

Terms and Conditions of Engagement

1. PARTIES

- 1.1. The Supplier: COLLINSON FOGARTY LAWS PTY LTD (ABN 84 168 339 845 / ACN 132 033 160) trading as CFL Building Surveyors / CFL Permits
- 1.2. The customer as referred to in the application.

2. DEFINITIONS

- 2.1. The Supplier is COLLINSON FOGARTY LAWS PTY LTD (ACN 132 033 160) trading as CFL PERMITS.
- 2.2. The Customer is the Owner or the Agent of the Owner and is the person or entity described or referred to in the Application.
- 2.3. The Owner is the registered proprietor of the land at the Premises and is the person or entity ultimately responsible for the payment of the Fee or Fee Adjustment.
- 2.4. The Agent is the person(s), body or organisation who is authorised by the Owner to engage the Supplier and provide instructions and information to the Supplier on behalf of the Owner in relation to the provision of the Services.
- 2.5. The Application shall be defined as:
 - 2.5.1. Any fee proposal, letter of engagement or tender document in relation to the provision of Goods and/or Services which has been provided to the Customer by the Supplier and which has been accepted by the Customer;
 - 2.5.2. Any request for the provision of Goods and/or Services by the Customer which has been accepted by the Supplier.
- 2.6. The Services are professional building surveying, site inspection and consultancy services provided by the Supplier and include the services described or included in any Application which the Supplier has agreed to carry out or perform.
- 2.7. The Goods are the reports, applications, certificates, permits or any other documents provided to the Customer in connection with the Services and include any Goods described or included in any Application which the Supplier has agreed to provide.
- 2.8. The Act refers to the Building Act 1993 (Vic) or other legislative instrument which governs or regulates the provision of Goods and/or Services.
- 2.9. The Premises is the property address or location associated with the provision of the Goods and/or Services.
- 2.10. The Regulations refer to the Building Regulations (2006) (Vic) or other regulations or rules made under Part 2 of the Building Act 1993 from time to time or rules or regulations made under any other legislative instrument which governs or regulates the provision of the Goods and/or Services.
- 2.11. The Fee is the amount or fee referred to in any Application or otherwise the amount invoiced for Goods and/or Services provided.
- 2.12. The Fee Adjustment is defined in Clause 6.
- 2.13. Indirect, Special or Consequential loss or damage includes (a) any loss of income profit or business; (b) any loss of good will or reputation; (c) any loss of value of intellectual property.

3. GENERAL

- 3.1. The agreement is formed by these Terms and Conditions and the Application.
- 3.2. Any Application is deemed to be an Application incorporating these Terms and Conditions. In the event that an inconsistency exists and/or arises it is acknowledged between the parties that these Terms and Conditions will prevail.
- 3.3. No subsequent correspondence or document or discussion shall modify or otherwise vary these Terms and Conditions unless such variation is in writing and signed by the Supplier.
- 3.4. The Terms and Conditions are binding on the Customer, his heirs, assignees, executors, trustees and where applicable, any liquidators, receivers or administrators.
- 3.5. In these Terms and Conditions, the singular shall include the plural, the masculine shall include feminine and neuter, words importing persons shall apply to corporations, heirs, assignees, executors, trustees and where applicable, any liquidators, receivers or administrators.
- 3.6. Where more than one Customer completes this agreement each shall be liable jointly and severally.
- 3.7. 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.
- 3.8. The Supplier may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

Correction of Errors

- 3.9. The Customer authorises the Supplier to correct any typographical, clerical or other error or omission in the Application or other document forming part of the agreement to give effect to the agreement.

Variation to these Terms and Conditions

- 3.10. The Supplier may change these Terms and Conditions for future orders at any time by giving the Customer reasonable written notice.
- 3.11. The Supplier can give the Customer notice by delivering it to the Customer personally or leaving it at, or sending it by post or email to the Customer's home, business, postal or email address last known to the Supplier.
- 3.12. The Customer agrees to notify the Supplier as to any change in personal details that may reasonably impact upon the provision of Goods and Services.

- 3.13. The Customer acknowledges that the Supplier may use these Terms and Conditions on its website and that it may provide notice to the Customer of any amendments. In this event, the Terms and Conditions on the Supplier's website shall apply to any future dealings as between the parties and the Customer is deemed to have notice of any such Terms and Conditions and/or amendments.

