

PARTNERED BUSINESS SOLUTIONS PTY LTD T/A MaC Consultants (Terms and Conditions)

OPERATIVE PROVISIONS

1 Definitions and interpretation

1.1 Definitions

In this agreement unless the context indicates otherwise, the following words have the following meanings.

" **MaC CONSULTANTS**" shall mean PARTNERED BUSINESS SOLUTIONS PTY LTD t/a MaC Consultants (ACN 625 285 805)

"**Customer**" shall mean any person, partnership, company, trust, body or other entity incorporated or unincorporated

"**Works**" shall mean the provision of building services by way of (insofar as necessary) advice, design, construction, installation and supply of Materials

"**Materials**" shall mean all goods and items required to complete the Works

"**Parties**" shall mean MaC CONSULTANTS and the Customer, and **Party** means either one of them

"**Payment claim**" shall mean as set out in clause 3 below

"**Price**" shall mean the monetary sum payable by the Customer to MaC CONSULTANTS for the Works.

"**Purchase Order**" shall mean a written request for the Works delivered by the Customer (either by hand, email, fax or post) to MaC CONSULTANTS.

GST Law means the same as in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

1.2 Interpretation

In this agreement unless the context otherwise requires:

- (a) words importing any gender include every gender;
- (b) words importing the singular number include the plural number and vice versa;
- (c) words importing persons include firms, companies and corporations and vice versa;
- (d) reference in any schedule to this agreement to numbered paragraphs relate to the numbered paragraphs of that schedule;
- (e) the headings to the clauses and schedules of this agreement are not to affect the interpretation;
- (f) any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
- (g) the word "including" (and related forms including "includes") means "including without limitation".

Commencement of the Works

1.3 Works commence upon acceptance of a quote.

2 Variations

- 2.1 In the event that the Customer requests any variation to the Works it shall be made in writing.
- 2.2 In the event that MaC CONSULTANTS requests a variation, MaC CONSULTANTS will, in writing;
- (a) state the reason for the variation.
 - (b) provide a full description of the variation.
 - (c) state any effect the variation will have on the Price, completion date and whether further permits or authorisations are required.
- 2.3 Other than for the events outlined in clause 2.4 below, MaC CONSULTANTS shall obtain acceptance by the Customer of any variation submitted by MaC CONSULTANTS Services before it undertakes to perform the variation works.
- 2.4 In the event of:
- (a) a problem on or with the site that was not reasonably obvious upon prior inspection of the site but was discovered when undertaking the Work and which MaC CONSULTANTS considers should be rectified for the safe completion of the Work; or
 - (b) MaC CONSULTANTS is instructed to undertake extra works by any person authorised by the local, state or federal government,
- then MaC CONSULTANTS may carry out such extra work referred to in 2.4(a) or 2.4(b) above and the Customer agrees to pay MaC CONSULTANTS for such extra work as a variation, provided that if the Price for such extra work is not agreed by the Parties, then the Customer shall pay MaC CONSULTANTS the actual cost of the extra work plus twenty percent (20%).
- 2.5 MaC CONSULTANTS reserves the right to give notice to the Customer at any time up to seven (7) days before commencement of the Work of an increase in the Price for the Work (such increase to reflect any increase in the cost of labour, materials and other manufacturing costs which were ordinarily beyond the reasonable control of MaC CONSULTANTS, for instance due to foreign exchange fluctuations, taxes and duties, provisions of any Acts,

By-Law, Order or Regulation of any parliament or local authority enacted after the date of this agreement between the Customer and MaC CONSULTANTS and such price increase is payable by the Customer.

