

ZYBEK CONSULTING PTY LTD

TERMS AND CONDITIONS OF SERVICE

1. INTRODUCTION

- 1.1 These Terms and Conditions apply to Our Services from the Date of Acceptance.
- 1.2 By requesting Our Services, you acknowledge that you have read and understood these Terms and Conditions and agree to be bound by them.
- 1.3 We reserve the right to change these Terms and Conditions at any time. The most current version of these Terms and Conditions is available from our website. Please check our Website for any changes to these Terms and Conditions at regular intervals.
- 1.4 These Terms and Conditions should be read together with any relevant Quotation and Authority to constitute the entire agreement between us. This supersedes any prior understanding, agreement, warranty or representation we may have.
- 1.5 These Terms and Conditions shall prevail over all inconsistencies contained in a Quote or an Authority, unless we expressly agree otherwise in writing.
- 1.6 We may provide further services to you at your request. Such services will (unless we otherwise advise in writing) be set out in an appropriate Quote and Authority and will be subject to these Terms and Conditions.

2. OUR CONDUCT

- 2.1 We will:
 - 2.1.1 provide to you Our Services as set out in any Quotation and Authority which has been accepted by you;
 - 2.1.2 provide Our Services to you exercising all due care and skill;
 - 2.1.3 where necessary, recommend appropriate Contractors;
 - 2.1.4 where necessary, engage and instruct appropriate Contractors on your behalf;
 - 2.1.5 where necessary, engage in discussions and negotiations with regulatory authorities (including Council) on your behalf;
 - 2.1.6 report to you on an ongoing basis in respect of Our Services.

3. YOUR CONDUCT

- 3.1 To enable us to provide Our Services to you, you must:
 - 3.1.1 provide all information and documentation we may reasonably request from you and in the form required, and answer in full all questions we may reasonably ask of you;
 - 3.1.2 provide such written instructions and any other assistance reasonably required by us in connection with the supply of Our Services (including in respect of services to be provided by Contractors);
 - 3.1.3 provide us with such information and documentation in your knowledge or possession that we should know or may reasonably affect the provision of Our Services;
 - 3.1.4 inform us immediately in the event that any information or instructions provided to us have changed;
 - 3.1.5 (where relevant) permit us to have access to any land you own at such times and on such notice as we reasonably require in connection with the provision of Our Services;
- 3.2 You acknowledge that you are under no obligation to accept any recommendation we may make to you in performing Our Services.
- 3.3 You warrant that:
 - 3.3.1 any information you provide to us is complete and true and correct and not misleading in any particular;
 - 3.3.2 you will provide all reasonably requested documents to us within 28 days of our request;
 - 3.3.3 you will do all things reasonably necessary at our request to allow us to perform Our Services;
 - 3.3.4 you have appropriate consents and authorities to use any document or information containing a third party's Intellectual Property Rights;
 - 3.3.5 you are responsible for checking the accuracy and completeness of any information we may forward to you;
 - 3.3.6 you will observe all terms of engagement between you and us, or you and any Contractor, including the prompt payment of all invoiced fees and charges;

- 3.3.7 you are solely responsible for all decisions and actions made in reliance on any advice or information we may provide to you; and
- 3.3.8 you will not sell, or otherwise pass on, the information we provide to you to third parties for profit, or attempt to do the same.

4. **TIMEFRAME FOR PROVISION OF SERVICES**

- 4.1 We will endeavour to provide Our Services to you in the timeframe set out in a Quote or, where no timeframe is stipulated, in a timely and efficient manner.
- 4.2 You acknowledge and agree that:
 - 4.2.1 any timeframe is a general estimate only, is provided solely for your guidance and is not binding on us;
 - 4.2.2 that the provision of Our Services may involve third parties (including Contractors and Council) and may be affected by the actions or omissions of you or third parties, or other events beyond our control;
 - 4.2.3 we will not be liable for any Claim or Liability suffered by you in respect of the late or non-delivery of Our Services.

