

## 1.0 Definitions and interpretation

### 1.01 Definitions:

**AAA** means the Australian Architectural Association. **Act**

**appropriately** means not **acting inappropriately**. **Act**

**inappropriately** means any of the following:

- Verbally abuse or verbal statements that result in the other party feeling threatened;
- Bullying;
- Harassment;
- **Physical intimidation**;
- Physical abuse.

**Act of insolvency** means one of the following actions:

- The **party** is a company, and that company goes into liquidation; or
- The **party** is an individual and the person is made bankrupt.

**Additional services** means **services** that are not included in the scope of work listed in **fee proposal**.

**Building** means a fixed structure that is wholly or partly enclosed by walls or is roofed. The term includes a floating building and any part of a building.

**Building assessment** means an assessment, under the **building assessment provisions**, of a building development application for compliance with those provisions in accordance with section 7 of the Building Act 1975.

**Building assessment provisions** mean those sections contained in Chapter 4 of the Building Act 1975.

**Building laws** means Building Act 1975, Building Regulation 2021, Queensland Building and Construction Commission Act 1991 and the Building Code of Australia.

**Building permit** means a building development approval, to the extent it approves a building development application.

**Business day** means a day that is not:

- a Saturday or Sunday; or
- a public holiday, special holiday or bank holiday in the place in which any relevant act is to be or may be done;

but includes within its meaning any day not specifically excluded above that occurs within any of the following periods

- 22-24 December;
- 27-31 December; and
- 2 to 10 January.

**Certifier** means a person who has the QBCC building certifier licence.

**Certify** and **certified** means that the **work** on **site** complies with the **building permit**.

**Competent person** has the same meaning as section 33, Building Regulation 2021, which means:

- a **competent person (design-specification)**; or
- a **competent person (inspection)**.

**Competent person (design-specification)** means an individual that a certifier decides, under section 34 of the Building Regulation 2021, is competent to give the

**certifier design-specification help**.

**Competent person (inspection)** means an individual that a **certifier** decides, under section 34 of the Building Regulation 2021, is competent to give the **certifier inspection help**.

**Competent person guidelines** means "Guideline for the assessment of competent persons" published by the Department of Energy and Public Works

**Contract price** means the amount stated **our fee proposal**.

**Day** means calendar day.

**Design-specification help** means help in performing a building certifying function for building design or specification for **building assessment work**.

**Due date** is 14 days from the date that **our** invoice is sent.

**Fee proposal** means the document given to **you** labelled "Fee Proposal" and attaching these terms and conditions.

**Initial inspection** means the first inspection of the site **our certifier** carries out for a retrospective permit.

**Inspection help** means help in performing a building certifying function for the inspection of assessable **building work**.

**Laws** means all relevant Australian Federal and Queensland state legislation including regulations, codes and bylaws.

**Our** means KP Building Approvals Pty Limited.

**Owner** is the legal owner of the **site**.

**Party** means a party to **this agreement**, being **us** and **you**.

**Physical intimidation** includes using physical proximity or size to intimidate and includes standing over a person and restricting or blocking a person from freely moving from one place to another.

**QCAT** means the Queensland Civil and Administrative Tribunal.

**QBCC** means the Queensland Building and Construction Commission.

**Related party** means any related person or animal whether professionally or personally including any subcontractor, employee, agent, advisor, authorised representative or family member.

**RPEQ** means a registered professional engineer of Queensland with the Board of Professional Engineers of Queensland.

**Requirements for supporting documents** means the requirements set out for supporting documents at sections 23 to 26 of the Building Act 1975, which include:

- Providing the details of the person who prepared the document and if the person is a designated person;
- The document demonstrates on its face that the carrying out of the **work** complies with the **building assessment provisions**;
- Whether a relevant authorisation is required in accordance with section 25(2)(a) Building Act 1975;
- How the application is consistent with the relevant

- authorisation;
- If the **work** requires site works, how the **work** complies with the **building assessment provisions**;
- If a performance solution is used in the supporting document, the documents must state:
  - the performance solution requirements that the **work** purports to comply with;
  - How the **work** complies with the performance requirements.
  - Details of how the performance solution is different from the deemed-to-satisfy provisions under the Building Code of Australia or acceptable solutions under the Queensland Development Code.
  - Details the inspection, test results or other documents of information relied on to prepare the application.