3 Price & Payment Claims

- 3.1 After request by the Customer, MaC CONSULTANTS shall quote the Price for the Works to the Customer.
- 3.2 Such quoted Price shall be open for acceptance (subject to the terms of this agreement) by the Customer for a period of thirty (30) days unless another acceptance date is specified by MaC CONSULTANTS at the time of quotation. Acceptance of the quoted Price by the Customer must be notified in writing to MaC CONSULTANTS.
- 3.3 At MaC CONSULTANTS's sole discretion a deposit may be required to be paid.
- 3.4 MaC CONSULTANTS may submit a payment claim at intervals equaling 25% of the works. 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, and the value of materials delivered to the site but not installed.
- 3.5 A payment claim is a claim for a progress payment which is made under the *Building and Construction Industry Security of Payment Act 2002 (the SOP Act)*.
- 3.6 Time for payment for the Works shall be of the essence and will be stated on the payment claim. If no time is stated then payment shall be due 7 days following the date of the payment claim.
- 3.7 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 Customer and MaC CONSULTANTS.
- 3.8 The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in the contract schedule.
- 3.9 Upon receipt of a payment claim the Customer must pay MaC CONSULTANTS the claimed amount when it's due.
- 3.10 The Customer agrees the SOP Act applies to this agreement and to the Works (unless this agreement is for Works for domestic building work and the Customer is not in the business of building residences).
- 3.11 MaC CONSULTANTS will serve the payment claim on the Customer with the periods set out in this agreement or as set out in the SOP Act (defined as 'reference date').
- 3.12 The Customer agrees MaC CONSULTANTS may make payment claims on the following;
 - (a) for progress payment claims – at intervals of 25% of completed works or final outstanding quoted work completed;
 - (b) for subsequent payment claims for works to the value of \$10,000 being 50% deposit and final payment claim of 50% upon completion of works.

(c) for single or one-off payment claims – the day after the Work was completed.

3.13 The Customer and MaC CONSULTANTS agree the payment claims shall contain the following information:

(a) identify the Works, including any variations, to which the payment claim relates;

(b) state the amount of money that MaC CONSULTANTS claims to be paid;

(c) include the following statement: ***This is a payment claim under the Building and Construction Industry Security of Payment Act 2002.***

3.14 The Customer and MaC CONSULTANTS agree a payment claim may be served on the Customer by delivery in person, or by delivery at the Customer's ordinary place of business during business hours, or by post to the Customer's ordinary place of business, or by fax, or by electronic mail (email) sent to the Customer's email address.

4 Projects under \$10,000 (including GST)

4.1 For Works where the Price quoted is less than \$10,000 (including GST), payment will be split into two payments being 50% prior to commencement of works and the remaining balance upon completion. Unless otherwise agreed to or instructed by MaC CONSULTANTS all extras throughout the project are to be paid in full at the next progress payment claim.

5 Projects with a value greater than \$10,000 (including GST)

5.1 Projects with a value greater than \$10,000 (including GST) will be split into the following payments:

(a) 15 % initial deposit;

(b) 25% after 25% of the works are completed;

(c) 25% after 50% of the works are completed;

(d) 25% after 75% of the works are completed;

(e) 10 % after completion of the Work.

5.2 All extra work and variations (if any) throughout the project is to be paid in full at the next progress payment claim unless otherwise stated or agreed to by MaC CONSULTANTS.

6 Delivery of works

6.1 Subject to clause 6.2 it is MaC CONSULTANTS responsibility to ensure that the Works start as soon as reasonably possible.

6.2 The Works commencement date will be put back and the building period extended by whatever time is reasonable in the event that MaC CONSULTANTS claims an extension of time (by giving the Customer written notice) where

completion is delayed by an event beyond MaC CONSULTANTS control, including but not limited to any failure by the Customer to:

- (a) make a selection; or
- (b) have the site ready for the commencement of works; or
- (c) notify MaC CONSULTANTS that the site is ready.

6.3 The Works shall be deemed to be completed when the building work has been performed in accordance with the specifications set out in the scope of work and or quotation; and

6.4 The failure of MaC CONSULTANTS to deliver the Works shall not entitle either party to treat this agreement as repudiated.

6.5 The Customer agrees that MaC CONSULTANTS shall not be liable for any loss or damage whatever due to failure by MaC CONSULTANTS to deliver the Works or any part of the Works on time or at all.

