

**IMPACT PROPERTY CONSULTANCY PTY LTD
(ACN 160 520 561)
TERMS & CONDITIONS OF SERVICES**

These terms and conditions govern the supply of goods and services (“**Services**”) by Impact Property Consultancy Pty Ltd (“**we/us/our**”) to you (“**the Customer**”). Unless otherwise specifically agreed in writing by us, all orders placed by the Customer for supply of Services will be on the following terms and conditions:

1. DEFINITIONS

- 1.1. **Claim** means any action, claim, suit or demand of any nature whatsoever.
- 1.2. **Intellectual Property Rights** means any and all industrial and intellectual property rights of any kind both in Australia and throughout the world.
- 1.3. **Loss** means any costs, losses, penalties, damages, liabilities and expenses and in relation to a Claim, includes amounts payable on a Claim (whether or not the Claim is successful) and legal costs and expenses on a solicitor and own client basis.
- 1.4. **Project** means the project described in our quotation.

2. QUOTATIONS & ACCEPTANCE

- 2.1. Our quotations are only open for acceptance within 30 days after their date.
- 2.2. Subject to clause 3.3, our quotations will only become binding on us upon receipt of a copy of our quotation with the acceptance form details at the end of our quotation fully completed and signed and dated by you. Alternatively, the client may issue a formal consultancy agreement for both parties to execute.
- 2.3. All Services will be as described in the quotation given by us, irrespective of any purported variation in the form of acceptance accepting such quotation.

3. PRICING & PAYMENT TERMS

- 3.1. Unless otherwise indicated, all fees quoted by us are inclusive of GST.
- 3.2. We will do all things reasonably available to us to assist the Customer to claim, on a timely basis, any input tax credits the Customer may be entitled to claim for the acquisition of the Services from us. This includes us maintaining our registered status for GST purposes, and issuing tax invoices for the Services delivered to the Customer.
- 3.3. We reserve the right to increase our quoted fees if there is any change to the Project after a quotation has been issued subject to notifying the Customer in writing in advance and the Customer agreeing the additional commitment and cost with us. To avoid doubt, if agreement cannot be reached within 7 days of notifying the Customer, we reserve the right to not provide Services which are outside the scope of Services as referred to in and attached to our quotation.

SPECIALISTS IN PROPERTY CONSULTANCY

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MEMBER 2021/22



ISO
9001
Quality
Management

ISO
14001
Environmental
Management

AS/NZS
4801:2001
Occupational
Health & Safety
Management

- 3.4. The fee for any variations and other Services supplied outside the scope of the Services as referred to in and attached to our quotation will be as agreed between us and the Customer in advance and failing agreement, such fees will be calculated according to our standard hourly rates for our personnel as set out in our quotation subject to us having notified the Customer sufficiently in advance in writing so that additional commitments and costs might be considered and discussed. The Project fees quoted in our quotation will be invoiced to you at the end of each month. Where the quoted Project fees are based on completion of relevant stages set out in the quotation, monthly invoices will be calculated and submitted on a pro-rata basis according to the percentage of the relevant stage completed at the end of the month in respect of which the invoice is issued.
- 3.5. The terms of payment will be strictly 14 calendar days from the date of the invoice (unless otherwise agreed in writing).
- 3.6. If the Customer defaults in any payment or if the Customer commits any act of bankruptcy, appoints an administrator or commits an act which entitles a third party to make an application to wind up the Customer or appoint a receiver or receiver and manager to the Customer or any of its assets, or where the Customer passes a resolution to wind itself up or enters into any arrangement or compromise with any of its creditors, save in any of the foregoing cases for the purpose of a bona fide scheme of solvent amalgamation or reconstruction then:
- (a) the date for payment of all monies owing and outstanding to us, irrespective of whether the due payment as per the invoice has passed, will accelerate and become immediately due and payable;
 - (b) we may invoice the Customer for the value of any Services supplied, and other out of pocket expenses incurred, but not yet invoiced, which amounts will be immediately due and payable upon issue of the invoice;
 - (c) we may suspend the supply of further Services or terminate our contract with the Customer by giving 14 days' notice in writing to the Customer.
- 3.7. The Customer will pay interest on all overdue payments at the rate of 2% per month over the Reserve Bank of Australia cash rate from the due date for payment until the date that payment is actually made.
- 3.8. In addition to the quoted Project fees, the Customer must also pay for all out of pocket expenses reasonably incurred in connection with the supply of the Services provided these have been agreed by the Customer in writing in advance. Out of pocket expenses include, without limit, transportation and living expenses in connection with out-of-town travel authorised by the Customer, fees paid for securing approval of authorities having jurisdiction over the Project, courier and delivery charges, printing etc. Out of pocket expenses will be charged to the Customer at cost plus 10%.
- 3.9. The Customer is responsible for engaging and paying all third party consultants and service providers such as architects, quantity surveyors, builders, structural, electrical, mechanical and civil engineers, hydraulic engineers, landscape consultants and other contractors.