Waiver

- 3.14. The failure by the Supplier to enforce any provision of these Terms & Conditions shall not be treated as a waiver of that provision, nor shall it affect the Supplier's right to subsequently enforce that provision.

4. APPLICATION

Placement

- 4.1. The supplier will provide the Goods and Services to the Customer in accordance with the Application, subject to Clauses 4.2, 4.3 and 4.4.
- 4.2. The Supplier reserves the right to accept or decline an application in whole or in part by giving the Customer reasonable notice.
- 4.3. Notwithstanding that the supplier has agreed to provide Goods and Services in connection with an Application, the supplier may at any time prior to the provision of Goods and/or Services terminate the agreement.
- 4.4. Any verbal or written fee proposal or tender in relation to an Application as defined in Clause 2.5.1 shall expire six months after the date it was given or provided to the Customer.

5. PRICE AND PAYMENT

- 5.1. The Customer shall pay the Fee or Fee Adjustment in accordance with the Application and these Terms and Conditions.
- 5.2. Subject to Clause 5.3 and Clause 7, the Customer must pay the Fee or Fee Adjustment within thirty (30) days from the date of issue of a tax invoice in respect of the provision of Goods and/or Services.
- 5.3. The Supplier reserves the right to refuse to supply the Goods to the Customer until such time as the Supplier receives the Fee or Fee Adjustment in cleared funds.
- 5.4. The Customer is required to pay the Fee or Fee Adjustment associated with a site inspection prior to or at the time of the inspection.
 - 5.4.1. Frame inspections for multiple dwellings may be charged per dwelling inspected.
 - 5.4.2. Projects located outside of Melbourne Metropolitan area (including the Mornington Peninsula) and multiple unit inspections, may incur an additional inspection fee if consultant building inspectors are required.
 - 5.4.3. The Customer will be required to pay any same day cancellation fees.
- 5.5. Time for payment of the Supplier's tax invoice shall be of the essence.
- 5.6. As part of the ongoing, ordinary course of business, prices may be reviewed annually and adjusted.

Cheques

- 5.7. If any cheque issued by the Customer or by any third party in payment of the Fee or Fee Adjustment is dishonoured:
 - 5.7.1. The supplier may refuse to supply any further Goods and Services until payment is received in full, including bank fees.
 - 5.7.2. The Supplier is entitled to treat the dishonour of the Customer's cheque as a repudiation of this agreement and may elect to terminate or affirm this agreement, and in each case to claim and recover compensation for loss or damage suffered.
 - 5.7.3. The Customer may be liable for a dishonoured cheque fee of \$40.00.

Credit Cards

- 5.8. The Customer acknowledges and agrees that a service fee equivalent to 1.5% of the Fee or Fee Adjustment as applicable will be charged for all payments made using a credit card.

6. FEE ADJUSTMENT

- 6.1. A fee adjustment may be required where:
 - 6.1.1. The Act or Regulations necessitate a change to the project, building works, the Goods and/or Services;
 - 6.1.2. There is a need for further, additional or different Goods and/or Services (e.g. additional reports, permits and/or inspections);
 - 6.1.3. There is a change to taxes, levies, statutory duties, or other charges, fees or duties.
- 6.2. If a Fee Adjustment is required, the Supplier shall inform the Customer within a reasonable time.
- 6.3. If additional or further work is required in relation to the Application, the Supplier shall obtain the Customer's verbal or written approval.

7. CREDIT FACILITY

- 7.1. Credit will only be granted at the sole discretion of the Supplier and upon submission of a completed Credit Application Form.
- 7.2. Any credit granted may be revised by the Supplier at any time and at its absolute discretion.
- 7.3. The Supplier reserves the right to withdraw any credit facility if the customer breaches these Terms and Conditions or ceases trading or is subject to a