7 Customer's Responsibility

7.1 It is the intention of MaC CONSULTANTS and agreed by the Customer that;

- (a) any building/construction sites will comply with all Victorian occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation; and
- (b) MaC CONSULTANTS is responsible for the removal of rubbish from or clean-up of building / construction works undertaken by MaC Consultants.
- (c) MaC Consultants are not responsible for the removal of rubbish from or clean-up of the building/construction site/s which was not a result of works undertaken by MaC Consultants. This is the responsibility of the Customer.

8 Risk

8.1 Notwithstanding the fact that ownership of all Materials remains with MaC CONSULTANTS until payment for such has been made in full, all risk in and for the Materials passes to the Customer upon completion of the Works.

9 Surplus Materials

9.1 Unless otherwise stated elsewhere in this agreement:

- (a) only suitable new Materials will be used;
- (b) Materials which MaC CONSULTANTS brings to the site which are surplus remain the property of MaC CONSULTANTS.

10 Title

- 10.1 It is the intention of MaC CONSULTANTS and agreed by the Customer that ownership of Materials shall not pass until:
- (a) the Customer has paid all amounts owing for the particular Materials, and
 - (b) the Customer has met all other obligations due by the Customer to MaC CONSULTANTS in respect of all contracts between MaC CONSULTANTS and the Customer.
- 10.2 Receipt by MaC CONSULTANTS 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 MaC CONSULTANTS ownership or rights in respect of Materials shall continue.
- 10.3 It is further agreed that:
- (a) where practicable the Materials shall be kept separate and identifiable until MaC CONSULTANTS shall have received payment and all other obligations of the Customer are met; and
 - (b) until such time as ownership of the Materials shall pass from MaC CONSULTANTS to the Customer, MaC CONSULTANTS may give notice in writing to the Customer to return the Materials or any of them to MaC CONSULTANTS. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Materials shall cease; and
 - (c) MaC CONSULTANTS shall have the right of stopping the Materials in transit whether or not delivery has been made; and
 - (d) if the Customer fails to return the Materials to MaC CONSULTANTS then MaC CONSULTANTS or MaC CONSULTANTS agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises as the invitee of the Customer, where the Materials are situated and take possession of the Materials.

11 Defects

- 11.1 The Customer shall inspect the Works within fourteen (14) days of receiving notification that the Works have been completed (time being of the essence) and the Customer shall notify MaC CONSULTANTS of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote as per the scope of works.
- 11.2 The Customer shall afford MaC CONSULTANTS an opportunity to inspect the Works within a reasonable time following such notification by the Customer if it believes the Works are defective in any way.
- 11.3 If the Customer shall fail to comply with these provisions, the Customer agrees the Works shall be deemed to be free from any defect or damage.

11.4 For defective Works which MaC CONSULTANTS has agreed in writing that the Customer is entitled to reject, the Customer agrees that at MaC CONSULTANTS's sole discretion MaC CONSULTANTS's liability is limited to either replacing the Works or repairing the Works.

12 Returns

12.1 MaC CONSULTANTS may (in its discretion) accept the return of Materials for credit but this may incur a handling fee of ten percent (10%) of the value of the returned Materials plus any freight.

13 Warranty

13.1 To the extent required by statute subject to the conditions of warranty set out in clause 13.2, MaC CONSULTANTS warrants that if any defect in any workmanship of MaC CONSULTANTS becomes apparent and is reported to MaC CONSULTANTS within twelve (12) months of the date of delivery (time being of the essence) then MaC CONSULTANTS will either (at MaC CONSULTANTS 's sole discretion) replace or remedy the workmanship.

13.2 The conditions applicable to the warranty given by clause 13.1 are:

- (a) The warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) Failure on the part of the Customer to properly maintain any Works; or
 - (ii) Failure on the part of the Customer to follow any instructions or guidelines provided by MaC CONSULTANTS; or
 - (iii) Any use of any Works otherwise than for any application specified on a quote or purchase order form; or
 - (iv) The continued use of any Works after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) Fair wear and tear, any accident or act of God.
- (b) The warranty shall cease and MaC CONSULTANTS shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without MaC CONSULTANTS 's consent.
- (c) In respect of all claims MaC CONSULTANTS shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.
- (d) For Material not manufactured by MaC CONSULTANTS the warranty shall be the current warranty provided by the manufacturer of the Material. MaC CONSULTANTS shall be under no liability whatsoever except for the express conditions as detailed and stipulated in the manufacturer's warranty.

