



TERMS & CONDITIONS

1.0 DEFINITIONS AND INTERPRETATION

1.1 In this document, unless the context indicates a contrary intention:

- (a) **Agreement** means these terms and conditions, the Fee Proposal, and Fee Schedule.
- (b) **Client** means the person or entity that appoints TDQS to provide the Services in accordance with the fee proposal and these terms.
- (c) **Confidential Information** includes any information marked as confidential and any information received or developed by either party during the term of this Agreement, which is not publicly available and relates to processes, equipment and techniques used by either party in the course of their business including all information, data, drawings, specifications, documentation, source or object code, designs, construction, workings, functions, features and performance notes, techniques, concepts not reduced to material form, agreements with third parties, schematics and proposals and intentions, technical data and marketing information such as customer lists, financial information and business plans.
- (d) **Facilities** means working space, air-conditioning, computer equipment, access to the internet and the Clients' computer network, telecommunications system etc, and includes not only access to such resources but also use of them to the extent required by TDQS in order to perform the Services.
- (e) **Fees** means TDQS' professional fees set out in the Fee Proposal or any our quotation for the providing the Services or as otherwise agreed between the parties from time to time.
- (f) **Fee Proposal** means TDQS' proposal of fees for the Services to be provided to the Client.
- (g) **Fee Schedule** means TDQS's schedule of fees and its associated fees listed in the Fee Proposal or quotation.
- (h) **Force Majeure Event** means any occurrence or omission as a direct or indirect result of which the party relying on it is prevented from or delayed in performing any of its obligations under this Agreement and which is beyond the reasonable control of that party and could not have been prevented or mitigated by reasonable diligence or precautionary measures, including forces of nature, natural disasters, acts of terrorism, riots, revolution, civil commotion, epidemic, industrial action and action or inaction by a government agency.
- (i) **GST** means a tax imposed under GST Law.
- (j) **GST LAW** means the same as in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- (k) **Intellectual Property** includes trademarks, patents, copyrights, processes know-how, registered

designs or other like rights or any right to apply for registration of any of the former or Confidential Information.

- (l) **Parties** means a reference to a person includes a natural person, corporation, partnership and any other organisation or legal entity.
- (m) **Privacy Policy** means TDQS' privacy policy found on TDQS' website from time to time.
- (n) **Reports** means the report(s) prepared by TDQS including but not limited to a tax depreciation report, a capital allowances report and a reinstatement cost assessment report.
- (o) **Services** means the services supplied by TDQS to the Client as outlined in the Fee Proposal.
- (p) **Site** means the Client's premises or any other location TDQS is required to attend to complete the Services.
- (q) **TDQS** means TDQS Pty Ltd ACN 97 606 069 363 and its directors, officers, personnel, agents and staff.
- (r) The singular includes the plural and vice versa.

2.0 APPOINTMENT AND SCOPE OF WORK

2.1 The parties agree that upon receipt of an instruction to proceed from the Client either verbally or via email or any other form of correspondence, the Client is deemed to have accepted the terms and conditions of this Agreement.

2.2 TDQS will:

- 2.2.1 provide the Services in accordance with the scope of work written in the Fee Proposal;
- 2.2.2 perform the Services with reasonable skill, care and diligence; and
- 2.2.3 be responsible for preparing and providing the Reports to the Client on completion of the Services.

2.3 TDQS shall comply with the Australian Standard AS4121 Code of ethics and procedures for the selection of consultants and the National Code of Conduct for the Construction Industry as current as at the date of this Agreement, to the extent that they are applicable and consistent with this Agreement.

2.4 The Client is responsible for providing TDQS with all necessary documents, instructions and other information required in a timely manner to enable TDQS to perform the Services in accordance with this Agreement. All information supplied to TDQS shall be fit for the purpose of the instruction given.