**Resolution institute** means an alternative dispute resolution organisation and can be found at <https://resolution.institute/web/default.aspx>.

**Services** means to:

- assess **your application for a building permit** to determine if it is in accordance with the building assessment provisions in the Building Act 1975;
- assess the **work** carried out on **site** to determine if the **work** is in accordance with the **building permit**; and
- any other services included in **fee proposal** or as agreed between **you** and **us** in writing from time to time.

**Site** is the property described in **our fee proposal**.

**SWMS** means a Safe Work Method Statement.

**This agreement** means these terms and conditions and **our fee proposal**.

**Us** means KP Building Approvals Pty Limited.

**We** means KP Building Approvals Pty Limited.

**Work** means the **construction work** carried out on site.

**Work Health and Safety requirements** means requirements that are in accordance with the **WHS laws**.

**WHS laws** means Work Health and Safety Act 2011, the Work Health and Safety Regulation 2011, associated codes of practice and guides.

**You** and **your** means the party stated in **our fee proposal**.

**Your application for a building permit** means the information and documents **you** provide to **us** to support your application for a **building permit**.

## 1.02 Interpretation

The following rules of interpretation apply to **this agreement**:

- (a) Words using the singular include the plural and vice versa.
- (b) Any gender includes the other genders.
- (c) Any reference to a person includes a reference to a corporation, authority, firm, government or government agent.
- (d) A reference to "\$" is a reference to Australian currency.

- (e) The use of the word "including" must not be interpreted as a word of limitation.
- (f) A reference to legislation or to a legislative provision includes:
  - (i) All regulations, orders, proclamations, notices or other requirements under that legislation or legislative provision;
  - (ii) Any amendments, modifications or re-enactments of that legislation or legislative provision and any legislation or legislative provision substituted for, and any statutory instrument issued under, that legislation or legislative provision.
- (g) Any reference to a clause number refers to the clause of that number in **this agreement** and all subclauses related to that clause.
- (h) Where under **this agreement** or anything done under **this agreement** the **day** on or by which any act, matter or thing is to be done is not a **business day** such act, matter or thing must be done on the immediately preceding **business day**.
- (i) No rule of construction or interpretation shall apply to the disadvantage of a **party** because that party was responsible for the preparation of **this agreement**.

## **Terms and Conditions**

### 2.00 Agreement

**2.01 We** agree to carry out the **services** and to fulfil **our** obligations in accordance with **this agreement**.

**2.02 You** agree to pay **us** the **contract price** and the cost of any **additional services**, and to fulfil **your** obligations in accordance with **this agreement**.

### 3.00 Authority to sign and agreeing to this agreement

**3.01** The **parties** acknowledge and agree that if our fee proposal is sent to **you** partially completed, **this agreement** is only agreed once:

- (a) **You** complete the incomplete sections in **our fee proposal**;
- (b) **You** have signed the **fee proposal** and initialled all of the pages contained in **this agreement**;
- (c) **You** send a copy of **this agreement** that has been the signed and completed by **you** to **us** within 90 days of the date that **this agreement** was sent to **you**; and
- (d) **We** sign **this agreement** and send a copy of **this agreement** fully signed to **you**.

**3.02** For the sake of clarity, if **we** receive a fully signed and completed copy of **this agreement** from **you** in accordance with clause 3.1(c), **we** are under no obligation to sign and agree to **this agreement**. **We** may choose not to agree to **this agreement** for many reasons including **our** capacity to carry out the services, time frames and the checks **we** may carry out on **you**.

Kim Pound, the director of KP Building Approvals Pty Limited, is the only person authorised to agree and sign off on changes to the terms of **this agreement**. Any change made to **this agreement** by any other person on **our** behalf is unenforceable against **us**.

### 4.00 Our fee proposal and additional costs

**4.01** The **parties** acknowledge and agree that:

- (a) **Our certifiers** will not check the documents **you** provide before **our fee proposal** is provided to **you** and **this agreement** is agreed;
- (b) There are likely to be additional documents, information and actions that need to be obtained or performed before a **building permit** can be approved; and
- (c) It is likely that there will be additional costs associated with obtaining an approved **building permit**.

**4.02** After being engaged, **our certifier** will assess the documents **you** have provided and provide **you** with a list of documents, information and actions that need to be obtained or performed so that a **building permit** is approved.

