



Co-inside P/ L ACN 143 899 432 as Trustee
for Co-inside Trust trading as Duckbuild

nest@duckbuild.com, duckbuild.com
p: +61 3 9682 2214, f: +61 3 9682 2312
133 MARKET ST, STH MELB, VIC, 3205
AUSTRALIA. ABN 41 166 287 198

DUCKBUILD ARCHITECTURAL SERVICES TERMS & CONDITIONS

1. SCOPE

1.1 Project

The Client appoints Duckbuild as the Client's architect for the Project detailed in the Quote Description and in the Architectural Services Agreement (ASA).

1.2 Services

Duckbuild accepts the appointment to perform the Services set out in Quote Tasks and, if provided, the Scope of Services document.

1.3 Term

This agreement will commence on the Commencement Date (ASA Item 2.1) and will continue until the earliest of: the completion of the Services; reaching the Completion Date (ASA Item 2.2); or termination of this agreement in accordance with clause 7.

2. PROVISION OF SERVICES

2.1 Duties

Duckbuild will:

- (a) perform the Services in a proper and professional manner;
- (b) provide documents and information in a timely manner;
- (c) maintain registration with the Architects Registration Board;
- (d) act as the Client's agent as required for the Project and also as independent assessor, valuer and certifier during Contract Administration.

2.2 Limitations

Unless set out otherwise in the Quote Tasks, Duckbuild is entitled to limit:

- (a) the amount of document iterations issued during the Design Schematic and Design Development Stages to 3;
- (b) the Development Approval stage to the first submission to the Responsible Authority, after which point it will convert to an Hourly Fee arrangement until the planning permit has been obtained;
- (c) the amount of hours of meetings, responding to client emails and phone calls for the Design Schematic, Development Approval, Design Development and Contract Documentation stages to 3 hours per stage;
- (d) the amount of hours per week by Duckbuild during the Contract Administration stage to 3 hours;
- (e) the total amount of hours by Duckbuild on each stage to a reasonable amount in relation to the Fees on the Quote and the Hourly Rates on the Architectural Services Agreement.

2.3 Sub-contracting of Services

The Client acknowledges that Duckbuild may engage sub-contractors and/or sub-consultants to carry out or perform part of the Services and in such circumstances will coordinate and integrate the work of such sub-contractors and sub-consultants. The Client will be notified of the engagement of such sub-contractors or sub-consultants if their work constitutes a majority of the Services and if notification does not detract from Duckbuild's commercial advantage.

2.4 Suspension of Services

Duckbuild is entitled to suspend the Services where any payment owing to Duckbuild remains unpaid for more than 14 calendar days from the issue of the invoice or if the Client does not fulfill their obligations under clause 2.5 below.

2.5 Client's Obligations

The Client must:

- (a) work cooperatively with Duckbuild at all times;
- (b) provide Duckbuild with all relevant information required in a timely manner;
- (c) provide Duckbuild with a realistic project completion date and required milestones (Item 2);
- (d) provide Duckbuild with a realistic project budget prior to commencing this agreement; and
- (e) sign-off on designs at the end of the Design Schematic and Design Development Stages.

3. FEES

3.1 Payment of Fees

- (a) The Client agrees to pay Duckbuild the Fees (plus any GST) for the Services on a monthly basis proportional to the work completed or on completion of a stage (at Duckbuild's discretion).
- (b) The Client must pay the Fees within 14 calendar days of receiving each invoice.

3.2 Fee Type

Fees will be established on the following basis, or combination thereof, as indicated in Item 3 of the Architectural Services Agreement:

- (a) Lump sum based on an agreed Project (ASA Item 1.1 & Item 1.2), Services (ASA Item 1.3) and Dates (ASA Item 2). Should the Project, Services or Dates vary Duckbuild is entitled to claim Additional Fees in accordance with clause 3.3, to amend this agreement or negotiate a new agreement.
- (b) Percentage of the final building cost as adjusted through the course of the project excluding GST but including the cost of any approved but later abandoned work.
- (c) Hourly Rates as set out in Item 4 of the Architectural Services Agreement. At annual intervals from the Commencement Date (ASA Item 2.1), Duckbuild is entitled to raise Hourly Rates by 5% per annum.

3.3 Additional Fees

Duckbuild is entitled to Additional Fees, as set out in Item 4 of the Architectural Services Agreement, which will be payable in the same manner as the Fees, in the following circumstances:

- (a) The Project goes beyond the Completion Date and the Client agrees to the continuation of Duckbuild's services; or
- (b) The Client requests Duckbuild to provide services that are in addition to the agreed Project (ASA Item 1.1 & Item 1.2) and Services (ASA Item 1.3).

The Client will be notified by Duckbuild prior to incurring Additional Fees. Client has 3 working days from Duckbuild's notification to object in writing otherwise Duckbuild will proceed to ensure the timely provisions of services.