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- 2.5 Unless otherwise agreed between the Parties, the Client must supply a reasonable number of copies of all documents required to TDQS to perform the Services under this Agreement, free of charge. Unless otherwise agreed in writing, all documents must be supplied in digital format.
- 2.6 The Client may give further instruction and order variations in relation to the Services. TDQS, at their sole direction, may accept any such reasonable instruction or variations and the Client agrees that it must pay TDQS in accordance with clause 3.0 for any further instruction accepted or variations agreed to by TDQS.
- 2.7 All oral or written instruction, drawing, specification or other document given by the Client's representative or lead consultant will be deemed to have been given by the Client.
- 2.8 TDQS will not be responsible to the Client for any error, omission, discrepancy or other defect in any Report or instruction provided to TDQS (unless caused by TDQS' negligent act or omission). Any extra work required to rectify or overcome errors, omissions or discrepancies in Reports provided to TDQS, or to comply with an instruction will be charged at hourly rates and shall be added to any amounts otherwise due TDQS.
- 3.0 PROFESSIONAL FEES AND TERMS OF PAYMENT**
- 3.1 In consideration for providing the Services, the Client must pay TDQS the Fees set out in the Fee Proposal together with all disbursements, which include but are not limited to travelling, telephone, facsimile, copying, printing and courier charges for the performance of the Services, unless otherwise agreed.
- 3.2 TDQS will provide the Client with a tax invoice in accordance with the GST Law in relation to remuneration payable under this clause 3.
- 3.3 Payment of any tax invoice must be made by the Client to TDQS within 7 days following receipt of TDQS' invoice or as otherwise stated in the Fee Proposal. When making a payment the Client must quote relevant reference numbers and the invoice number. TDQS may require payment of the invoice(s) prior to release of the Reports to the Client details of which will be as stated in the Fee Proposal.
- 3.4 If the Client does not make a payment by the date stated in an invoice or as otherwise provided for in the Agreement, TDQS is entitled to:
- 3.4.1 charge interest on the outstanding amount at the rate of 6% per year, accruing daily;
- 3.4.2 withhold the provision of the Reports;
- 3.4.3 require the Client to pay, in advance, for any Services (or any part of the Services) which have not yet been performed; and
- 3.4.4 not to perform any further Services (or any part of the Services).
- 3.5 The Client agrees that it is responsible for:
- 3.5.1 verifying any links received purporting to be from TDQS. TDQS will not be responsible for any links in emails and attachments accessed by the Client. TDQS does not provide any warranty with respect to any such links in emails, attachments provided to the Client by any means (including, but not limited to, Facebook, Twitter, LinkedIn etc.); and
- 3.5.2 ensuring that TDQS' correct bank account details are verified (including comparison with bank account details used in previous payments to TDQS) prior to any payment processed. In case of any discrepancy, the Client must notify TDQS within 5 business days of receipt of any invoice or statement issued by TDQS. Any error in respect of payment to TDQS due to failure to comply with this clause shall not release the Client from your obligation to pay TDQS.
- 3.6 Should the scope of Services be varied in accordance with clause 2.6 and such variation results in:
- 3.6.1 additional Services (including as a result of or in connection with delay beyond control of TDQS), the Client must pay TDQS for the additional fees calculated according to TDQS' standard hourly rates together with all of its expenses relating to the extra Services; or
- 3.6.2 a reduction to the scope of Services, then the Fee Schedule will no longer apply and the Client will pay TDQS the Fees for the Services completed under this Agreement to the date of the agreed variation, calculated according to TDQS' standard hourly rates together with all of its expenses, unless otherwise agreed in writing by TDQS. The Client agrees that it may be required to pay an amount to TDQS for any other costs it may have incurred in completing the reduced portion of the Services, including the cost of demobilising, retrenching staff and other costs resulting directly from the reduction in scope.
- 3.7 If any phases of the Services fail to proceed, and the phases are separately priced, the Client agrees to

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pay TDQS for completed phases of the Services, together with any other costs it may have incurred in contemplation of completing the work, the cost of demobilising, retrenching staff and other costs resulting directly from the failure to proceed.

- 3.8 If the Services (or a stage of the Services) is delayed beyond the agreed date for completion for any reason beyond the control of TDQS, the Client agrees that it will, in addition to the Fees and expenses payable under clause 3.1, pay TDQS the amount of any increase in its costs and any loss incurred as a result of the delay based on TDQS' Fee Schedule.
- 3.9 In the event of the termination of this Agreement for any reason (prior to the completion of the Services) the Client agrees that it will pay TDQS its Fees for all of the work performed under this Agreement calculated according to hourly rates together with all of its expenses, unless otherwise agreed by TDQS.
- 3.10 Where TDQS' fees are to be calculated according to hourly rates, they will be calculated by reference to TDQS's time records for the Services and at the rates stated in the Fee Schedule. Nominated hourly rates are fixed for the duration of the contract.
- 3.11 Where no rates are stated or where the contract duration is extended beyond the initial contract period as outlined in the Fee Proposal, the current rates customarily charged by TDQS for each employee engaged in the Services shall apply.
- 3.12 If TDQS requires security for its fees before commencing work, the Client shall provide security for an agreed sum in the form of an unconditional bank guarantee, director's personal guarantees or other form of security nominated in the Fee Proposal.