**4.03** Once a **building permit** has been approved the **work** on **site** can commence.

- 4.04** Once **work** on **site** commences, there can be:
- (a) Additional documents, information and actions that need to be obtained or performed before the **work** can be **certified**; and
  - (b) It is likely that there will be additional costs associated with the **work** on **site** being **certified**.

## **5.00 The Services**

**5.01** The **parties** acknowledge and agree that the **services** only include **us**:

- (a) Providing a **building permit** to **you** if **your application for a building permit** is in accordance with the **building assessment provisions**; and
- (b) **Certifying** the **work** carried out on **site**, if the **work** and the supporting documents comply with the **building permit** and the **building laws**.

- 5.02** As part of a **building assessment**, **we** must:
- (a) Check the documents that **you** have provided;
  - (b) Provide a list of documents and actions that **you** are required to provide or action to comply with the **building assessment provisions**;
  - (c) Check **your** documents comply with the **requirements for supporting documents**;
  - (d) Provide plumbing applications for new dwellings.

- 5.03** As part of the building assessment, **we** will not:
- (a) Provide any architectural, engineering or design services to **you**;
  - (b) Provide town planning services, however **we** may facilitate an introduction to a town planning service provider;
  - (c) Source, provide, find or compile any of the documents **you** need for **your application for a building permit** to comply with the **building assessment provisions**;
  - (d) **Source, provide, find or** contact a designated person or competent person for **you**;
  - (e) Actively prompt and remind **you** that **you** need to provide the documents requested after the list of documents and actions have been provided to **you** in accordance with clause 5.2(b);
  - (f) Provide a plumbing application form for an existing **building**.

- 5.04** As part of **assessing** the **work** carried out on **site**, **we** must:
- (a) Carry out inspections of the **work** on **site**, when **we** are notified that the **work** has reached a stage for inspection;
  - (b) Check **your** documents comply with the **requirements for supporting documents**;

- (c) Provide a list of documents and actions that **you** are required to provide or action to comply with the **building permit**;
- (d) Notify **you** three months before the **building permit** lapses.

**5.05** As part of **assessing** the **work** carried out on **site**, **we** will not:

- (a) Project manage **your** build;
- (b) Attend **site** unless **you** notify **us** that the **site** is ready for an inspection;
- (c) Follow up or ask to inspect the **site**;
- (d) Follow up on supporting documents or information already requested from **you**;
- (e) Require the **work** is carried out to a standard that is higher than the acceptable health and safety standards required by the **building laws**;
- (f) Source, provide, find or compile any of the documents **you** need to prove that the work complies with the **building permit**;
- (g) **Source, provide, find or** contact a designated person or competent person for **you**;
- (h) Actively prompt and remind **you** to
- (i) Notify **us** for the stage inspections; and
- (j) Provide documents, certificates and other information requested by **us**.

**5.06** How we carry out the **services** is a matter for **our** discretion.

- 5.07** If the **work** or any part of the **work** is different from the **work** allowed under the **building permit**, **we** may:
- (a) Request that the **work** is changed to comply with the **building permit**; or
  - (b) Carry out **additional services** to change the **building permit** to reflect the **work** carried out on **site**.

**5.08** **We** are not responsible for any changes to **site** that are made after **our** final **site** inspection.

To assist **our completion of the services**, **you** agree that **we** may complete forms and application forms with **your** details as required.

## **6.00 Additional services**

**6.01** The **services** are strictly limited to the **services** described in the **fee proposal**. Any **service** that is not described in the **fee proposal** is a variation to **this agreement** and an **additional service**.

- 6.02** **Additional services** may include:
- (a) An increased number of site visits;
  - (b) Energy Efficiency Reports;
  - (c) Bushfire Attack Level Reports; and
  - (d) Performance Solutions Reports

## **7.00 Drawings**

- 7.01** The **parties** acknowledge and agree:
- (a) You may provide hand drawn plans to us at the quoting stage;
  - (b) For the purposes of the building assessment, you must provide plans that have been drafted by a competent person;
  - (c) If **you** do not provide plans that have been drafted by a competent person in accordance with clause 8.3(a), **we** will not provide a **building permit**.