3.4 Reimbursable Expenses

In addition to payment of the Fees, the Client will pay for, or reimburse Duckbuild for, any out of pocket expenses or disbursements incurred by Duckbuild in carrying out Services for the Client, including but not limited to items listed below. To the extent any individual expense is greater than AUS \$50, Duckbuild will seek approval from the client in advance of incurring the expense.

- (a) Fees, taxes, levies or charges paid to authorities;
- (b) Advertisements or notices;
- (c) Preparation of submissions and attendance at Tribunals;
- (d) Special presentation material, physical models, videos, perspective renderings and montages;
- (e) Fees for consultants;
- (f) Rental of special equipment;
- (g) Photographic records;
- (h) Transfer of computer drawings or original design material;
- (i) Telephone calls other than local;
- (j) Postage, air freight and courier services; and
- (k) Printing.

3.5 Travel

In addition to payment of the Fees, the Client will pay for Duckbuild Travel time if it is more than 30 minutes per day charged at half Hourly Rates for the full travel time.

3.6 Late Payment Charge

A Late Payment Charge will be payable by the Client to Duckbuild at the rate of 1.5% per month compounded monthly (annual equivalent rate of 19.56%) on any part of the Fees (ASA Item 3), Additional Fees (ASA Item 4), Reimbursable Expenses (subclause 3.4), Travel Expenses (subclause 3.5) and any other moneys owed to Duckbuild that remain unpaid by the Client from the date payment is due until the date such amount and any associated costs are received by Duckbuild.

4. INSURANCE

- 4.1 Duckbuild must hold and maintain all necessary insurances in relation to performing the Services as required by law, and will hold and maintain, at a minimum, insurances in relation to public liability and professional indemnity.

5. INTELLECTUAL PROPERTY

- 5.1 Intellectual Property includes without limitation:
- (a) patents, copyright, moral rights, rights in circuit layouts, registered designs, trademarks, service marks, trade names and the right to have confidential information kept confidential; and
 - (b) any application or right to apply for registration of any of those rights.
- 5.2 The Intellectual Property of Duckbuild in existence at the Commencement Date (ASA Item 2.1) or created after the Commencement Date will remain the property of Duckbuild.
- 5.3 Client agrees and acknowledges that Client has no proprietary or other interest in any of the Intellectual Property.
- 5.4 Duckbuild will allow the Client to use the Intellectual Property provided that this licence applies only to the Project for which it was prepared and intended, as identified in the Architectural Services Agreement.
- 5.5 Other than as set out in clause 5.4, the Client must not use any Intellectual Property of Duckbuild for any purpose without the prior written consent of Duckbuild.
- 5.6 Duckbuild is entitled to take photographs of the Project and produce written descriptions of the Project for marketing, publication and awards entries. Client is entitled to withhold their name, address and contact details from being released to the public.

6. LIABILITY

- 6.1 The liability of Duckbuild under this agreement will not exceed, at Duckbuild's option:
- (a) the re-supply of the Services by Duckbuild; or
 - (b) the cost of engaging a third party to supply the Services.
- 6.2 In no event will Duckbuild be liable for indirect, special, incidental or consequential damages including loss of profit or revenues and downtime costs sustained by the Client to the full extent such may be disclaimed by law.

7. TERMINATION

- 7.1 Either party is entitled to terminate this agreement after giving the other party 14 calendar days' notice in writing.
- 7.2 Duckbuild is entitled to provide Services for no more than 8 hours at normal staffing levels with Hourly Rates (ASA Item 4) from the receipt of the notice of termination in order to finalise incomplete work and redeploy staff.
- 7.3 The Client must pay Duckbuild the Fees for finalising work as set out in subclause 7.2 and for work completed at the time of receiving the notice of termination in the same manner as set out in clause 3.
- 7.4 If this agreement is terminated before the completion of the Project and Services as agreed then Duckbuild is entitled to charge an early termination fee of \$200+GST to cover insurances and minor ongoing dealings.
- 7.5 Duckbuild is entitled to renegotiate agreements and fees if the Project goes beyond the latest of the end of the Completion Date (ASA Item 2.2) or 18 months from the Commencement Date (ASA Item 2.1).

8. MISCELLANEOUS

- 8.1 **Assignment**
Subject to Duckbuild's right to sub-contract part of the Services from time to time (subclause 2.3), a party may only assign this agreement or a right or obligation under this agreement with the prior written consent of the other party.
- 8.2 **Severability**
A provision or part of a provision of this agreement that is illegal or unenforceable may be severed from this agreement and the remaining provisions or parts of the provision of this agreement continue in force.
- 8.3 **Waiver**
A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.
- 8.4 **Confidentiality**
Each party must keep the terms of this agreement confidential.
- 8.5 **Governing law and jurisdiction**
This agreement is governed by the law of Victoria and each party irrevocably and unconditionally submits to the non exclusive jurisdiction of the courts and tribunals of Victoria.