4.0 CLIENT'S OBLIGATIONS

- 4.1 During the performance of the Services, the Client will:
 - 4.1.1 cooperate with TDQS as TDQS reasonably requires;
 - 4.1.2 provide the information and documentation that TDQS reasonably requires;
 - 4.1.3 ensure that any Site accessed by TDQS complies with all law and requirements including workplace health and safety;
 - 4.1.4 make available to TDQS the Site and Facilities as TDQS reasonably requires; and
 - 4.1.5 ensure that the Client's staff and agents cooperate with and assist TDQS.
- 4.2 The Client will not charge for TDQS' use of the Site or the Facilities made available by the Client.
- 4.3 If the Client does not provide access to the Site or the Facilities that TDQS reasonably requires (and

within the time period) to perform the Services, any additional costs and expenses which are reasonably incurred by TDQS will be paid by the Client.

5.0 DELIVERY TIMEFRAME AND PROVISION OF REPORTS

- 5.1 The Parties will agree on the time and place for the performance of the Services at the Site(s).
- 5.2 TDQS will start providing the Services on the date specified in the Fee Proposal.
- 5.3 TDQS shall use its best endeavours to perform the Services in accordance with any program or schedule date set out in the Fee Proposal or such other date as the Parties may agree.
- 5.4 If events beyond the control of TDQS result in delay to any schedule agreed for the performance of any part of the Services, TDQS will be entitled to a reasonable extension of the date for completion of that part of the Services.
- 5.5 TDQS must notify the Client within 7 days of the cause of any delay becoming evident to it and must advise the Client in writing of the nature, extent and expected duration of the delay.
- 5.6 Unless otherwise agreed between the Parties:
 - 5.6.1 the Client will be entitled to 1 copy of any Report provided by TDQS;
 - 5.6.2 subject to clause 7, the Client will be entitled to use any Reports for the Client's own internal business purposes;
 - 5.6.3 the Client will not be entitled to publish any Reports (or sell or make the reports available to third parties), or allow any other person to do so; and
 - 5.6.4 unless expressly agreed otherwise in writing, all Intellectual Property rights in the Reports (or in any other material created or prepared by TDQS in performing the Services, whether or not provided to the Client) will belong to TDQS.

6.0 INTELLECTUAL PROPERTY

- 6.1 The Parties agree that, other than as expressly provided in this clause, nothing in this agreement transfers or grants to any party any right, title or interest in or to any Intellectual Property in existence prior to the commencement of this Agreement.
- 6.2 The Client acknowledges and agrees that the ownership of all Intellectual Property rights in respect of any Reports or the provision of the

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Services by TDQS to the Client is vested in, and will vest in, TDQS.

6.3 The Client acknowledges and agrees that TDQS (or its associated entities or persons) owns all Intellectual Property created by TDQS in connection with the Services and the Reports, that now exists or that later comes into existence.

6.4 TDQS grants to the Client an exclusive, perpetual, fully paid-up, irrevocable, worldwide licence to use the Reports for the sole purpose of enabling the Client to derive full benefit from its acquisition of the Reports.

6.5 The Client must not provide any documents or computer files prepared by TDQS to any third party for use in any prospectus, sales or promotional material or for any purpose other than that described in this Agreement without the express written consent of TDQS, which consent shall not be unreasonable withheld.

7.0 TERMINATION

7.1 The Client may terminate this Agreement:

7.1.1 if TDQS commits a material breach of this Agreement and the breach has not commenced action to remedy the breach within 14 days after receipt from the Client of a written notice specifying the breach and requiring it to be remedied: or

7.1.2 by providing TDQS 30 days' written notice of the Client's intention to terminate.

7.2 TDQS may terminate this Agreement:

7.2.1 if it has not received instructions from the Client within 7 days of giving a written request to the Client for instructions: or

7.2.2 if the Client has committed a material breach of this Agreement and has not commenced action to remedy the breach within 7 days after receipt from TDQS of a written notice specifying the breach and requiring it to be remedied; or

7.2.3 by 30 days' written notice of its intention to terminate.