- judgment or order which is not satisfied within fourteen (14) days or is the subject of a Bankruptcy Notice or Statutory Demand.
- 7.4. The Customer agrees that upon such withdrawal, any and all monies owing shall become immediately due and payable.
- 7.5. In the event that a credit facility has been granted, payments are due within thirty (30) days from the end of the month the date of tax invoice unless stated otherwise in the Credit Application Form or otherwise agreed to by the Supplier in writing.
- 8. GOODS AND SERVICES TAX (GST)**
- 8.1. GST refers to Goods and Services tax under the *Goods and Services Act 1999 ("GST Act")* and terms used herein have the meanings contained within the *GST Act*.
- 8.2. It is hereby agreed between the Customer and the Supplier that the consideration for the Supplier in this agreement is exclusive of the Supplier's liability of GST.
- 8.3. On provision of the Goods and Services:
- 8.3.1. The Customer will pay to the Supplier, in addition to the total Fee, the amount payable by the Supplier of GST;
- 8.3.2. The supplier shall deliver to the Customer a Tax invoice which complies with the *GST Act and Regulations*.
- 9. PROVISION OF SERVICES**
- 9.1. The Supplier will provide the Services during such hours and on such days as it considers necessary and appropriate to ensure compliance with its obligations under this agreement, the Act and the Regulations.
- 9.2. The Customer shall ensure that the Supplier, its servants and agents have full and safe access to the Premises and to any prerequisite equipment, materials or documentation. The Supplier reserves the right to charge the applicable Fee or Fee adjustment to the Customer until such access has been provided.
- 9.3. Unless specified by the Supplier to the contrary in the Application, the Supplier does not warrant that it will be capable of providing the Services at specific times requested by the Customer during the term of this agreement.
- 9.4. In the discharge of its duties, the Supplier shall comply with all reasonable resolutions, regulations and directions of the Customer that may lawfully be given from time to time as the nature and scope of the Services provided.
- 9.5. Nothing in the above clause shall effect the Supplier's right to exercise its own judgment and discretion as to its most appropriate and effective manner of providing the Service and in order to achieve compliance with the said resolutions, regulations and directions or otherwise with its obligations under this agreement, the Act and the Regulations.
- 9.6. The supplier may, upon request of the Customer, agree to provide additional Services not included or specifically excluded in the Application. In the event that additional services are provided (i.e., additional inspections), the supplier shall be entitled to make a Fee Adjustment.
- 10. DELIVERY OF GOODS**
- 10.1. Delivery of the Goods shall be deemed to take place when the Goods are collected by the Customer, or are delivered to the Customer and:
- 10.1.1. The customer receives the Goods; or
- 10.1.2. A person apparently over the age of sixteen (16) receives the Goods.
- 10.2. The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Customer fails to take delivery of the Goods as arranged, then the Supplier shall be entitled at its discretion to terminate the agreement and/or to make a Fee Adjustment for redelivery.
- 10.3. The Supplier will not be liable for any delay or failure to deliver by any freight company or delivery service to deliver the Goods to the Customer or any consequential loss or damage arising in respect of the late delivery of the Goods.
- 11. RISK AND LIABILITY**
- 11.1. Any response times or delivery dates stated in an Application for the provision of Goods and/or Services are approximate. The Supplier shall not be liable for any direct, indirect or consequential loss or damage arising from its failure to meet the stated service response times.
- 11.2. The Supplier shall not be liable for loss or damage, fault, failure due to any:
- 11.2.1. External causes including, but not limited to, accident, abuse or misuse;
- 11.2.2. Services and/or Goods and/or information, documentation or specifications performed or provided by a third party;
- 11.2.3. Acts of God including, but not limited to, fire, flood, war or other like occurrences.
- Force Majeure**
- 11.3. If the Supplier's ability to perform its obligation is adversely affected by any cause beyond the Supplier's control, the Supplier may terminate the agreement by giving the Customer verbal or written notice.
- 12. THE CUSTOMER'S OBLIGATIONS**
- 12.1. If the Supplier has been appointed as the relevant building surveyor under the Act and/or the Regulations, the Customer acknowledges and agrees that it has continuing obligations under the Act and/or the Regulations.
- 12.2. The Customer warrants that the Customer is the Owner of the Premises and/or is an Agent of the Owner of the Premise who is duly authorised to engage the Supplier on behalf of the Owner. The Agent shall produce written authority of the Owner if requested by the Supplier.