14 Competition and Consumer Act 2010, Building Act 1993, and Fair Trading Acts

14.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Competition and Consumer Act 2010 (Cth), Building Act 1993 (Vic), or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

15 Default & Consequences of Default

15.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgement.

15.2 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify MaC CONSULTANTS from and against all costs and disbursements incurred by MaC CONSULTANTS in pursuing the debt including legal costs on a solicitor and own client basis and MaC CONSULTANTS 's collection agency costs.

15.3 Without prejudice to any other remedies MaC CONSULTANTS may have, if at any time the Customer is in breach of any obligation (including those relating to payment) MaC CONSULTANTS may suspend or terminate the supply of Works to the Customer under the Building and Construction Industry Security of Payments Act 2002 (Vic). The Customer agrees MaC CONSULTANTS will not be liable to the Customer for any loss or damage the Customer suffers because MaC CONSULTANTS exercised its rights under this clause.

15.4 If any account remains overdue after thirty (30) days then an amount of the greater of \$20.00 or 10.00% of the amount overdue (up to a maximum of \$200) shall be levied for administration fees which sum shall become immediately due and payable.

15.5 Without prejudice to MaC CONSULTANTS other remedies at law MaC CONSULTANTS shall be entitled to cancel all or any part of any works undertaken for the Customer which remains unperformed and all amounts owing to MaC CONSULTANTS shall, whether or not due for payment, become immediately payable in the event that:

- (a) any money payable to MaC CONSULTANTS becomes overdue, or in MaC CONSULTANTS opinion the Customer will be unable to meet its payments as they fall due; or
- (b) 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; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

16 Termination

16.1 MaC CONSULTANTS may Terminate any contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are delivered by giving written notice to the Customer. On giving such notice MaC CONSULTANTS shall repay to the Customer any sums paid in respect of the Price. MaC

CONSULTANTS shall not be liable for any loss or damage whatever arising from such cancellation.

- 16.2 In the event that the Customer cancels delivery of Works the Customer shall be liable for any loss incurred by MaC CONSULTANTS (including, but not limited to, any loss of profits) up to the time of cancellation.

17 Privacy Act 1988

- 17.1 The Customer consents to MaC CONSULTANTS being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

18 General

- 18.1 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.
- 18.2 This agreement shall be governed by the laws of Victoria and are subject to the jurisdiction of the courts of Victoria.
- 18.3 MaC CONSULTANTS shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by MaC CONSULTANTS of these terms and conditions.
- 18.4 The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by MaC CONSULTANTS.
- 18.5 MaC CONSULTANTS may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 18.6 MaC CONSULTANTS 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 MaC CONSULTANTS notifies the Customer of such change.
- 18.7 Neither party shall be liable for any default due to any act of God, war, terrorism, fire, flood, drought, storm or other event beyond the reasonable control of either party.

19 Do and Charge Rates

- 20.1 For small scale Works undertaken on a 'do and charge' reasonable value basis, the following charge out rates apply:
- 1) Day rate (7:00am – 5:00pm) \$90 (plus GST) per hour;
 - 2) Out of hours, weekends and public holidays rate (5:00pm – 7:00am): premium call out fee \$240 (plus GST) for the first thirty minutes, plus hourly rate of \$190 per hour (plus GST), minimum of two hours including travel time.

20 Acceptance

- 20.1 Acceptance of the quotation shall constitute acceptance of the terms and conditions contained herein and will continue to apply to all quotations provided by the Customer and for the duration of the relationship between MaC CONSULTANTS and the Customer.

- 20.2 Where more than one Customer has entered into this agreement, each Customer shall be jointly and severally liable for the Price and for all other obligations under this agreement.
- 20.3 These terms and conditions may only be varied in writing by the parties.
- 20.4 None of MaC CONSULTANTS 's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of MaC CONSULTANTS in writing, and MaC CONSULTANTS is not bound by any such unauthorised statements or representations.