7.3 Despite anything in this Agreement to the contrary, either party may terminate this Agreement upon the happening of any of the following events:

7.3.1 if the other party enters into a deed of arrangement or an order is made for it to be wound up;

7.3.2 if an administrator, receiver or receiver/manager or a liquidator is appointed to the Client pursuant to the Corporations Act 2001 (Cth) (Corporations Act); or

7.3.3 if the other party would be presumed to be insolvent by a court in any of the circumstances referred to in the Corporations Act.

7.4 If TDQS's services are terminated for any reason, the client must pay TDQS for the Services provided to the date of termination and otherwise in accordance with clause 3 where applicable and reimburse TDQS for any reasonable costs in resulting from the termination, including costs reasonably incurred in anticipation of completing the commission.

8.0 LIMITATION OF LIABILITY AND INDEMNITY

8.1 Each of the Parties acknowledge that, in entering into this Agreement, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in this Agreement. Any conditions, warranties or other terms implied by statute or common law are excluded from this Agreement to the fullest extent permitted by law.

8.2 To the extent permitted by law, TDQS gives no warranties or representations that the Services or the Reports will be fit for a particular purpose, up to date, accurate, error free, complete or will achieve a particular outcome.

8.3 Without limiting the generality of clause 8.2, except where this Agreement provides otherwise, TDQS's total liability for any claim for loss, damage or expense incurred or suffered by the Client, whether arising under or in connection with or incidental to this Agreement, including the performance or non-performance of TDQS's obligations under this Agreement or anything incidental to it, and whether by way of indemnity, by statute, in tort (for negligence or otherwise), contract or on any other basis in law or in equity will be limited to the total Fees paid by the Client for the Services provided by TDQS to the Client under this Agreement preceding the date on which the loss, damage or expense arose.

8.4 If despite the limitation of liability under this clause 8, TDQS is liable to the Client or a third party, TDQS' liability for failure to comply with a Consumer Guarantee (a guarantee applicable to the supply of

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goods or services which is incorporated into this Agreement pursuant to division 1 part 3-2 of the Australian Consumer Law) is limited to the re-supply of the Services or the total Fees paid by the Client under this Agreement.

- 8.5 Despite any other provision in this Agreement, TDQS will not be liable for any consequential, indirect or special loss, such as loss of profits or revenue, loss of business opportunity, loss of production or loss of goodwill, suffered by the Client whether arising under or in connection with or incidental to this Agreement, including the performance or non-performance of its obligations under this Agreement or anything incidental to it, and whether by way of indemnity, by statute (to the extent that it is possible to limit such liability), in tort (for negligence or otherwise), or on any other basis in law or in equity.
- 8.6 TDQS does not assume any responsibility to any third party or undertake to discharge any duty or responsibility of the Client to any third party by performing the Services or providing any Reports to the Client.
- 8.7 TDQS assumes no responsibility in respect of, and is not liable for any error, omission, discrepancy or defect in any materials, documents, information or instructions provided by the Client or the Client's personnel to TDQS under clause 2.5. The Client must pay TDQS at the standard rates for the performance of any additional Services by TDQS due to any such error, omission, discrepancy or defect in the materials, documents, information or instructions.
- 8.8 The Client indemnifies TDQS from and against any and all loss, damage or expense directly or indirectly arising from or in connection with any breach of this Agreement by the Client or any unlawful, negligent or willfully wrong act or omission by the Client or the Client's personnel.

9.0 CONFIDENTIALITY AND PRIVACY

- 9.1 A party which receives Confidential Information from the other party must keep the other party's Confidential Information confidential and not deal with it in any way that might prejudice its confidentiality.
- 9.2 Each party's obligations in relation to the Confidential Information will continue for as long as the Confidential Information is maintained on a confidential basis by the disclosing party.
- 9.3 A party must not disclose any Confidential Information of the other party to any person without prior written consent of the other party except its employees or consultants professional advisers who are carrying out the work and/or required by an applicable law, including the rules of any relevant

stock exchange, after first consulting with the other Party about the form and content of the disclosure and must use its best endeavours to ensure all permitted disclosures are kept confidential.