5. **POWER OF ATTORNEY**

- 5.1 You appoint us as your attorney and agent to do all things necessary to provide Our Services and undertaking all actions which are reasonably ancillary to the provision of Our Services (including making applications to Council).
- 5.2 The attorney and agency created under this clause is only revocable on termination of any agreement for us to provide you with Our Services.
- 5.3 Without limiting clause 5.1, you authorise us to:
 - 5.3.1 engage and give instructions to Contractors on your behalf;
 - 5.3.2 accept quotes and/or sign letters of engagement for Contractors on your behalf; and
 - 5.3.3 make Council applications and provide such other documents as Council may require.
- 5.4 You agree to ratify (at our request) all acts undertaken by us when acting pursuant to the power of attorney contained in clause 5.1.

6. FEES AND PAYMENT

- 6.1 The fees payable for Our Services are as set out in the relevant accepted Quote.
- 6.2 We reserve the right to vary any prices set out in a Quote in the event of any unforeseen circumstances or any delay (including a delay caused by you). We will endeavour to present any variation to you prior any further work being undertaken and will not proceed unless approved.
- 6.3 Should additional services (either from us or Contractors) be required which are outside the scope of the original Quotation, we will notify you of any additional costs prior to these additional services be undertaken and they will not proceed unless approved.
- 6.4 A tax invoice will be issued to you at the completion of the appropriate milestones as set out in the relevant Quote. We reserve the right to invoice you outside of these milestones.
- 6.5 Payment must be made in full within 7 days from the date of the tax invoice.
- 6.6 We accept payment by cheque or electronic funds transfer as provided on the relevant tax invoice.
- 6.7 We reserve the right to stop the provision of Our Services until all prior amounts invoiced to you (by us or Contractors) have been paid in full.
- 6.8 We reserve the right to charge interest at the rate of 12% per annum on all overdue amounts payable by you. Such interest will accrue daily and be payable on demand.
- 6.9 You must reimburse to us on demand any Liabilities we incur (including legal costs) in collecting or attempting to collect overdue amounts payable by you.
- 6.10 Unless otherwise stated, all prices quoted by us are inclusive of GST. Where GST is not included in a price, you will be liable for the amount of GST calculated on that price.
- 6.11 We reserve the right to increase our Quote in the event that there is any change to the rate of GST or as a result of any increase in government charges which increases the costs of providing Our Services to you.
- 6.12 Our fees do not include amounts payable to third parties, including Contractors fees, levies, Council fees, lands title office lodgement fees, stamp duties and such other fees, duties or levies which may be imposed in relation to Our Services.
- 6.13 In the event that any amount payable by you to us or any Contractor remains unpaid for 28 days, you grant us the right to lodge a caveat over any land the

subject of Our Services to secure the payment of those fees. Any such caveat will be withdrawn once payment in full has been received. You irrevocably appoint us to be your agent and attorney to perform all necessary acts to give effect to the provisions of this clause 6.13.

- 6.14 We may receive between 0% - 1% of the total build contract during the construction (as paid by the builder) which is based on being compensated for time spent undertaking product research, negotiations with suppliers and shared IP, communications and deliverables regarding delivery a quality product that are outside of the project management agreement. We reserve the right to retain this as contingency toward future projects i.e. to absorb potential variations or use at our discretion.

7. **PRIVACY AND CONFIDENTIALITY**

- 7.1 During the provision of Our Services, we may collect information about you. We are committed to protecting your privacy and will take all reasonable steps to keep your Personal Information private. Subject to this clause, we will not knowingly disclose your Personal Information to other parties without your consent (unless required to do so by law).
- 7.2 Notwithstanding subclause 7.1, in order for us to provide you with Our Services, you authorise us to use or disclose your Personal Information, or any other information which you have provided to us, to such third parties as we believe is reasonable including without limitation any Contractor or Council.
- 7.3 You consent and agree to us providing you with information and material about the services we provide and other information which may be of interest to you (including without limitation newsletters and updates). If at any time you no longer wish to receive such material, you may request in writing that we stop providing such material.

