

TERMS AND CONDITIONS**1. ACCEPTANCE**

1.1 Parties: These Terms are between Hill Built Joinery Pty Ltd (ABN 13 650 866 452), its successors and assignees (referred to as “**we**” and “**us**”) and you, the person, organisation or entity described in the Quote (referred to as “**you**”). These Terms apply to all Services provided by us to you.

1.2 Acceptance: You have requested the Services set out in the Quote. You accept these Terms by:

- (a) signing and returning the Quote;
- (b) confirming by email or verbally that you accept the Quote;
- (c) accepting the Quote online;
- (d) instructing us to proceed with the Services; or
- (e) making part or full payment for the Services.

1.3 You agree that these Terms form the agreement under which we will supply Services to you. Please read these Terms carefully. Please contact us if you have any questions. Purchasing Services from us indicates that you have had sufficient opportunity to read these Terms and contact us if needed, that you have read, accepted and will comply with these Terms.

1.4 Deposit: If the Quote indicates that we require a Deposit, we will not commence performing the Services until you have paid the Deposit or the first instalment of our Fee.

1.5 Cancellation: You can only terminate this Agreement in accordance with clause 5.1(b) and clause 11. Cancellation may result in any Deposit or Fees being forfeited at our sole discretion.

2. SERVICES

2.1 We agree to perform the Services with due care and skill.

2.2 We reserve the right to refuse any request that we deem inappropriate, unreasonable or illegal.

2.3 We may provide the Services to you using our employees, contractors and third party

providers, and they are included in these Terms.

2.4 When you engage third parties that are neither our employees nor contractors we have directly appointed, their services or products fall under your oversight. We bear no liability for the outcomes or quality of the services or products provided by these independent third parties.

2.5 Where any manuals or drawings are required in order for you to enjoy or use the Services or as a legal requirement we will provide these to you as a hard copy and or electronic form in our discretion and for no additional fee. Where you require additional copies or replacement copies we may charge additional fees for the provision of such additional or replacement manuals or drawings.

3. PRICE, INVOICING AND PAYMENT

3.1 You agree to pay us the amounts set out in our Quote, including any Deposit required. All amounts are stated in Australian dollars (AUD). Payment may be made by way of payment methods as set out in our Quote when purchasing our Services.

3.2 You agree to pay our Invoices by the due date. If you do not pay by the due date, we may cease to provide the Services to you until we receive payment.

3.3 We may charge interest at a rate equal to the Reserve Bank of Australia’s cash rate from time to time plus 8% per annum, calculated daily and compounding monthly, on any amounts unpaid after the due date.

3.4 If invoices are unpaid after the due date, we have the right to engage debt collection services for the collection of unpaid and undisputed debts, and the right to commence legal proceedings for any outstanding amounts owed to us.

3.5 We reserve the right to report bad debts to independent credit data agencies.

3.6 You agree to pay the Hourly Rate Fees. The Hourly Rate Fees will be charged at the rate set out in the Quote for any unanticipated work that is outside of the original scope of Services and required to complete the Services.

4. VARIATIONS

4.1 If the Quote states that the Fees and Expenses are an estimate only, you acknowledge that the final Fees and Expenses may be more or less

than the estimated amounts. We will endeavour to inform you of any material variation as it becomes apparent.

- 4.2 The Fee and Services can only be varied by written agreement between us, including by email.
- 4.3 We may at any time, in writing, inform you of the need for us to perform a Variation.
- 4.4 If you request a Variation to the Services, we have discretion as to whether we make the Variation.
- 4.5 Variations will not invalidate these Terms or be regarded as a repudiation of these Terms by us.
- 4.6 If in our reasonable opinion a Variation requires additional time to perform the Services, then we will amend the term of this Agreement after consultation with you.
- 4.7 If we need to charge an additional fee for a Variation (Additional Fee), then we will provide a written quote for the Additional Fee to you within 2 Business Days of notice of the Variation and prior to commencing performance of the Variation. If:
- (a) you accept the quote for the Additional Fee then these Terms are amended to incorporate the Variation but otherwise remain the same; or
 - (b) you do not accept the quote for the Additional Fee where we informed you of the need for us to perform a Variation then we may in our discretion terminate these Terms immediately.
- 4.8 If we are unable to accommodate a Variation requested by you, we may consult with you to find a feasible adjustment. Should a mutually agreeable solution not be reached, we reserve the right to invoice for Services performed to date and terminate these Terms.

5. QBCC

- 5.1 To the extent that the QBCC Act applies to the Services being provided to you for residential building work over \$3,301:
- (a) Queensland Home Warranty Scheme: Under the QBCC Act, we are required to collect the premium from you and pay it to the QBCC within 10 business days after the date the agreement was entered into or before the Services commence (whichever is earlier).

- (b) Cooling Off: If you are entitled under the QBCC Act to withdraw under the cooling-off provisions you must, before the expiry of the cooling-off period, give us a written and signed withdrawal notice stating that you are withdrawing from these Terms under the cooling-off provisions in section 35 of Schedule 1B of the QBCC Act.
- (c) Warranties Under Schedule 1B of QBCC Act: To the extent required by Schedule 1B of the QBCC Act, we warrant that:
 - i. the Services will be carried out in an appropriate and skilful way and with reasonable care and skill and reasonable diligence;
 - ii. all materials supplied will be of good quality and suitable for the purpose for which they are used;
 - iii. the Services will be carried out in accordance with all relevant laws and legal requirements; and
 - iv. the Services will be carried out in accordance with any plans and specifications which form part of the agreement.

