

**1. Definitions**

- 1.1. "Consultant" shall mean South Burnett Surveys Pty Ltd trading as ONF SURVEYORS and its successors and assigns.
- 1.2. "Client" shall mean the Client or any person acting on behalf of and with the authority of the Client.
- 1.3. "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Client on a principal debtor basis.
- 1.4. "Services" shall mean all services supplied by the Consultant to the Client and includes any advice or recommendations.
- 1.5. "Price" shall mean the cost of the Services as agreed between the Consultant and the Client subject to clause 4 of this contract.

**2. Acceptance**

- 2.1. Any instructions received by the Consultant from the Client for the supply of Services and/or the Client's acceptance of Services supplied by the Consultant shall constitute acceptance of the terms and conditions contained herein.
- 2.2. None of the Consultant's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Consultant in writing nor is the Consultant bound by any such unauthorised statements.

**3. Services**

- 3.1. The Services are as described on the invoices, quotation, work authorisation or any other work commencement forms as provided by the Consultant to the Client.

**4. Price and Payment**

- 4.1. Price shall be either;
  - 1) as indicated on invoices provided by the Consultant to the Client in respect of Services supplied; or
  - 2) be the Consultant's quoted Price (subject to clause 4.2) which shall be binding upon the Consultant provided that the Client shall accept in writing the Consultant's quotation within thirty (30) days.
- 4.2. Any variation from the plan of scheduled works or specifications will be charged for based on the Consultant's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.

**5. Delivery Of Services / Services**

- 5.1. Delivery of the Services shall be made to the Client's address. The Client shall make all arrangements necessary to take delivery of the Services.
- 5.2. Delivery of the Services to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 5.3. The failure of the Consultant to deliver shall not entitle either party to treat this contract as repudiated.
- 5.4. The Consultant shall not be liable for any loss or damage whatever due to failure by the Consultant to deliver the Services (or any of them) promptly or at all.

**6. Risk**

- 6.1. If the Consultant retains property in the Services nonetheless, all risk for the Services passes to the Client on delivery.

**7. Errors and Omissions**

- 7.1. The Client shall inspect the Services on delivery and shall within seven (7) days of delivery notify the Consultant of any alleged defect, shortage in quantity, errors, omissions or failure to comply with the description or quote. The Client shall afford the Consultant an opportunity to inspect the Services within a reasonable time following delivery if the Client believes the Services are defective in any way. If the Client shall fail to comply with these provisions, the Services shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage. 7.2. For defective Services, which the Consultant has agreed in writing that the Client is entitled to reject, the Consultant's liability is limited to either (at the Consultant's discretion) replacing the Services or repairing the Services provided that the Client has complied with the provisions of clause 7.1.

**8. Intellectual Property**

- 8.1. The Consultant hereby extends to the Client a non-exclusive, perpetual licence to use the designs and drawings created for the Client for any uses associated with the purpose of creating the designs and drawings.
- 8.2. The Client warrants that all designs or 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.

**9. Default and Consequences of Default**

- 9.1. Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% compounding per calendar month and shall accrue at such a rate after as well as before any judgement.
- 9.2. If the Client defaults in payment of any invoice when due, the Client shall indemnify the Consultant from and against all the Consultant's costs and disbursements including on a solicitor and own client basis and in addition all the Consultant's nominees' costs of collection.
- 9.3. 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), the Consultant may suspend or terminate the supply of Services to the Client and any of its other obligations under the terms and conditions. The Consultant will not be liable to the Client for any loss or damage the Client suffers because the Consultant exercised its rights under this clause.

**10. Title**

- 10.1. It is the intention of the Consultant and agreed by the Client that property in the Services shall not pass until the Client has paid all amounts owing for the Services.
- 10.2. It is further agreed that:
  1. Until ownership of the Services shall pass from the Consultant to the Client the Consultant may give notice in writing to the Client to return the Services or any of them to the Consultant. Upon such notice the rights of the Client to obtain ownership or any other interest in the Services shall cease.
  2. The Consultant can issue proceedings to recover the Price of the Services sold notwithstanding that ownership of the Services may not have passed to the Client.

**11. Cancellation**

- 11.1. The Consultant may cancel these terms and conditions or cancel delivery of Services at any time before the Services are delivered by giving written notice. The Consultant shall not be liable for any loss or damage whatever arising from such cancellation.

**12. Privacy Act 1988**

- 12.1. The Client agrees that Personal Data provided may be used and retained by the Consultant for the following purposes and for other purposes as shall be agreed between the Client and Consultant or required by law from time to time:
  1. provision of Services;
  2. processing of any payment instructions, direct debit facilities and/or credit facilities requested by Client; and
  3. enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Services.
- 12.2. The Consultant may give, information about the Client to a credit reporting agency for the following purposes:
  1. to obtain a consumer credit report about the Client; and or
  2. allow the credit reporting agency to create or maintain a credit information file containing information about the Client.

**13. General**

- 13.1. 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.
- 13.2. All Services supplied by the Consultant are subject to the laws of Queensland and the Consultant takes no responsibility for changes in the law which affect the Services supplied.
- 13.3. The Consultant shall be under no liability whatever to the Client for any indirect 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.
- 13.4. In the event of any breach of this contract by the Consultant the remedies of the Client shall be limited to damages. Under no circumstances shall the liability of the Consultant exceed the Price of the Services.
- 13.5. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.

**14. Survey and Mapping Infrastructure Act 2003 and Surveyors Act 2003.**

- 14.1. Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Survey and Mapping Infrastructure Act 2003 and/or Surveyors Act 2003 of Queensland, except to the extent permitted by these Acts where applicable.

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