

Lee Tyers Building Surveyors – Terms and Conditions

1. PAYMENT

The Fee amount in the Fee Proposal, save for any Additional Charges, is payable by the Client on engagement or forthwith after engagement.

At the election of the Building Surveyor the Fee amount in the Fee Proposal, save for any Additional Charges, may be requested by the Client prior to the issue of the Certificate of Likely Compliance

Any charges or fees levied by authorities and other third parties required to be paid by the Building Surveyor in relation to carrying out statutory functions under the *Building Act 2016* (the Act) at or in relation to the Client's' property, are to be prepaid by the Client on production of invoice or reimbursed at cost plus administration fee of 10%, in addition to the Fee agreed for the provision of the Services.

Additional Charges must be paid by the Client immediately on production of estimate /quote or otherwise within invoice terms at the election of the Building Surveyor.

If any invoice is produced by the Building Surveyor to the Client, payment shall be made within 14 days of issue of an invoice, by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Client and the Building Surveyor.

All amounts expressed or determined to be payable under this Agreement are calculated and will be determined inclusive of GST unless otherwise expressly stated that GST is excluded.

2. CLIENT AUTHORITY

The Client warrants that the Client is the owner of the land at the project address referred to or that the Client is the duly authorised agent of the said owner. If required by the Building Surveyor, the Client will produce written authority of the owner of the land to authorise the Client to act on behalf of the owner.

3. APPOINTMENTS AS BUILDING SURVEYOR AND WARRANTY AND INDEMNITY

It is an offence pursuant to Section 35 of the Act to appoint a person as a building surveyor if another building surveyor has already been appointed or otherwise authorised for the project. The client warrants that no other building surveyor has been appointed (or has otherwise commenced duties) in relation to the project referred to in the Agreement.

The owner warrants:

- (a) the accuracy and completeness of all information given to the Building Surveyor;
- (b) that the Building Surveyor when carrying out the Services acts with the owner's authority;
- (c) that no other person has been appointed as the RBS for the subject property.; and

The Client shall indemnify the Building Surveyor against any claims made against the Building Surveyor in relation to performing its statutory functions under then Act.

4. ENTIRE AGREEMENT AND NO REPRESENTATIONS

These conditions of engagement, the Fee proposal and the Commercial Services Form constitute the entire agreement between the Building Surveyor and the Client (*the Agreement*) and no reliance may be placed by the Client upon any oral discussions or representations made prior to or at the time of signing this Agreement. The Client will make no claim or demand in relation to any such representations either at common law or alleged breach of the Australian Consumer Law.

If there is any inconsistency between the Fee Proposal and the Terms and Conditions, the Fee Proposal overrides the provisions of the Agreement to the extent of the inconsistency.

5. ADDITIONAL SERVICES

Where the Client requests additional services from the Building Surveyor, that are not included in the original scope of services, the Building Surveyor shall not be obliged to proceed with such additional work until a revised Fee Proposal or fee variation is in place (which may be waived by the absolute discretion of the Building Surveyor). In the event that additional inspections or other work is required by:

- (a) The Client; or
- (b) The scope of the mandatory services specified in this Agreement changes for any reason whatsoever; and/or
- (c) The Act making it necessary or desirable that such further work to complete the obligations and functions of the Building Surveyor be undertaken, the Building Surveyor shall be entitled to deliver an estimate or an invoice to the Client for such additional work. The amount of such fees, where relevant, shall be calculated in accordance with the Fee Proposal and payment shall be duly made within 14 days of issue of the additional invoice or on estimate as governed by Clause 1.

Even if not requested by the Client, the following would at least amount to additional services:

- (a) Obtaining additional information and documents from a Council and other authority;
- (b) Carrying out additional inspections of the subject property;
- (c) Reporting any matters to the CBOS or other authority;
- (d) Responding to any requests for information from the CBOS or other authority including but not limited to a council, the RMPAT;
- (e) Issuing any Notices or Orders under the Building Act 2016 and the Regulations;
- (f) Preparation or Certification of performance based solutions pursuant to the Building Code of Australia;
- (g) Independent certification of structural and services designs. Issue of a Certificate of Compliance the design consultant would find acceptable for this project;
- (h) Fire Engineer's fees and independent peer review related to any alternative solutions under the performance provisions of the BCA (if required);
- (i) Fire authority fees & consultancy involved with seeking variations to fire service matters;
- (j) Protection Notice Determinations;
- (k) Attendances at appeals (e.g. Protection of adjoining properties etc.);
- (l) Staged Permits for building works other than any nominated within the scope of works;
- (m) Design amendments assessed after the issue of the initial building permit;
- (n) Disbursements other than those specifically included in the Fee Proposal.

The Client shall pay for these Additional Services as Additional Charges in accordance with Clause 1.

