss and damage incurred as a result of delay or failure to observe any of these conditions or to perform the Services due to the failure by the Client to provide information and documentation on request and in timely manner or due to an event of force majeure, being any cause or circumstance beyond the Practitioner's reasonable control.

8. WARRANTY

8.1. The Practitioner warrants that the Client's rights and remedies in the Agreement arising from a warranty against defects are in addition to other rights and remedies under any applicable law in relation to the goods and services to which the warranty relates.

8.2. The Practitioner does not purport to restrict, modify or exclude any liability that cannot be excluded under the Australian Consumer Law contained in Schedule 2 of the *Competition and Consumer Act 2010 (Cth)* as may be amended from time to time.

Warranty for Services

8.3. Provided that the Client reports any defect in any Service provided, preferably within fourteen (14) days from the date that the defect became apparent, the Practitioner will rectify any defect in the Services within a reasonable period of time.

8.4. The Supplier provides the following warranty to Customers in respect of Services supplied:

"Our services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service you are entitled:

- *To cancel your service contract with us; and*
- *To a refund for the unused portion, or to compensation for its reduced value.*

You are also entitled to be compensated for any other reasonably foreseeable loss or damage. If the failure does not amount to a major failure, you are entitled to have problems with the service rectified in a reasonable time and if this is not done, to cancel your contract and obtain a refund for the unused portion of the contract."

8.5. The Practitioner shall not be liable to compensate the Client for any reasonable delay in remedying any defective Services or in assessing the Client's claim.

8.6. The Client warrants that it will use its best endeavours to assist the Practitioner with identifying the nature of the defective Service claim.

Claims made under Warranty

8.7. Claims for warranty should be made in one of the following ways:

8.7.1. The Client must send the claim in writing to the Practitioner's post office box PO Box 342, Warrandyte 3113 in the State of Victoria.

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- 8.7.2. The Client must email the claim to the Practitioner to info@melbourneqs.com.au.
- 8.7.3. The Client must contact the Practitioner on the Practitioner's business number (03) 9068 3950.

9. TERMINATION AND CANCELLATION

Cancellation by the Practitioner

- 9.1. Without prejudice to the Practitioner's other remedies at law, the Practitioner shall be entitled to cancel all or any part of any Services of the Client which remain unperformed and all amounts owing to the Practitioner shall, whether or not due for payment, become immediately due and payable in the event that:
- 9.1.1. Any money payable to the Practitioner becomes overdue for payment; or
- 9.1.2. 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
- 9.1.3. A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 9.2. The Practitioner shall not be liable for any loss or damage whatsoever suffered by the Client arising from the cancellation.

Cancellation by the Client

- 9.3. The Client may cancel any request for Services by providing written notice to the Practitioner. The Client acknowledges and accepts that the Practitioner will be entitled to charge its prevailing rate(s) for any Services performed up to the time of cancellation.

10. SECURITY AND CHARGE

- 10.1. The Client hereby charges in favour of the Practitioner all his/her estates and interests in real property, including present and future estates or interests, to secure the obligations of the debtor under the agreement.
- 10.2. The Client consents to the Practitioner lodging a caveat or registering a mortgage over the real property to secure the obligations of the debtor under the agreement.

- 10.3. The Client irrevocably appoints the Practitioner as the duly constituted attorney of the Client and to execute in his/her name any documents, including any mortgage of real property or caveat in registrable form.

11. ENTIRE AGREEMENT

- 11.1. The agreement as defined herein constitutes the whole agreement between the Client and the Practitioner.
- 11.2. The agreement is deemed to be made in the State of Victoria and all disputes hereunder shall be determined by the appropriate courts of Victoria.
- 11.3. All prior discussions and negotiations are merged within this document and the Practitioner expressly waives all prior representations made by it or on its behalf that are in conflict with any clauses in this document in any way.
- 11.4. Nothing in these terms and conditions is intended to have the effect of contravening any applicable provisions of the *Competition and Consumer Act 2010* or the *Fair Trading Acts* in each of the States and Territories of Australia.