4. VARIATIONS

- 4.1. Any changes requested to the Project and the Services must be in writing.
- 4.2. If the Customer postpones our contract or does not give us requested instructions/feedback for more than 30 days, we may terminate our contract by notice in writing to the Customer.

5. INTELLECTUAL PROPERTY

- 5.1. All property and materials which the Customer provides to us in connection with the Services, will be held at the Customer's risk and we accept no liability whatsoever for loss or damage to such property and materials. We will not insure any of the Customer's property and materials.
- 5.2. The Customer will own and retain the Intellectual Property Rights in all construction details, drawings, specifications, reports and other documents which we create in connection with the supply of the Services, irrespective of whether or not the Project is completed but subject to our quoted Project fee being paid in full.
- 5.3. The Customer represents and warrants that all materials, documents and anything else provided to us do not infringe directly or indirectly, the Intellectual Property Rights of any other person.

6. DISCLAIMERS, LIMITATION OF LIABILITY AND INDEMNITY

- 6.1. The Customer acknowledges and agrees that the Customer is solely responsible for ensuring that all information and other materials provided to us in connection with the supply of the Services are complete and accurate.
- 6.2. To the extent permitted by law, and specifically excluding the warranties provided by us in Clause 7, all express or implied terms, conditions, warranties, statements, assurances and representations in connection with the supply of the Services are expressly excluded. In particular, to the extent permitted by law, we specifically disclaim any implied warranties of title, merchantability, fitness for a particular purpose and non-infringement of any third party rights, unless we are required to provide such warranties under applicable law.
- 6.3. In no event will we, including our officers, employees, agents and contractors, be liable for any indirect or consequential Loss including without limit, loss of profits, loss of revenue, loss of business, loss of production, loss of data, loss of opportunity or goodwill, corruption of data or software, equipment failure or damage, security breach or business interruption however caused in connection with the supply of the Services.
- 6.4. Save in respect of any property damage or personal injury or death caused by us or and/or our officers, employees or contractors or to that extent, we expressly limit our liability for breach of a non-excludable express or implied term, condition, warranty, statement, assurance or representation by virtue of any legislation, to the following (the choice of which is at our discretion):
 - (a) in the case of goods:
 - (i) the replacement of the goods or the supply of equivalent goods; or
 - (ii) the repair of the goods; or
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having the goods repaired;
 - (b) in the case of services:
 - (i) the re-supply of the services; or
 - (ii) the payment of the cost of re-supplying the services.

- 6.5. Under no circumstances will either we or the Customer incur any liability to the other on account of any Loss or Claims resulting from any delay or failure to supply all or any part of the Services if such delay or failure is caused in whole or in part, by events, occurrences or causes beyond our reasonable control. Such events, occurrences or causes include without limitation, acts of God, earthquakes, fire, explosions, strikes, lock-outs, adverse weather, accidents or break-downs of plant or machinery, unforeseen site conditions, delays caused by third parties (including consultants such as architects or contracted directly to the Customer), pandemics or epidemics, acts of public authorities or power shortages.
- 6.6. Other than as required by law, the Customer must not reveal to any third party (other than the Customer's legal or accounting or any other professional advisors) any information contained in these terms and conditions, any associated Project proposal, our quotations, or any information that comes into the Customer's possession or control concerning our business and undertakings and which either we designate as confidential, or which, by its nature is confidential. And we undertake not to reveal to any third party (other than the our legal or accounting or any other professional advisors) any information contained in these terms and conditions, any associated Project proposal, our quotations, or the program to be produced by the Customer or any information that comes into our possession or control concerning the Customer's business and undertakings all of which is hereby agreed to be designated as confidential.
- 6.7. The Customer at all times agrees to indemnify us, our officers, employees and agents against all Claims and Loss which we suffer or incur in connection with:
- (a) the infringement or alleged infringement of any third party's Intellectual Property Rights;
 - (b) damage to any property;
 - (c) injury or death to any person; and
 - (d) any act or omission by us in connection with the supply of the Services in accordance with any instructions or materials provided by the Customer to us;