8. **DISCLAIMER**

- 8.1 While we take all reasonable care in preparing the content of the material we provide to you, you use the material at your own risk and assume all responsibility for any decision you make.
- 8.2 All information and advice provided to you is given in good faith. We make no guarantee or warranty that any information contained in materials provided to you is:
- 8.2.1 complete, accurate, free from errors or up to date; and
 - 8.2.2 of satisfactory quality or has fitness for a particular purpose.

- 8.3 We make no warranty or representation, and we do not guarantee, that using Our Services or the information provided to you pursuant to the provision of Our Services will result in:
- 8.3.1 an appropriate development site being located or purchased;
 - 8.3.2 a particular development or proposal being approved;
 - 8.3.3 you achieving or realising any results as projected;
 - 8.3.4 you realising a gross or net profit;
 - 8.3.5 any budget provided being fixed or will not be exceeded;
 - 8.3.6 the most effective or efficient development proposal being presented.
- 8.4 The advice or materials we provide to you is not a guarantee but is an opinion only, based on your instructions, information provided by third parties, current trends in the market and the laws and rules which apply at the relevant time, and as such is speculative only.
- 8.5 We are not able to provide you with legal, taxation or financial advice. The information, advice or materials provided to you are not to be considered as legal, taxation or financial advice, are not intended to replace consultation with a qualified professional and must not be relied on as such. We strongly recommend that you make your own enquiries and obtain independent professional advice tailored to your specific circumstances before making any legal, taxation or financial decisions.
- 8.6 You must not use any material we have provided to you if there are errors or omissions in the information you have provided to us on which the material is based.
- 8.7 We accept no liability or responsibility to you or any third party as a consequence of any reliance upon the information, advice or materials provided to you by us. It is your responsibility to satisfy yourself prior to using any information, advice or materials in any way that it is suitable for your purposes.
- 8.8 Where we make arrangements with Contractors in the provision of Our Services (whether disclosed to you or not), we do so on your behalf as agent and pursuant to the power of attorney granted to us in clause 5 (irrespective of how invoices rendered by those Contractors may be addressed). You agree that at no time will we be taken as entering into direct relationships with those Contractors.

- 8.9 You agree that you take full responsibility to ensure that invoices issued by Contractors are paid in full within their trading terms, and that we are not liable for the same.
- 8.10 We accept no responsibility for services, information, advice or materials either provided to you directly, or to us to enable us to provide Our Services, by a Contractor, whether referred by us or not. Where there are issues requiring rectification, we will undertake on your behalf to have the issues rectified. This may incur an additional fee, in which case notice shall be provided to you prior to undertaking any work in relation thereto.
- 8.11 We do not endorse third party Contractors or make representations about them, nor do we endorse their opinions or advice or give any guarantee or warranty as to the accuracy or reliability of such information, opinions or advice. We will only provide you with sufficient information to enable you to make an informed choice regarding the provision of services by them. When you choose to use a Contractor you do so at your own risk.
- 8.12 Any information, advice or material provided to you is prepared specifically for you and is not intended for use by, and may not be relied upon by, any other person or party.

9. **LIMITATION OF LIABILITY**

- 9.1 This clause does not limit our liability or responsibilities to you pursuant to, and does not replace or remove any rights or implied guarantees conferred by, the Australian Consumer Law or other law relating to consumer protection.
- 9.2 Except where otherwise required by law (including the Australian Consumer Law):
- 9.2.1 all guarantees, conditions, warranties or other terms which may be implied by law or otherwise in connection the provision of Our Services are excluded;
- 9.2.2 you agree that we will not be responsible for any Liabilities which you may incur (whether in contract, tort (including negligence), statute or otherwise) in connection with the provision of Our Services and you release us from any Claim relating to such Liabilities;
- 9.2.3 in no circumstances will we be responsible for any loss of profits or data or interruption to business or other indirect economic or other consequential loss suffered by you or any third party in connection with the provision of Our Services;

9.2.4 you indemnify us against all Liabilities which we may incur in the provision of Our Services and release us from any Claim relating to the provision of Our Services to you.

