

Standard Terms and Conditions of Business

- 1.0 Introduction**
- 1.1 These standard terms and conditions are to be read with our attached fee proposal letter to you. They apply to all services that we perform for you that are described in that letter (called "The Services"). Together, the letter and these terms are called "this agreement". If the two documents are inconsistent, the terms in the engagement letter overrule these standard terms and conditions.
- 1.2 For the purposes of clauses 2-14, "Smith Land Surveyors" includes the Directors, employees and all related entities of Smith Land Surveyors.
- 2. Our Services**
- 2.1 Smith Land Surveyors will provide the services set out in our fee proposal (the "services") and will use all reasonable commercial efforts to provide the services in an efficient and timely manner, using the necessary skill and experience to an appropriate professional standard.
- 3. Your Obligations**
- 3.1 You agree to pay for the services in accordance with this agreement.
- 3.2 You will provide Smith Land Surveyors promptly with such information as may reasonably be required for the proper performance of the services.
- 3.3 Smith Land Surveyors shall be entitled to rely upon the accuracy of all information provided by you, or by others on your behalf, without independently verifying it.
- 3.4 You shall retain responsibility for the use of, or reliance on, advice or recommendations supplied by us in the delivery of the services.
- 3.5 You undertake that, if anything occurs after information is provided by you to Smith Land Surveyors, to render such information untrue, unfair or misleading, you will promptly notify Smith Land Surveyors and, if required by Smith Land Surveyors, take all necessary steps to correct any announcement, communication or document issued which contains, refers to or is based upon, such information.
- 4. Confidentiality and Records**
- 4.1 Both parties acknowledge that they may, in the course of the engagement, be exposed to or acquire information that is proprietary or confidential to the other party. Both parties agree to hold such information in strict confidence, and not to divulge such information except as may be required by law or judicial process, by any persons or bodies responsible for regulating that party's business or as required by a party's internal policies.
- 4.2 Smith Land Surveyors shall be entitled to destroy its file and all documents in relation to the matter after a period of 7 years has elapsed from the date of completion of the matter.
- 5. Benefit of Advice**
- 5.1 Unless otherwise specifically stated in the fee proposal, any advice or opinion relating to the services is provided solely for your benefit and may not be disclosed in any way, including any publications on any electronic media, to any party and is not to be relied upon by any other party.
- 5.2 During the supply of our services, we may supply oral, draft or interim advice, reports or presentations but in such circumstances our written advice or final written report shall take precedence. No reliance should be placed by you on any oral, draft or interim advice, reports or presentations. Where you wish to rely on oral advice or an oral presentation, you shall inform us and we will provide documentary confirmation of the advice.
- 5.3 Smith Land Surveyors shall not be under any obligation in any circumstance to update any advice or report, oral or written, for events occurring after the advice or report has been issued in final form.
- 6. Electronic Mail**
- 6.1 If you ask us to transmit any document to you electronically, you agree to release us from any claim you may have as a result of any unauthorised copying, recording, reading or interference with that document after transmission, for any delay or non-delivery of any document and for any damage caused to your system or any files by the transmission (including by any computer virus).
- 6.2 You may not rely on electronically transmitted advice or opinion unless it is subsequently confirmed by fax or letter signed by an authorised signatory of Smith Land Surveyors.
- 7. Fees, Expenses and Payment Terms**
- 7.1 Any time based fees, quoted in the attached fee proposal or as separately quoted elsewhere will remain in force until 31 December or 30 June (whichever occurs first) and we may increase fees for work continuing past that date. We review our time based fees six monthly.
- 7.2 Disbursements incurred in connection with the engagement will be charged to you.
- 7.3 The consideration payable for any supply made or to be made under this Agreement is exclusive of, any goods and services tax ("GST"), unless otherwise specifically stated.
- 7.4 Accounts are to be paid within 14 days of the billing date. Interest is payable on any outstanding amounts (calculated from the billing date) after 14 days at a rate of 10% p/a. Payment claims are made under (but not limited to) the Building and Construction Industry & Security of Payment Act 2002.
- 7.5 You will be responsible for payment of all legal fees & debt collector's commissions incurred in the event that Smith Land Surveyors is required to take recovery action against you.