which Claims and Loss are caused or to the extent contributed to by any act or omission of the Customer and/or its officers, employees or contractors, in connection with the Services, except to the extent that such Claims and Loss are caused or contributed to by us.

7. OUR WARRANTIES

- 7.1. In relation to our provision of the Services to the Customer, we hereby warrant to the Customer that the Services:
- (a) will be carried out/provided with due care and skill; and
 - (b) will be fit for the specified purpose as set out in the document "Scope of Services" referred to in our quotation ("**the Scope of Services**"); and
 - (c) will be carried out/provided according to the time frames within the Scope of Services except to the extent that there are delays beyond our reasonable control.

8. TERMINATION

- 8.1. Without limiting clause 3.6, either party may terminate this agreement (“the terminating party”) by giving the other party notice, with termination to be effective immediately, if:
- (a) the other party commits any act of bankruptcy, appoints an administrator or commits an act which entitles a third party to make an application to wind up the other party or appoint a receiver or receiver and manager to the other party or any of its assets, or where the other party passes a resolution to wind itself up or enters into any arrangement or compromise with any of its creditors, save in any of the foregoing cases for the purpose of a bona fide scheme of solvent amalgamation or reconstruction ; or
 - (b) the other party does not comply with an obligation under this agreement and in the terminating party’s reasonable opinion:
 - (i) the non-compliance can be remedied, but the other party does not remedy it to the terminating party’s reasonable satisfaction within 14 days after the terminating party gives other party notice to remedy it; or
 - (ii) the non-compliance cannot be remedied but the terminating party can be compensated and the other party does not pay the terminating party compensation reasonably satisfactorily to the terminating party for the breach, within 14 days after the terminating party gives the other party notice to pay it.

9. RESTRAINT

- 9.1. Subject to clause 9.2, both we and the Customer (each a “**Restrained Party**”) each agree not to, directly or indirectly, except with the prior written consent of the other, at any time during the course of the Project and for a period of 2 years after the end of the Project:
- (a) engage or hire, or attempt to engage or hire any employee or subcontractor of the other party whether wholly or partially for the benefit of the Restrained Party or for the benefit of any other person or company;
 - (b) persuade or entice or attempt to persuade or entice any employee or subcontractor of the other party to cease employment with or cease to provide services to that party; or
 - (c) counsel or procure any person or entity to do any of (a) or (b) above.
- 9.2. Clause 9.1 does not apply to the employment or engagement by a Restrained Party of a former employee or subcontractor of the other party in response to a public advertisement.

10. GENERAL

- 10.1. These terms and conditions are incorporated by implication into all agreements between us to supply the Customer with Services, irrespective of other terms appearing in documentation provided by the Customer.
- 10.2. Unless expressed in writing to the Customer, any failure or delay by us in exercising any right, power or privilege available to us, will not operate as a waiver or variation of such right, power or privilege, nor will the exercise by us of any other right, power or privilege prevent us from exercising any other rights, powers or privileges available to us
- 10.3. We and the Customer acknowledge that these terms and conditions together with our quotation, constitute the whole agreement between us and the Customer and all previous negotiations and agreements between us and the Customer will cease to have effect.
- 10.4. These terms and conditions are governed by the laws in force in NSW. We and the Customer submit to the jurisdiction of the Courts of NSW and all Courts of appeal there from.

- 10.5. If any part of these terms and conditions is held to be void or unlawful, these terms and conditions will be read and enforced as if the void or unlawful provisions have been deleted.
- 10.6. Nothing in these terms and conditions is intended to create an agency, partnership or joint venture relationship between us and the Customer. Neither we nor the Customer has any authority to bind the other to any obligation to any third parties unless otherwise agreed in writing.