6. CLIENT TO NOTIFY RELEVANT BUILDING SURVEYOR OF OTHER BUILDING PRACTITIONERS and PROVIDE INFORMATION

The Client must give written notice to the Building Surveyor of each accredited building practitioner engaged for the building work referred to in this Agreement, including copies of any building practitioner certificate issued.

7. TERMINATION OF BUILDING WORK

Pursuant to Section 36 of the Act, the Client cannot remove the Building Surveyor from their engagement without the consent of the Director of Building Control.

Pursuant to Section 37 of the Act, the Building Surveyor cannot terminate this Agreement without the consent of the Director of Building Control.

Should the Director of Building Control grant the required consent under Section 36 of the Act, the Client must notify the Building Surveyor by written notice. When this written notice is issued, the appointment of the Building Surveyor shall be deemed to be terminated.

Should the Director of Building Control grant the required consent under Sections 36 or 37 of the Act and notwithstanding any other provision of this Agreement, the Client must pay the Building Surveyor any portion of the Fee and disbursements incurred to the date of termination (which are unpaid at that time) within 14 days of the termination of this Agreement.

Termination of this Agreement under this clause does not affect any accrued rights or remedies of either party.

8. THE ROLE OF THE BUILDING SURVEYOR AND CLIENT AND OBLIGATIONS OF THE CLIENT

The Certificate of Likely Compliance will be an assessment of the drawings for *likely compliance* with the Act and not the serviceability, quality or functionality of the work.

The appointment of the Building Surveyor is limited to ensuring the work carried out likely complies with the requirements of the Act that are applicable from time to time.

The Building Surveyor is responsible for the carrying out of inspections that will be listed on the Certificate of Likely Compliance.

The client is responsible to ensure that the Building Surveyor is given adequate notification for inspection and shall ensure that works do not continue beyond the notification stage until the inspection is approved.

Where the location of the Building Surveyor's work is not under the Building Surveyor's control (including the land at the project address), the Client must provide reasonable access to allow the Building Surveyor to fulfil its obligations.

The Client shall, at its own cost, as soon as practicable make available, and continue to make available to the Building Surveyor all information, documents and other particulars relating to the Client's requirement for the project as is necessary for the Building Surveyor to carry out the services as expressly set out in this Agreement.

The Building Surveyor is entitled to rely on such information, documents and other particulars as are provided by the Client pursuant to or in connection with this Agreement as complete.

The owner hereby acknowledges his/her/its ongoing obligations pursuant to the Building Act 2016 and the Regulations including but are not limited to:

- (a) providing the Building Surveyor with unfettered access to the subject property;
- (b) not obstructing the Building Surveyor in carrying out its functions;
- (c) not provide the Building Surveyor with any information which may be misleading or deceptive;
- (d) advising the Building Surveyor:

(i) of any changes in relation to the engagement of a Building Practitioner or an insured architect within 14 days of such change;

(ii) of any change to the owner's address;

(iii) if building work cease on the subject property;

(iv) if the subject property is transferred to a new owner; and

- (e) ensuring the building work the subject of any building permit issued by the Building Surveyor are carried out in accordance with the building permit, directions of the Building Surveyor, the Building Act 2016 and the Regulations.
- (f) to make application for and obtain required occupancy permit, certificate of final inspection, report and consent or other permits or approvals deemed by the Building Surveyor to be necessary to the carrying out of the functions.

9. PURPOSE OF INSPECTION

Inspections carried out will be the minimum required to ensure likely compliance with the Act and not supervision of all the work. It is the responsibility of the *builder* to construct the building work fully in accordance with the approved permit documents. Amendments must be approved by the Building Surveyor prior to construction and those amendments that require further document survey and assessment and/or approval will incur an additional fee pursuant to clause 5 of this Agreement.

10. BUILDING NOTICES & ORDERS

Building notices and building orders are formal documents issued pursuant to the Act when breaches and non-compliances are identified for the purpose of securing compliance with the permit documents and other relevant provisions of the Act. Building notices and building orders are required to be served as a matter of course for significant areas of non-compliance or where safety is or may be compromised. In the case of routine rectification works an inspection direction or letter will normally be sent to the Client and/or builder as applicable and in the event of a non-response within the appropriate time a formal notice or order will be served and further fees will be payable as per clause 5 of this Agreement. The issue of any building notice or building order is not included in the Fee.

11. LIMITATION OF LIABILITY

The Client agrees to the maximum extent permitted by law that:

- (a) Subject to paragraphs (b), (c) and (d) below, the Building Surveyor's liability to the Client arising out of or in connection with this Agreement (including the performance or non-performance of the Services), whether under the law of contract, in tort, in equity, under statute or otherwise, shall be limited in aggregate to \$300,000.
- (b) The Building Surveyor is not liable to the Client in respect of any indirect, consequential or special losses (including loss of profit, loss of business opportunity and payment of liquidated sums or damages under any other agreement).
- (c) The Building Surveyor shall be deemed to have been discharged from all liability in respect of the Services whether under contract, in tort, in equity, under statute or otherwise, on the expiration of 3 years from the completion of the Services.
- (d) If, and to the extent that, any of this clause is void as a result of the Australian Consumer Law, then the Building Surveyor's liability for a breach of a condition or warranty is limited to the supplying of the relevant Services again or the payment of the cost of having the Services supplied again.