8. Problem Resolution

- 8.1 If at any time you would like to discuss with us how our services can be improved or if you have a complaint about them, you are invited to telephone the Director or Company contact, as the case may be, identified in the engagement letter. We will investigate any complaint promptly and do what we can to resolve the difficulties.
- 8.2 If the problem cannot be resolved, the parties agree to enter into mediation, or some other form of alternative dispute resolution, before commencing legal proceedings.
- 8.3 In the event of a dispute, or where fees remain unpaid beyond the due date, we reserve the right to suspend provision of the services until such time as the dispute is resolved or the fees are paid. Suspension of the services will not affect your obligation to pay us for the services rendered to the date of suspension.

9. Termination of Agreement

- 9.1 Each of us may terminate this agreement if:
The other commits any material or persistent breach of its obligations under this agreement (which, in the case of a breach capable of remedy, shall not have been remedied within 14 days or receipt by the party in breach of a notice identifying the breach and requiring its remedy); or
The other becomes insolvent; or
The services are suspended under clause 9.3 for more than 10 normal working days.
- 9.2 Termination must be effected by written notice served on the other.
- 9.3 Termination under this clause shall be without prejudice to any right that may be accrued for either of us before termination and all sums due to us shall become payable in full when termination takes effect.

10. Limitation of Liability

- 10.1 We set out, and you accept, the limitations which apply to our liability to you should you have reason to make a claim against us. The limitations and exclusions are accepted by both of us to be fair and reasonable, given the duties we are undertaking, the sums to which we are entitled and the availability (and cost) of insurance.
- 10.2 Nothing in these terms excludes, restricts or modifies the application of the provisions of any statute (including the Trade Practices Act 1974) where to do so would contravene that statute or cause any part of these terms to be void.
- 10.3 These terms, and engagement letter, are the only communications governing our relationship. Subject to clause 11.2, Smith Land Surveyors will have no liability for any statements, representations, guarantees, conditions or warranties (collectively referred to as "representations") arising from communications (oral or written), which are not expressly contained in this agreement. All representations to exercise reasonable care or render our services with due care and skill which may otherwise be implied by statute, common law or custom are expressly excluded. If any representations are of importance to you, you should ensure that they are expressly set out in the engagement letter before signature.
- 10.4 Subject to clauses 11.2 and 11.6, you agree that Smith Land Surveyors' liability for any loss or damage suffered by you (whether direct, indirect or consequential) in connection with our engagement, including (without limitation) liability for any negligent act or omission or misrepresentation of Smith Land Surveyors, shall be limited to the amount of professional fees paid to Smith Land Surveyors in respect of the services and you agree to release Smith Land Surveyors from all claims arising in connection with the services to the extent that Smith Land Surveyors liability in respect of such claims would exceed the amount of those professional fees.
- 10.5 If Smith Land Surveyors is liable for a breach of any warranty implied by section 74 of the Trade Practices Act 1974 in respect of services not of a kind ordinarily acquired for personal, domestic or household use or consumption, Smith Land Surveyors' liability under that section is limited to the supplying of the services again or the payment of the cost of having the services supplied again, whichever Smith Land Surveyors, in its absolute discretion, elects.
- 10.6 To the extent permitted by law, you agree that to the extent that any loss or damage suffered by you is attributed to negligence, fault or lack of care on your part or on the part of any person for whom you are responsible, Smith Land Surveyors is not liable (in contract, tort or otherwise) for the loss or damage.

11. Indemnities

- 11.1 You agree to indemnify and hold harmless Smith Land Surveyors against any and all losses, claims, costs, expenses, actions, demands, damages, liabilities or any other proceedings, whatsoever incurred by Smith Land Surveyors in respect of any claim by a third party arising from or connected to any breach by you of your obligations under this agreement.
- 11.2 Smith Land Surveyors shall not be liable for any losses, claims, expenses, actions, demands, damages, liabilities or any other proceedings arising out of reliance on any information provided by you or any of your representatives which is false, misleading or incomplete. You agree to indemnify and hold harmless Smith Land Surveyors from any such liabilities we may have to you or any third party as a result of reliance by Smith Land Surveyors on any information provided by you or any of your representatives which is false, misleading or incomplete.
- 11.3 In the event of any inconsistency between clauses 11 and 12, clause 12 shall prevail.

12. Variation

- 12.1 No variation of this Agreement will be valid unless confirmed in writing by authorised signatories of both parties on or after the date of signature of the engagement letter.

13. Directors Guarantee

- 13.1 Where you are signing on behalf of a company the director whose signature appears hereon agrees to accept personal liability for the performance by the company of all the terms of this Agreement (including but not limited to the payment of our invoice).