- 12.3. The Customer must not appoint another building surveyor during the period that the Supplier is nominated as the relevant building surveyor under the Act and/or Regulations. Contravention of this clause may result in the imposition of penalties under the Acts and the Regulations.
- 12.4. The Customer is responsible for obtaining any planning permit and shall provide a copy of same to the Supplier as required. The Supplier shall not issue any building permit or certificate until such time as it receives the planning permit and approved planning permit drawings.
- 12.5. The Customer must give written notice to the Supplier in respect of each building practitioner engaged by the Customer to perform the building works associated with this agreement and the Application.
- 13. WARRANTY**
- General**
- 13.1. To the extent permitted by law, damages for breaches of warranties implied by law are limited to the replacement of the Goods or the resupply of services, at the discretion and election of the Supplier.
- 13.2. If the Customer is in default of any payment to the Supplier after a request in writing has been made, all warranties shall cease and the Supplier shall thereafter in no circumstances be liable under the terms of any warranty.
- Warranty for Goods and Services**
- 13.3. The Supplier warrants that the goods and services provided under this Agreement shall be provided and/or produced using reasonable skill and care of and of a quality conforming to generally accepted industry standards and practices in compliance with the Act and the Regulations.
- 13.4. The Supplier warrants that if any defect in any Goods or Services provided by the Supplier becomes apparent and is reported to the Supplier within seven (7) days of the provision of the Goods and Services (time being of the essence) then the Supplier will (at the Supplier's sole discretion) remedy the defective Goods and/or Services.
- 13.5. The Supplier shall be under no liability in respect of any defect in the Goods and/or Services where the defect arises from information, documentation or specifications that have been produced or provided to the Supplier by a third party.
- 14. Default**
- 14.1. If the Supplier does not receive the outstanding balance for the Goods on or before the due date as stipulated on the tax invoice(s), the Supplier may issue the Customer a final demand letter.
- 14.2. Without prejudice to any other rights of the Supplier, the Customer may be charged interest calculate at the penalty interest rate pursuant to the Penalty Interest Rate Act 1983 (Vic) plus two (2) percent on the outstanding balance from time to time.
- 14.3. If the Supplier does not receive the outstanding balance for the Goods and/or Services by the due date stipulated on the tax invoice or by the due date stipulated in the final demand letter ("Default Date"), the Supplier may without prejudice to any other remedy it may have, forward the Customer's outstanding account to a debt collection agency for further action. The Customer acknowledges and agrees that:
- 14.3.1. After the Default Date, the outstanding Balance shall include, but not limited to, all applicable fees and charges under this agreement;
- 14.3.2. The Supplier may incur commission costs charged by the debt recovery agency on the Aggregate Sum (as defined below) at an applicable rate agreed between the Supplier and the debt recovery agency ("Commission Rate");
- 14.3.3. The Customer will be responsible for payment of the aggregate of the Outstanding Balance on the Customer's account and all commission costs incurred by the Supplier ("Aggregate Sum"), the intention of the parties being that the Supplier will receive the whole outstanding balance after the deduction of commission costs and other expenses;
- 14.3.4. The Aggregate Sum will be calculated as follows:
$$\text{Aggregate Sum} = \frac{\text{Outstanding Balance}}{(1 - \text{Commission Rate})}$$
- 14.3.5. The Aggregate Sum may be referred to a debt collection agency for further action;
- 14.3.6. The Aggregate Sum will be payable as a liquidated debt on demand.
- 14.4. The Customer is also responsible for all expenses in relation to the collection of the Aggregate Sum including, but not limited to, all charges and fees, legal costs on an indemnity basis, and disbursements.
- 15. TERMINATION AND CANCELLATION**
- Cancellation by the Supplier**
- 15.1. The Supplier may terminate this agreement or cancel, suspend or delay delivery of Goods and/or the provision of Services at any time before the Goods are delivered or Services performed by giving written or verbal notice to the Customer. Upon giving such notice the Supplier shall repay to the Customer any sums paid in respect of the Fee or Fee Adjustment.
- 15.2. The Customer acknowledges that in the event of any breach of this Agreement/Application by the Supplier including, the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Fee. The Supplier shall not be liable for any consequential loss or damage whatever arising from such cancellation.
- 15.3. Without prejudice to the Supplier's other remedies at law, the Supplier shall be entitled to immediately terminate the agreement without notice to the Customer in the following circumstances:
- 15.3.1. The Customer fails to perform any of its obligations under the agreement;