## **8.00 Competent Person**

**8.01** It is for **our certifier** to decide if a person is a competent person.

**8.02** **Our certifier** must determine whether a person is a competent person in accordance with:

- (a) Section 34 of the Building Act 1975; and
- (b) **The competent person guidelines.**

**8.03** The **parties** acknowledge and agree:

- (a) A **competent person** for the purposes of drafting plans is:
  - (i) An architect, who is licensed with the AAA;
  - (ii) A RPEQ engineer; or
  - (iii) QBCC licenced designer.
- (b) All building **work** must be carried out by a person with a **QBCC** licence of the appropriate class, unless one of the exemptions in Schedule 1A of the **QBCC Act** applies; and
- (c) All electrical **work** must be carried out by a person with an electrical contractor licence.

## 9.00 If you are not the owner

**If you are not the owner, the owner has statutory rights that cannot be contracted out of.**

**9.01** If **you** are not the **owner**:

- (a) The **owner** may request additional inspections;
- (b) If the **owner** requests additional inspections, **we** will notify **you**;
- (c) **You** must allow **us** on **site** to carry out the inspection requested by the **owner**;
- (d) If **you** do not allow **us** on **site** to carry out an inspection in accordance with clause 9.1(c), **we** may terminate **this agreement** in accordance with clause 20.01.
- (e) The **owner** can formally request a copy of all and any inspection documents that we have, at any time before the inspection of the final stage of the **work**, by sending **us** a form 35.
- (f) If **we** receive a request in accordance with clause 9.1(e), **we** must provide a copy of all the documents requested in accordance with section 124A of the Building Act 1975 within 5 **business days**.

## 10.00 Retrospective permits

**If you engage us for a retrospective permit, please have patience with us as we get up to speed with your documents and what has happened on site.**

**10.01** If you engage us for a retrospective permit:

- (a) You must engage us for 12 hours of services so that we can carry out the **initial inspection** of the site and assess the documents that you have;
- (b) If we need more than 12 hours to carry out the **initial inspection** of the **site** and assess the documents **you** have provided to **us**, **we** request additional time and addition payment in accordance with clause 16.02;
- (c) Once we have carried out the **initial inspection** and assessed the documents you have provided, we will notify you if **we** can continue with the building assessment.
- (d) If **we** notify **you** that **we** can continue with the **services**, **we** will:
  - i. Send an informal quote to **you** for the rest of the **services** to be carried out;
  - ii. If **you** pay to **us** the amount quoted in accordance with clause 10.01(d), we will carry out the building assessment and

the final report on the work at the same time.

- (e) If, after the initial inspection we notify you that we cannot continue with the services, we will return the funds you have paid to us for the services, less:
  - i. The cost of the **services** that **we** have carried out to date; and
  - ii. A \$250 administration fee.

**10.02** We will only carry out a reinspection of the work on site if:

- (a) When we carried out the **initial inspection**, the site was unsafe;
- (b) There is additional work that needs to be carried out for the work to be compliant with the building permit; or
- (c) The certifier requires another inspection.

## 11.00 Our obligations to you

**Please note that our statutory obligations will at times override our obligations to you.**

**11.01** **We** are QBCC licensed certifiers.

**11.02** **We** must provide the **services** in accordance with clause 5.0.

**11.03** **We** must carry out the **services** in accordance with the **building laws** and other **laws**.

**11.04** **We** must **act appropriately**.

**11.05** **We** must be truthful in all **our** dealings with **you**;

**11.06** **We** will maintain during the period of **this agreement** the following insurance:

- (a) Public Liability Insurance to the values of \$20 Million;
- (b) Professional Indemnity Insurance to the value of \$2.5 million; and
- (c) Insurance that is compliant with the Worker's Compensation and Rehabilitation Act 2003 (Qld).

**11.07** **We** will comply with and discharge all obligations imposed on **us** in accordance with the **WHS laws**.

**11.08** **We** must notify **you** 3 months before the **building permit** lapses, that the building permit will lapse.

**11.09** **We** must not post or publish anything defamatory or disparaging about **you**, **your** directors, **your** employees, **your** project or **your** build, whether on social media, **our** website or other form of communication.

**11.10** The **services** may come with guarantees that cannot be excluded under Australian Consumer Law. **Our** liability for failure to comply with any guarantee under Australian Consumer Law is limited to **us**:

- (a) Supplying the **services** again; or
- (b) Paying to **you** the cost of having the **services** supplied again.