9.3 You acknowledge and agree that our liability (to the extent that it cannot be excluded) to you or any third party for negligence or a breach of a warranty or condition implied in these Terms and Conditions by law in respect of the provision of Our Services is limited (to the extent possible) to (at our election):

9.3.1 the amount paid by you for; of

9.3.2 a re-provision of

the particular Service in respect of which the breach has arisen.

9.4 In all cases, we will not be responsible for any Liabilities resulting from any acts, omissions, faults, delays or errors caused by any third party (including Contractors) or by you.

10. **INTELLECTUAL PROPERTY**

10.1 Except as expressly provided in this clause, you acquire no Intellectual Property Rights as a result of using Our Services. You acknowledge that all information generated by us in the course of providing Our Services remains our property.

10.2 Subject to clause 10.3, you may not:

10.2.1 copy, reproduce, modify, adapt, reverse engineer, transmit, disseminate or publish any document or other material we create or provide to you pursuant to the provision of Our Services without our consent

10.2.2 create derivative works from any part of such document or material;

10.2.3 commercialise any information, products or services obtained from any part of the material

without our consent or, in the case of any document or material provided by a third party, the consent of the owner of the copyright in that document or material

10.3 You may copy and use any document or other material we create or provide to you pursuant to the provision of Our Services for the purposes set out in the Quote, provided that you do not modify such document or material without our consent.

11. **TERMINATION**

- 11.1 We reserve the right to terminate an agreement to provide Our Services at any time prior to commencing any work by giving you notice in writing and repaying any sums you have paid. We will have no liability to you in respect of such termination.
- 11.2 You may terminate an agreement for us to provide Our Services at any time. In the event that you do so:
- 11.2.1 We may retain any deposit or other sums paid on account of Our Services; and
- 11.2.2 if payment has not already been made, you must pay to us in full the amount of all fees for Our Services for any milestone which is current at the time of termination.
- 11.3 We may terminate an agreement to provide Our Services:
- 11.3.1 immediately if you breach any of these Terms and Conditions and in such event we will not be liable to refund any amounts paid by you to us for Our Services;
- 11.3.2 immediately at any time by giving you notice in writing and repaying all or a proportion of any sums which you have paid having regard to Our Services which are at that time unfulfilled.
- 11.4 The parties may terminate any agreement for us to provide Our Services by mutual agreement. In this case, neither party is liable for any Liability (save for those already accrued) to the other.
- 11.5 On termination any amounts owed by you become immediately payable.

12. **YOUR BREACH**

- 12.1 You indemnify us against all Liabilities which we may incur in respect of your breach of these Terms and Conditions.
- 12.2 Any breach or threatened breach of these Terms and Conditions entitles us to apply for and obtain injunctive relief in any court of competent jurisdiction in addition to all other available remedies.

13. **DISPUTE RESOLUTION**

- 13.1 If you are dissatisfied with Our Services, you agree to promptly give us written notice specifying the matters about which you are dissatisfied and allow us to attempt to resolve the matters with you within 14 days of receipt by us of such written notice before taking any remedial action or incurring any costs.

13.2 You agree that you will not commence court proceedings (except for urgent equitable or injunctive relief) in respect of a dispute with us unless you have first attempted to resolve the dispute by negotiation and mediation.

14. GENERAL

14.1 Any notice to be given under these Terms and Conditions shall be in writing and shall be deemed duly given when delivered personally, by courier or three business days after being mailed by registered post or (in the case of email) a receipt is received from the recipients computer.