12. LEVEL OF SERVICE

The Building Surveyor shall provide the Services with such skill, care and diligence as is generally exercised by competent members of the building surveying profession performing services of a similar nature, at the time the Services are provided.

13. FORCE MAJEURE

The Building Surveyor is not liable or in breach of this Agreement for any delays or failures in performance of this Agreement which result from circumstances beyond the reasonable control of the Building Surveyor.

If such circumstances continue for a continuous period of more than 60 days, either party may terminate this Agreement by written notice to the other party.

14. INTELLECTUAL PROPERTY

All intellectual property created by the Building Surveyor before the date of this Agreement or during the term of this Agreement remains the Building Surveyor's.

The Client grants the Building Surveyor an unrestricted, royalty free licence to use and manipulate all Intellectual Property Rights in any information, documents and other particulars which the Client provides to the Building Surveyor to the extent reasonably necessary for the Building Surveyor to perform the Services.

15. DISPUTE RESOLUTION

If there is any dispute the parties are to confer to attempt to resolve the issue within 7 days.

16. NOTICES

A notice required or permitted to be given by one party to the other under this Agreement must be in writing, signed by the party giving it or their duly appointed solicitor, and is deemed as being duly given if:

- (a) personally delivered to that party;
- (b) sent by pre paid post, addressed to the other party; or
- (c) transmitted by email, to the other party's email address.

A notice given to a party in accordance with this clause 16 is deemed to have been duly given and received:

- (a) at the time of delivery;
- (b) on the second Business Day after the day on which it is posted; and
- (c) on the day of transmission, where the person giving the notice has received no indication in any form that the notice has not been received, however if such delivery is later than 4.00pm or not on a Business Day, at 9.00am on the next Business Day.

The address of a party is the address or number set out in this Agreement or another address which that party may from time to time give notice of to the other party.

17. CONFIDENTIALTY

Each party agrees that it will not use Confidential Information in any way that might prejudice its confidentiality.

The Confidential Information does not include information which:

- (a) is generally available in the public domain otherwise than as a result of a breach of this Agreement; or
- (b) was known by the recipient party prior to the disclosing of the information to it.

Despite this clause, either party may make such disclosures in relation to this Agreement as is reasonably necessary:

- (a) to its professional advisers upon those persons undertaking to keep confidential any information disclosed; or
- (b) to comply with any applicable law or the requirement of any regulatory body.

18. MISCELLANEOUS

18.1 Governing Law

This Agreement is governed by the laws of Tasmania, and the parties submit to the non-exclusive jurisdiction of the courts of Tasmania.

18.2 Variation

This Agreement may not be varied or amended except in writing signed by the parties.

18.3 Severance

If any provision of this Agreement is or becomes legally ineffective, under common law or legislation, the ineffective provision may be severed from this Agreement which otherwise continues to be valid and operational. The parties will agree on an arrangement having a legal and economic effect which will be as similar as possible to the ineffective provision.

18.4 Relationship

This Agreement does not create a relationship of employment, agency or partnership between the parties.

19. DEFINITIONS

Additional Services include:

Building Act means the Building Act 2016 (Tas) and includes any regulations made from time to time.

Building Surveyor means Lee Tyers Building Surveyor and includes any corporate entity that causes the provision of Services through its

Business Day means a day which is not a Saturday, Sunday or public holiday in Hobart, Tasmania.

Certificate of Likely Compliance has the same meaning as defined in the Building Act.

Client means the client described in the Fee Proposal and includes an owner of a property or any person or entity that stands to benefit from the Services or is authorised by the owner to instruct the Building Surveyor in respect of the property

Confidential Information means any documentation or information of a confidential nature supplied by either party to the other in connection with this Agreement and includes all data, technical, manufacturing, performance, sales, financial, commercial, contractual, or marketing information possessed by a party.

Director of Building Control means the person appointed as the director of building control pursuant to the Building Act.

Fee means the fee payable for the Services pursuant to the Fee Proposal and includes any additional fees, levies costs and expenses incurred by the Building Surveyor from any other third party (the included items are **Additional Charges**)

Fee Proposal means the form attached to this Agreement which outlines, among other things, the Services and the fee.

Intellectual Property Rights includes property and rights in respect of or in connection with trademarks, patents, copyrights, processes know-how, registered designs or other like rights or any right to apply for registration of any of the former.

Services means the works to be carried out by the Building Surveyor for the Client pursuant to the Fee Proposal.