## 12.00 Our statutory obligations

**12.01** Both **parties** acknowledge and agree that **we** have statutory obligations in performing **our** role as **certifier** that override **our** obligations in **this agreement**.

**12.02** **Our** statutory obligations include (but are not limited to):

- (a) Protecting the public interest;

- (b) Stopping **work** on **site** if **we** find the **work** is unsafe
- (c) Reporting obligations if **we** observe on **site**:
  - i. Any issues with pool safety (whether it is the subject of the **services** or not);
  - ii. If the **site** is unsafe;
- (d) Notifying the Council or local authority when:
  - i. **We** are engaged; and
  - ii. **We** are disengaged before a permit is issued or before the final certification has been provided.

### 13.00 Your Responsibilities

#### 13.01 You are responsible for:

- (a) Obtaining the development approval for **your** project (if required);
- (b) Making sure that all plans are drawn by a **competent person** in accordance with clause 8.3;
- (c) Making sure that **site** plans provided to **us**, include all structures on **site** (including the distances between the boundary and the structures)
- (d) Arranging a plumbing application form to be completed for an existing **building**;
- (e) Sourcing, providing, finding or compiling any of the documents **we** request **you** provide;
- (f) Providing the required certificates throughout the **work**;
- (g) Advising **us** when the work on **site** is ready for a stage inspection
- (h) Suspending the progress of the **work** until a stage inspection has been carried out by **us**.

### 14.00 Your Obligations

**14.01** You must be truthful in all your dealings with **us** and not provide any false or misleading information or documents to **us**;

**14.02** You must **act appropriately**;

**14.03** You are the **owner**, or **you** have the authority from the **owner** to carry out the project on the **site**;

**14.04** You must advise **us** when the work on **site** is ready for a stage inspection;

**14.05** You must suspend the progress of the **work** until a stage inspection has been carried out by **us**;

**14.06** You must provide uninterrupted access to **site** when **we** attend **site** for the inspections;

**14.07** You must not interfere with the **services**;

**14.08** You can and will pay for **our services** and any variations that **you** request by the **due date** for payment.

**14.09** You must make payment before the services are carried out.

**14.10** You must not post or publish anything defamatory or disparaging about **us**, **our** directors, **our** **certifiers** or **employees**, whether on social media, **your** website or other form of communication.

**14.11** You must make sure that the **site** is safe and all work on **site** is carried out in accordance with the **WHS laws**, including:

- (a) **SWMS** are carried out for the **site**; and
- (b) All animals will be removed from the **site** or suitably and safely housed and secured so as not to interfere with the **services**.

### 15.00 Work Health and Safety

**15.01** Before **we** attend the **site**, **you** must inform **us** if there are any **site** requirements or if there is any information **we** should be aware of, including:

- (a) Work Health and Safety requirements for the **site**;
- (b) Legislative, regulatory, departmental, or policy requirements due to the type of business or organisation that is operated on the **site** (for example a school or factory); or
- (c) Other requirements due to the type of business or organisation that operates on the **site**.

### 16.00 Payment

**16.01** You must pay to us the amount stated in **our fee proposal**, before we carry out any **services**.

**16.02** **We** will notify **you** if **we** need to carry out **additional services** and the cost of those **additional services**, before any **additional services** are carried out.

**16.03** Once **we** have been paid for the **additional services**, **we** will carry out the **additional services**.

**16.04** **We** must be paid in advance of all **services** being carried out by **us**.

### 17.00 Acting Inappropriately

**We understand that whether a stage is certified or not can be a matter of much debate, however it is never okay to act inappropriately.**

**17.01** If **you act inappropriately**, **we** may:

- (a) Leave **site** immediately and suspend the **site** inspection, if **we** are on **site**; and
- (b) Immediately terminate **this agreement** in accordance with clause 20.1.

**17.02** If **we act inappropriately**, **you** may:

- (a) Ask **us** to leave **site** immediately; and
- (b) Immediately terminate **this agreement** in accordance with clause 20.1.

### 18.00 Confidentiality

**18.01** Each **party** must treat **this agreement**, and all information shared by the other **party** under **this agreement** as confidential, except for:

- (a) Disclosure to the council or local authority;
- (b) Disclosure to the contractor carrying out the **work** (if **you** are not carrying out the **work**);
- (c) Disclosure to the **owner** (if **you** are not the **owner**);
- (d) Disclosure with a person providing **design-specific help** or **inspection help** as a competent person;
- (e) An appropriate regulator, such as **QBCC** or Work Health and Safety Queensland;
- (f) To the extent required by the **laws**;
- (g) On a confidential basis to their insurers, professional advisors, auditors or financiers; or
- (h) **Express written consent of the other party**.

### 19.00 Disputes

**19.01** If a dispute occurs in relation to this agreement, the party with the dispute must give the other party written notice of the dispute within two (2) business days.

**19.02** Both parties must attempt to resolve the dispute together in good faith.

**19.03** If the dispute cannot be resolved, either party can refer the dispute to mediation by giving the other party notice.

**19.04** If the dispute is referred to mediation in accordance with clause 19.3:

- (a) If the parties cannot agree on a mediator within fourteen (14) days of the notice of mediation, either party can request the chairperson of the Resolution Institute to appoint a mediator.
- (b) If a party is to be legally represented at the mediation, that party must notify the other party, that they will be legally represented, at least 5 business days before the mediation.

**19.05** If the parties are unable to agree to mediation, or unable to reach an agreement at mediation, disputes may be referred to QCAT or a court of competent jurisdiction in the Brisbane district.

**19.06** Notwithstanding the commencement of proceedings, but subject to clause 20.0, the parties must comply with their contractual obligations.

## 20.00 Termination

**20.01** Either party is entitled to terminate this agreement, by written notice of termination if:

- (a) There is an **act of insolvency**;
- (b) The other party acts **inappropriately** in accordance with clause 17.0;
- (c) You do not allow us access to site for an owner requested inspection in accordance with clause 9.0;
- (d) The other party is in substantial breach of this agreement and the procedure for termination set out in clause 20.3 is followed.

**20.02** If we have not received any information or communication from you in 12 months, we are entitled to terminate this agreement by sending a written notice of termination to you.

**20.03** If you no longer require the services, you are entitled to terminate this agreement by sending a written notice of termination to us.

**20.04** A substantial breach is when:

- (a) We:
  - i. Breach any of our obligations set out in clause 12.0; or
  - ii. Lose legal capacity;
  - iii. We have our QBCC licence suspended or cancelled; or
  - iv. Are otherwise in substantial breach.
- (b) You:
  - i. Breach any of your obligations set out in clause 14.0;
  - ii. Instruct us to act unlawfully or unethically;
  - iii. You have your QBCC licence suspended or cancelled, if you are a holder of a QBCC licence;
  - iv. Lose legal capacity; or
  - v. Are otherwise in substantial breach.

**20.05** If a party is in substantial breach of this agreement:

- (a) The other party must send a written notice to the party in substantial breach, which:
  - i. States the substantial breach; and
  - ii. Requests that the substantial breach is remedied within ten (10) business days;
- (b) If the party in substantial breach does not remedy

the substantial breach, the non-breaching party may terminate this agreement by sending a letter of termination to the party in substantial breach.

- (c) If this agreement is terminated, within 28 days we must refund the funds we have received from you, less:
  - i. The cost of the services that we have carried out to date including our time at our hourly rates and any costs we have incurred in carrying out the services; and
  - ii. \$250 administration fee.

## 21.00 Notices

**21.01** All notices and invoices must be given to you by hand or sent to you at one or more of the address details stated for you contained in our fee proposal.

**21.02** All notices must be given to us by hand or sent to us at one or more of the following address details:

- (a) Unit 6, 379 Main Road, Wellington Point QLD 4160 and
- (b) [office@kpbapprovals.com.au](mailto:office@kpbapprovals.com.au)

**21.03** Notices and invoices are deemed to be received on the day it was given by hand, or on the day it was sent by email, or electronic message, or two (2) days after it was posted.

Documents that are accessed via a download link contained in an email or electronic message are for the purposes of the delivery of notices deemed to be part of the email or electronic message itself and therefore delivered at the time the email or electronic message is received, whether or not the documents were downloaded at that time.

## 22.00 Liabilities

**22.01** If you suffer a loss that is caused by our negligence, or wilful misconduct and is in connection to this agreement, we indemnify you from and against those losses you suffer, regarding:

- (a) Loss or damage to property (unless specifically excluded in this agreement); or
- (b) A personal injury or death.