- 15.3.2. The Customer 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;
 - 15.3.3. The Customer dies, becomes incapacitated or indicates (by words or by conduct) that it is about to cease to carry on business;
 - 15.3.4. A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 15.4. If the agreement is terminated because of the Customer's default or pursuant to Clause 15.3, any money due to the Supplier shall become immediately due and payable as a liquidated debt.

Cancellation by Customer

- 15.5. Without affecting the Supplier's rights to seek other remedies and without limiting the Customer's obligations arising from the Application, the Supplier may at its discretion accept a Customer's request for cancellation provided that the Customer:
- 15.5.1. Requests cancellation within three (3) days from the date of the Application;
 - 15.5.2. Agrees to incur a cancellation fee in the sum of ten percent (10%) of the Fee and to pay any costs or disbursements that have been incurred by the Supplier on behalf of the Customer provided that the Application has not yet been assessed. If assessment has occurred then the fees in 15.6.1 are payable.
- 15.6. In the event that the Customer otherwise terminates the agreement (by words or conduct) or where the Application does not proceed for any other reason, the Customer shall be required to pay:
- 15.6.1. A sum equal to the fee less inspection costs with respect to the Building Permit; and
 - 15.6.2. Any costs or disbursements incurred by the Supplier on behalf of the Customer.
- 15.7. If the Supplier has been appointed as the relevant building surveyor for the purposes of the Act or the Regulations, the Customer must obtain the written consent of the Building Commission before the appointment of the Supplier as the relevant building surveyor can be terminated. On termination, the Supplier shall be entitled to recover all fees and disbursements incurred up to the date of termination.

16. PRIVACY ACT 1988

- 16.1. The Customer and/or the Guarantor/s agree for the Supplier to obtain from a credit reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by the Supplier.
- 16.2. The Customer and/or the Guarantor/s agree that the Supplier may exchange information about the Customer and the Guarantor/s with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- 16.2.1. To assess an application by Customer;
 - 16.2.2. To notify other credit providers of a default by the Customer;
 - 16.2.3. To exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers;
 - 16.2.4. To assess the credit worthiness of Customer and/or Guarantor/s.
- 16.3. The Customer consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 16.4. The Customer agrees that personal credit information provided may be used and retained by the Supplier for the following purposes and for other purposes as shall be agreed between the Customer and Supplier or required by law from time to time:
- 16.4.1. Provision of Goods and/or Services;
 - 16.4.2. Marketing of Goods by the Supplier, its agents or distributors in relation to the Goods;
 - 16.4.3. Analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to provision of Goods and/or Services;
 - 16.4.4. Processing of any payment instructions, direct debit facilities and/or credit facilities requested by Customer;
 - 16.4.5. Enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods and/or Services.
- 16.5. The Supplier may give information about the Customer to a credit reporting agency for the following purposes:
- 16.5.1. To obtain a consumer credit report about the Customer;
 - 16.5.2. Allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.

17. SET-OFF

- 17.1. The Customer shall have no right of set-off in any suit, claim or proceeding brought by the Supplier against the Customer for default in payment.
- 17.2. The Customer acknowledges that the Supplier can produce this clause in bar of any proceeding for set-off.

18. INSURANCE

- 18.1. The Customer is responsible to effect whatever insurance cover he requires at his own expense.

19. JURISDICTION

- 19.1. This agreement is deemed to be made in the State of Victoria and all disputes hereunder shall be determined by the appropriate courts in Victoria.

20. ENTIRE AGREEMENT

- 20.1. The conditions set out in this agreement constitute the whole agreement made between the Customer and the Supplier.
- 20.2. This agreement can only be amended in writing signed by each of the parties.
- 20.3. All prior discussions and negotiations are merged within this document and the Supplier expressly waives all prior representations made by him or on his behalf that are in conflict with any clauses in this document in any way.
- 20.4. Nothing in these Terms and Conditions is intended to have the effect of contravening any applicable provisions of the Commonwealth Trade Practices Act 1974 or the Fair Trading Acts in each of the States and Territories of Australia.