- 9.4 Each party must take all reasonable steps to ensure that its employees, consultants and professional advisers do not publicise or disclose the other party's confidential information.
- 9.5 This clause 9 does not apply to information which:
- 9.5.1 is or becomes public knowledge other than by a breach of this Agreement;
 - 9.5.2 a party already possesses at the time the other party discloses the information to it;
 - 9.5.3 a party acquires from a third party entitled to disclose that information.
- 9.6 On termination of this Agreement:
- 9.6.1 all Confidential Information must be returned to the disclosing party, including all copies of the Confidential Information or any extracts or summaries of the Confidential Information that the receiving party makes and any software that the receiving party creates based on the Confidential Information; and
 - 9.6.2 the receiving party must erase and destroy any copies of any software containing or comprising the Confidential Information in its possession or under its control or that may have been loaded onto a computer possessed or controlled by it.
- 9.7 By using the Services, the Client agrees to the Privacy Policy and consents for TDQS to collect, handle and disclose the Client's Personal Information as necessary to provide the Services.

10.0 DISPUTE OR DIFFERENCE

- 10.1 Any dispute or difference in relation to this Agreement shall not be referred to any court or arbitration proceedings in the first instance.
- 10.2 A party who is claiming a dispute must give written notice to the other party specifying the nature of the dispute.
- 10.3 If the dispute cannot be resolved then it shall be referred to mediation within 30 days after the notice is received. The mediator will be selected by agreement between the parties who will bear the costs of the mediation equally. In the event that the parties cannot agree on a mediator, a mediator shall be nominated by Chapter President of the Australian Institute of Quantity Surveyors in the State or Territory where the work is being carried out.
- 10.4 If the dispute or difference or any part of it is not resolved within 30 days of the mediation conference,



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the unresolved issues will be submitted immediately to arbitration in accordance with and subject to The Institute of Arbitrators Australia Expedited Rules for the Conduct of Commercial Arbitration.

in performance of this agreement which result from a Force Majeure Event.

11.0 ASSIGNMENT AND DISCLOSURE

- 11.1 The Client must not assign or transfer this agreement without the written consent of TDQS, which consent will not be unreasonably withheld.
- 11.2 TDQS may assign its rights or sub-contract its obligations under this agreement without the written consent of the Client.
- 11.3 Neither Party shall disclose contract material to any third parties without written consent of the other parties.

12.0 NOTICES

- 12.1 Any notice to be given under this Agreement may be given in writing addressed to the party at the address specified at the commencement of this Agreement or at its last known business address or, if the party is a company, at its registered office or sent by email to the email address of the addressee.
- 12.2 Any such notice shall be deemed to have been received at the on third business-working day after the date of posting or if sent by email then it shall be deemed to be received an hour after being sent.

13.0 APPLICABLE LAW AND JURISDICTION

- 13.1 The law governing this Agreement will be the law of the State or Territory in which the Services are performed by TDQS and the parties submit to the non-exclusive jurisdiction of the courts in that State or Territory.

14.0 TAX

- 14.1 All fees are exclusive of Government taxes introduced or levied after the date of this agreement. New government taxes and charges shall be added to invoice amounts.
- 14.2 All fees are exclusive of Goods and Services Tax (GST). The amount of any GST shall be added to invoice amounts.

15.0 FORCE MAJEURE

- 15.1 Neither party has any liability under or be deemed to be in breach of this agreement for any delays or failures in performance of this agreement which result from a Force Majeure Event.
- 15.2 The party has any liability under or be deemed to be in breach of this agreement for any delays or failures in performance of this agreement which result from a Force Majeure Event.
- 15.3 If party has any liability under or be deemed to be in breach of this agreement for any delays or failures

16.0 GENERAL

- 16.1 This Agreement constitutes the sole and entire agreement between the parties with regard to its subject matter and supersedes any replaces any prior oral agreements, warranty, representation, guarantee or other term or condition of any nature between them relating to such subject matter.
- 16.2 The rights, duties and remedies granted or imposed under the provisions of this Agreement operate to the extent not excluded by law.
- 16.3 A right or remedy created by this Agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.
- 16.4 Nothing in this Agreement constitutes or will be deemed to constitute a partnership between the parties or the appointment of one party as the agent of the other, or the employment of one party by the other. Other than as expressly provided in this Agreement, no party has the authority or power to bind the other or to contract in the name of, and create a liability against, the other in any way or for any purpose.
- 16.5 TDQS is permitted to use other persons such as subcontractors to provide some or all of the Services.
- 16.6 This Agreement may only be amended in writing signed by duly authorised representatives of the Parties.
- 16.7 Clauses 1.0, 3.0, 5.0, 6.0 7.0, 8.0, 9.0, 10.0, 12.0, 13.0, 14.0 and 16.0 survive termination or expiry of this Agreement.

Signature: _____

Name: _____

Date: _____

Position: _____

Company: _____