**22.02** If we hold insurance, the indemnity contained in clause 22.1 is limited to:

- (a) The amount we are able to recover under our insurance; or
- (b) The amount we would be able to recover if we had fulfilled all of our obligations under our insurance policy.

**22.03** If we suffer a loss that is caused by your or your related party's negligence, or wilful misconduct and is in connection to this agreement you indemnify us from and against those losses we suffer, regarding:

- (a) loss or damage to property; or
- (b) a personal injury or death;

**22.04** If you hold insurance, the indemnity contained in clause 22.3 is limited to:

- (a) The amount you are able to recover under your insurance; or
- (b) The amount you would be able to recover if you had fulfilled all of your obligations under your insurance policy.

**22.05** For the sake of clarity, the indemnities contained in clauses 22.1 and 22.3:

- (a) Do not contract out of or limit any laws regarding proportionate liability;

- (b) Are subject to any limitation of liability provided in **this agreement**;
- (c) Do not extend to any part of the loss that results from a separate causative event; and
- (d) Do not entitle the indemnified **party** to be compensated for more than the amount of the relevant loss.

## 23.00 Miscellaneous

**23.01** **This agreement** is governed by the law of Queensland and the Commonwealth of Australia, which is in force in Queensland. Any legal action arising out of or in respect of **this agreement** and/or its interpretation must be brought only in the courts of Brisbane in the state of Queensland.

**23.02** Neither **party** is responsible for any loss caused due to strikes, lockouts, theft, fires, storms, riots, war, acts of terrorism, embargoes, civil commotions, acts of God or any other activity beyond that **party's** control.

**23.04** Neither **party** is liable, whether claims are made or not, for loss of profit, economic or financial loss, damages, consequential loss, loss of opportunity or benefit, loss of a right or any other indirect loss suffered by **us, you, the owner** or any person (including, but not limited to **your** or the **owner's** employees, contractors, tenants and agents).

**23.05** Retentions do not apply to **this agreement**.

**23.06** Liquidated damages and delay damages are set at \$0 per day.

**23.07** **This agreement** between **you** and **us** is made up of **our fee proposal** and these terms and conditions.

**23.08** No provision or term of **this agreement** may be waived, varied, discharged or released by a **party** unless such a waiver, variation, discharge, or release is agreed in writing by **you** and **us**.

**23.09** If any provision of **this agreement** is found to be unenforceable or invalid, the other terms of **this agreement** will remain enforceable in accordance with their terms. The unenforceable or invalid clauses must be deleted while the remainder of **this agreement** must remain enforceable and effective.

**23.10** All intellectual property, designs, drawings and trademarks created by **us** shall remain **our** property. Once **you** have paid for the **services** including any variations, **you** will be granted an non-exclusive, non-transferable licence to use, reproduce and communicate the **services** and variations with the public.

**23.11** All intellectual property, designs, drawings and trademarks created by **you** shall remain **your** property.

**23.12** Both **parties**:

- (a) Confirm and declare that the terms of **this agreement** are fair and reasonable;
- (b) Agree they have had a reasonable opportunity to obtain independent legal advice; and
- (c) Declare the terms of **this agreement** are not against public policy on the grounds of inequality or bargaining power or general grounds of restraint of trade.

**23.13** **You** agree that **we** may collect information (personal or otherwise) about **you** and:

- (a) **You** authorise **us** to disclose that information where

it is necessary to complete the **services** set out in **this agreement**;

- (b) **You** authorise **us** to use **your** information to undertake credit checks and to obtain payment from **you**, including hiring debt collection agencies.
- (c) **You** consent to **our** use of **your** contact details set out in **our fee proposal** to maintain a professional relationship with **you**, to provide information that **we** think may be of interest to **you** and to market directly to **you**. **You** may request not to be sent direct marketing material by notifying **us**.
- (d) **We** will attempt to keep **your** information secure, accurate and up to date. Australia or other countries.
- (e) Both **parties** are obliged to tell each other as soon as their contact details change.
- (f) **You** may request to see **your** personal information (if any) that **we** may hold about **you**, and **you** may have an opportunity to correct that personal information collected.
- (g) **Your** information is supplied at **your** own risk.

**23.13** In the event of **this agreement** being completed or terminated, **you** and **we** agree that clauses 12.0, 18.0, 20.0, 21.0, 22.0 and 23.0. shall survive any completion or termination.