14.2 You may not assign or otherwise deal with your interest in any arrangement or contract for the provision of Our Services without our consent.

14.3 If we waive any rights available to us under these Terms and Conditions on one occasion, this does not mean that those rights will automatically be waived on any other occasion. The failure, delay or indulgence by us in exercising any rights is not a waiver of that right.

14.4 Any indemnity or release in these Terms and Conditions survives termination or completion of Our Services. Any other provision in these Terms and Conditions intended to do so, survives the termination or completion of Our Services.

14.5 The validity and interpretation of these Terms and Conditions are governed by the laws of South Australia. Any dispute in connection with Our Services or these Terms and Conditions is subject to the exclusive jurisdiction of the courts of South Australia.

15. DEFINITIONS

In these Terms and Conditions unless the context otherwise requires:

15.1 **Australian Consumer Law** means the law as set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

15.2 **Authority** means an Authority to Proceed with the provision of Our Services as set out in a Quote.

15.3 **Contractors** means such third party professionals, contractors, suppliers and service providers as are retained or required to be retained by you for us to provide Our Services, including without limitation lawyers, architects, engineers, conveyancers, surveyors, financial planners and accountants.

15.4 **Claim** means any claim, demand, action or cause of action, whether in contract, tort, equity or under statute, and any loss, cost, expense or Liability arising from or in connection with such claim, demand, action or cause of action.

- 15.5 **Date of Acceptance** means the date we first receive from you a signed Authority (whether related to a current project or otherwise).
- 15.6 **GST** means GST as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 15.7 **Intellectual Property** and **Intellectual Property Rights** includes property and rights in connection with copyright (including future copyright and rights in the nature of or analogous to copyright), know-how, trade mark, service mark, design, inventions (including patents), semi-conductor or circuit layout rights, trade, business or company names, or other proprietary rights, or any rights to registration of such rights (including all renewals and extensions).
- 15.8 **Liabilities** means liabilities, losses, damages, actions, causes of action, arbitrations, claims, orders, judgments, outgoing costs (including legal costs calculated on a solicitor and own client basis) and expenses, whether present or future, actual or contingent.
- 15.9 **Our Services** means the consulting and management services we provide from time to time more particularly set out in a Quote including (where relevant) site acquisition, feasibility, design and approval, land divisions, project management, construction tenders and sales management and any ancillary or related services we provide with respect thereto.
- 15.10 **Personal Information** means any information which may be used to personally identify an individual.
- 15.11 **Quote** means a quotation to provide Our Services to you and which has been accepted by you.
- 15.12 **Terms and Conditions** means these Terms and Conditions (including any amendment).
- 15.13 **Website** means our website, which is currently located at <http://www.zybek.com.au>.
- 15.14 **you** and **yourself** means the person engaging us or requesting Our Services and includes any servants, agents, or contractors acting on behalf of you where the context permits
- 15.15 **Zybek, us** and **we** means Zybek Consulting Pty Ltd in its capacity as trustee of the Zybek Consulting Trust ABN 97 411 264 520 trading as Zybek Consulting and Management.

16. INTERPRETATION

In these Terms and Conditions unless the context otherwise requires:

- 16.1 headings do not affect interpretation;

- 16.2 singular includes plural and plural includes singular;
- 16.3 words of one gender include any gender;
- 16.4 a reference to a party includes its executors, administrators, successors and permitted assigns;
- 16.5 a reference to a person includes a partnership, corporation, association, government body and any other entity;
- 16.6 an agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- 16.7 an agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- 16.8 a reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;
- 16.9 a provision is not to be construed against us only because we prepared it;
- 16.10 an unenforceable provision or part of a provision may be severed, and the remainder of these Terms and Conditions continues in force, unless this would materially change the intended effect of these Terms and Conditions;
- 16.11 the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions.