

## 1. Definitions

- 1.1 “Consultant” shall mean Alex Star Enterprises Pty Ltd its successors and assigns or any person acting on behalf of and with the authority of Alex Star Enterprises Pty Ltd.
- 1.2 “Client” shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by the Consultant to the Client.
- 1.3 “Agent” shall mean the person or persons engaged by the Consultant to undertake work on the behalf of the Client.
- 1.4 “Guarantor” means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.5 “Services” shall mean all services and documentation supplied by the Consultant to the Client and includes any advice or recommendations.
- 1.6 “Price” shall mean the price payable for the Services as agreed between the Consultant and the Client in accordance with clause 3 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 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of the Consultant.
- 2.4 The Client shall give the Consultant not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by the Consultant as a result of the Client's failure to comply with this clause.
- 2.5 These terms and conditions are to be read in conjunction with the Consultant's letter of engagement. If there are any inconsistencies between the two documents then the terms and conditions contained in this document shall prevail.

## 3. Price And Payment

- 3.1 At the Consultant's sole discretion the Price shall be either;
  - (a) as indicated on invoices provided by the Consultant to the Client in respect of Services supplied; or
  - (b) the Consultant's quoted Price as per the Consultant's letter of engagement (subject to clause 3.2 which shall be binding upon the Consultant provided that the Client shall accept the Consultant's quotation/letter of engagement in writing within ninety (90) days.
- 3.2 The Consultant reserves the right to change the Price in the event of a variation to the Consultant's quotation/letter of engagement. In the event the Client requests changes after commencement of the Services then the Consultant (at its sole discretion) shall be entitled not only to vary the Price but the term of the contract. All variations shall be in writing detailing the reason for the variation, the impact on the Price, term and/or the scope of the contract and shall be signed by both parties.
- 3.3 At the Consultant's sole discretion a non-refundable deposit may be required.
- 3.4 The Consultant may submit a detailed payment claim at intervals not less than one month for work performed up to the end of each month. The value of work so performed shall include the reasonable value of authorised variations, whether or not the value of such variations has been finally agreed between the parties.
- 3.5 The Client agrees to indemnify the Consultant for all costs and expenses (including, but not limited to, disbursements, postage, search fees, couriers and the like expenses), incurred by the Consultant in connection with the provision of the Services. The Consultant shall fully document all such expenses for submission to the Client.
- 3.6 At the Consultant's sole discretion;
  - (a) payment shall be due on delivery of the Services, or
  - (b) payment shall be due before delivery of the Services, or
  - (c) payment for approved Clients shall be made by instalments in accordance with the Consultant's payment schedule.
- 3.7 Time for payment for the Services shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 3.8 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Client and the Consultant.
- 3.9 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

## 4. Extension of Contract Period

- 4.1 The Consultant shall as per clause 3.2 above be entitled to claim an extension to the term of the contract in the event of delays resulting from any matter whatsoever which is not entirely under the control of the Consultant. These matters shall include, but are not limited to delays caused by:
  - (a) response(s) to information request(s) made by the Consultant to the Client not being available when required;
  - (b) approval authorities response times for requests for preliminary decisions/information;
  - (c) information from Agents, councils or referral agencies not being available when required;
  - (d) changes to the design brief being requested by the Client;
  - (e) time taken by the approval authority for the granting of required approvals;
  - (f) any other variation to the contract.

## 5. Compliance with laws

- 5.1 The Client and the Consultant shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the works.

5.2 The Client shall obtain (at the expense of the Client) all licences and approvals that may be required for the works.

## **6. Delivery Of Services**

- 6.1 At the Consultant's sole discretion delivery of the Services shall take place when;
- (a) the Client takes possession of the Services at the Consultant's address; or
  - (b) the Client takes possession of the Services at the Client's nominated address (in the event that the Services are delivered by the Consultant or the Consultant's nominated carrier).
- 6.2 At the Consultant's sole discretion the costs of Delivery are:
- (a) included in the Price; or
  - (b) in addition to the Price; or
  - (c) for the Clients account.
- 6.3 The Client shall make all arrangements necessary to take delivery of the Services whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Services as arranged then the Consultant shall be entitled to charge a reasonable fee for redelivery.
- 6.4 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.
- 6.5 The Consultant may deliver the Services by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 6.6 The failure of the Consultant to deliver shall not entitle either party to treat this contract as repudiated.
- 6.7 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.

## **7. Nominated Agents**

- 7.1 The Consultant shall engage Agents as specified in the quotation acting as agent on behalf of the Client and the following shall apply:
- (a) the Consultant shall be entitled to enter into contracts with such Agents in the name of the client; and
  - (b) the Client shall be responsible for payments to Agents; and
  - (c) where the Consultant pays the Agents' account on behalf of the Client, the Client shall reimburse the Consultant for the payment on the Agent's account together with an account-handling fee within 14 days from the date of submission of the account by the Consultant; and
  - (d) if the Client does not reimburse the Consultant with 14 days from the date of submission of the account in accordance with subparagraph (c) above, the Consultant shall be entitled to:
    - (i) charge interest at the rate specified in clause 14.1 from the date of payment of the Agent's account by the Consultant to the date of reimbursement to the Consultant by the Client; and/or
    - (ii) an administration fee per month as stated in clause 14.4 on any outstanding monies due to the Consultant
  - (e) the Agent does not warrant the accuracy or quality of the consultant's work or warrant that the recommendations of the Agent are appropriate or adequate or are fit for their purpose or that they are not given negligently; and
  - (f) the Client shall not make any demand on the Consultant or commence any legal proceedings against the Consultant and the Consultant shall have no liability, whether in negligence or otherwise, to the Client in relation to any work performed by the Agent.

## **8. Risk**

- 8.1 If the Consultant retains ownership of the Services nonetheless, all risk for the Services passes to the Client on delivery.
- 8.2 Where the Client expressly requests the Consultant to leave documentation outside the Consultant's premises for collection or to deliver the documentation to an unattended location then such documentation shall be left at the Client's sole risk.

## **9. Title**

- 9.1 The Consultant and the Client agree that ownership of the Services shall not pass until:
- (a) the Client has paid the Consultant all amounts owing for the particular Services, and
  - (b) the Client has met all other obligations due by the Client to the Consultant in respect of all contracts between the Consultant and the Client.
- 9.2 Receipt by the Consultant of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Consultant's ownership or rights in respect of the Services shall continue.
- 9.3 It is further agreed that
- (a) until such time as 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.
  - (b) if the Client fails to return the Services to the Consultant then the Consultant or the Consultant's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Services are situated and take possession of the Services.

## **10. Client's Disclaimer**

- 10.1 The Client hereby disclaims any right to rescind, or cancel the contract with the Consultant or to sue for damages or to claim restitution arising out of any misrepresentation made to the Client by the Consultant and the Client acknowledges that the Services are bought relying solely upon the Client's skill and judgment.

## **11. Errors and Omissions**

- 11.1 The Client shall inspect the Services on delivery and shall within seven (7) days of delivery (time being of the essence) 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. 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, except where the Client has acquired Services as a consumer within the meaning of the Trade Practices Act 1974 (Cwth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Services, or repair of the Services, or replacement of the Services.

## **12. The Commonwealth Trade Practices Act 1974 ("TPA") and Fair Trading Acts ("FTA")**

- 12.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

## **13. Intellectual Property**

- 13.1 Where the Consultant has designed, drawn or written Goods for the Client, then the copyright in those designs and drawings and documents shall remain vested in the Consultant, and shall only be used by the Client at the Consultant's discretion.
- 13.2 Where the Client provides the Consultant any materials including sketches, photographs, drawings, plans or concepts upon which the Consultant is to base the work, the Client shall indemnify and keep indemnified the Consultant at all times against all actions, proceedings, claims, demands, liabilities, either express or implied, and all costs, losses, losses of profit, damages and expenses whatsoever which may be taken against the Consultant or incurred or become payable by the Consultant resulting or arising from any claim or infringement of any patent, registered design, trademark, copyright or any other property interest of a third party which may result out of the use by the Consultant of the materials.
- 13.3 Designs submitted by the Consultant on a speculative basis shall remain the property of the Consultant. They shall not be used for any purpose other than that nominated by the Consultant and no ideas obtained there from may be used without the consent of the Consultant. The Consultant shall be entitled to compensation from the Client for any unauthorised use of such sketches and dummies.
- 13.4 Designs, Drawings or sketches, furnished by the Consultant, dummies, models or the like devices made or manipulated by the Consultant or made from the Consultant's original design, or from a design furnished by the Client, remain the exclusive property of the Consultant unless otherwise agreed upon in writing.
- 13.5 The Consultant shall retain the original designs. The Client is entitled to one set of designs as a record of the Service and shall not be entitled to an electronic copy of the designs.
- 13.6 The Client hereby authorises the Consultant to utilise images of the Goods designed or drawn by the Consultant in advertising, marketing, or competition material by the Consultant.

## **14. Default & Consequences of Default**

- 14.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment.
- 14.2 If the Client defaults in payment of any invoice when due, the Client shall indemnify the Consultant from and against all costs and disbursements incurred by the Consultant in pursuing the debt including legal costs on a solicitor and own client basis and the Consultant's collection agency costs.
- 14.3 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 has exercised its rights under this clause.
- 14.4 If any account remains overdue after seven (7) days then an amount of the greater of one hundred dollars (\$100.00) or two percent (2.00%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 14.5 Without prejudice to the Consultant's other remedies at law the Consultant shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Consultant shall, whether or not due for payment, become immediately payable in the event that:
- any money payable to the Consultant becomes overdue, or in the Consultant's opinion the Client will be unable to meet its payments as they fall due; or
  - 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
  - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

## **15. Security And Charge**

- 15.1 Despite anything to the contrary contained herein or any other rights which the Consultant may have howsoever:
- where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Consultant or the Consultant's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the

Guarantor acknowledge and agree that the Consultant (or the Consultant's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.

- (b) should the Consultant elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify the Consultant from and against all the Consultant's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Consultant or the Consultant's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 15.1.

## 16. Cancellation

- 16.1 The Consultant may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are delivered by giving written notice to the Client. On giving such notice the Consultant shall repay to the Client any sums paid in respect of the Price. The Consultant shall not be liable for any loss or damage whatever arising from such cancellation.
- 16.2 In the event that the Client cancels delivery of Services the Client shall be liable for any loss incurred by the Consultant (including, but not limited to, any loss of profits) up to the time of cancellation, and a cancellation fee of two hundred and fifty dollars (\$250) is charged to the Client.
- 16.3 Cancellation of orders for Goods made to the Client's specifications or non-stocklist items will definitely not be accepted, once production has commenced.

## 17. Privacy Act 1988

- 17.1 The Client and/or the Guarantor/s agree for the Consultant to obtain from a credit reporting agency a credit report containing personal credit information about the Client and Guarantor/s in relation to credit provided by the Consultant.
- 17.2 The Client and/or the Guarantor/s agree that the Consultant may exchange information about the Client and the Guarantor/s with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
  - (a) to assess an application by the Client; and/or
  - (b) to notify other credit providers of a default by the Client; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
  - (d) to assess the credit worthiness of Client and/or Guarantor/s.
- 17.3 The Client consents to the Consultant being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 17.4 The Client agrees that personal credit information 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:
  - (a) provision of Services; and/or
  - (b) marketing of Services by the Consultant, its agents or distributors in relation to the Services; and/or
  - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Services; and/or
  - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
  - (e) 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.
- 17.5 The Consultant may give information about the Client to a credit reporting agency for the following purposes:
  - (a) to obtain a consumer credit report about the Client; and/or
  - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.

## 18. Dispute Resolution

- 18.1 If a dispute arises between the parties to this contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:
  - (a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
  - (b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

## 19. Lien

- 19.1 Where the Client has left any of the Client's documentation with the Consultant for the Consultant to provide any Services in relation to that documentation and the Consultant has not received or been tendered the whole of the Price, or the payment has been dishonoured, the Consultant shall have:
  - (a) a lien on the documentation; and
  - (b) the right to retain the documentation whilst the Consultant is in possession of the documentation until such time as payment has been made in full; and
  - (c) the lien of the Consultant shall continue despite the commencement of proceedings, or judgment for the Price having been obtained; and

(d) the Consultant shall be under no obligation to release the documentation to the Client if the Client is in default of payment except as may be required by any law or statute.

**20. Building Work Contractors Act 1995**

20.1 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Building Work Contractors Act 1995 of South Australia, except to the extent permitted by the Act where applicable.

**21. General**

- 21.1 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.
- 21.2 These terms and conditions and any contract to which they apply shall be governed by the laws of South Australia and are subject to the jurisdiction of the courts of South Australia.
- 21.3 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.
- 21.4 In the event of any breach of this contract by the Consultant the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Services.
- 21.5 The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by the Consultant.
- 21.6 The Consultant may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 21.7 The Consultant reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Consultant notifies the Client of such change.
- 21.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 21.9 The failure by the Consultant to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Consultant's right to subsequently enforce that provision.