6. YOUR OBLIGATIONS AND WARRANTIES

- 6.1 You warrant that:
- (a) there are no legal restrictions preventing you from agreeing to these Terms;
 - (b) you will cooperate with us, and provide us with information that is reasonably necessary to enable us to perform the Services as requested from time to time, in a timely manner;
 - (c) the information you provide to us is true, correct and complete;
 - (d) you will not infringe any third party rights in working with us and receiving the Services;
 - (e) you will inform us if you have reasonable concerns relating to our provision of Services under these Terms, with the aim that the Parties will use all reasonable efforts to resolve your concerns;
 - (f) you are responsible for obtaining any consents, licences and permissions from

other parties necessary for the Services to be provided, at your cost, and for providing us with the necessary consents, licences and permissions;

- (g) you are responsible for providing all specifications/measurements/ product codes for appliances required for us to perform the Services.
- (h) you will ensure that, if the Services are to be performed on your property, you are authorised to occupy those premises and obtain the Services;
- (i) You will ensure that we have clear access to the installation and its immediate surrounds. This includes clearing the contents of relevant cabinets and ensuring driveway/paths are clear prior to arrival.
- (j) You will ensure that if the Services are to be performed on your property, that at all times the property is safe and that all facilities provided by you for the purposes of enabling the Services to be performed are also safe;
- (k) You will ensure that we have free and unimpeded access to the place in which the Services are to take place and that you will do all things to ensure that we are not delayed by matters within your control;
- (l) You accept that we have the right to impose stand down charges and recover additional costs incurred where work is delayed by reason not in our control and where we are unable to reasonably reschedule services;
- (m) if applicable, you hold a valid ABN which has been advised to us;
- (n) if applicable, you are registered for GST purposes; and
- (o) you will not employ, canvass, solicit, entice, induce or attempt to employ our employees or contractors.

7. WORK HEALTH & SAFETY

You agree and acknowledge that:

- (a) Whilst works are being carried out the property is considered a work site and therefore must comply with all

legislation and must follow the following conditions.

- (b) An approximate age of the property must be advised to ascertain potential risk.
- (c) Disclosure of the presence of asbestos, where known by you, within the work site must be made prior to the commencement of works.
- (d) All work areas must be free of potential hazard to us and any of our representatives.
- (e) Any representative of ours can refuse to complete the Services if they believe that the working environment is in breach of company policy and/or legislation.

8. CONFIDENTIAL INFORMATION

8.1 We, including our employees and contractors, agree not to disclose your Confidential Information to any third party (other than where necessary, to third party suppliers, or as required by law); to use all reasonable endeavours to protect your Confidential Information from any unauthorised disclosure; and only to use your Confidential Information for the purpose for which it was disclosed by you, and not for any other purpose.

8.2 You, including your employees and contractors, agree not to disclose our Confidential Information to any third party; to use all reasonable endeavours to protect our Confidential Information from any unauthorised disclosure; and only to use our Confidential Information for the purpose for which it was disclosed or provided by us to you and not for any other purpose.

8.3 These obligations do not apply to Confidential Information that:

- (a) is authorised to be disclosed;
- (b) is in the public domain and/or is no longer confidential, except as a result of a breach of these Terms;
- (c) is received from a third party, except where there has been a breach of confidence; or
- (d) must be disclosed by law or by a regulatory authority including under subpoena.

8.4 This clause will survive the termination of these Terms.

9. FEEDBACK AND DISPUTE RESOLUTION

9.1 Your feedback is important to us. We seek to resolve your concerns quickly and effectively. If you have any feedback or questions about the Services, please contact us.

9.2 If there is a dispute between the Parties in relation to these Terms, the Parties agree to the following dispute resolution procedure:

- (a) The complainant must tell the respondent in writing, the nature of the dispute, what outcome the complainant wants and what action the complainant thinks will settle the dispute. The Parties agree to meet in good faith to seek to resolve the dispute by agreement between them at an initial meeting.
- (b) If the Parties cannot agree how to resolve the dispute at that initial meeting, any Party may refer the matter to a mediator. If the Parties cannot agree on who the mediator should be, the complaining Party will ask the Law Society of Queensland to appoint a mediator. The mediator will decide the time and place for mediation. The Parties must attend the mediation in good faith, to seek to resolve the dispute and will be equally responsible for the costs of the mediator.

9.3 Any attempts made by the Parties to resolve a dispute pursuant to this clause are without prejudice to other rights or entitlements of the Parties under these Terms, by law or in equity.

10. RETENTION OF TITLE

10.1 Title in any goods we supply to you does not pass to you until they have been paid for in full, even if we have installed them.

10.2 To the extent allowed by law, if you fail to make a due payment, we may enter the site or your premises and take reasonable action to remove the goods without us being liable to you for damage to the site, premises of the goods caused by such removal.

11. TERM AND TERMINATION

11.1 If either Party commits a remediable breach of these Terms and does not remedy the breach at its cost within a reasonable time after receiving written notice of the breach from the

other Party, then the Parties agree to engage in the dispute resolution process set out in clause 9.2 in the first instance. If the dispute is not resolved after following that process, then either Party may terminate these Terms at any time upon written notice to the other Party.

11.2 We may terminate these Terms immediately, at our sole discretion, if:

- (a) you commit a non-remediable breach of these Terms;
- (b) you fail to provide us with clear or timely instructions to enable us to provide the Services;
- (c) we, acting reasonably, consider that our working relationship has broken down including a loss of confidence and trust;
- (d) for any other reason outside our control which has the effect of compromising our ability to perform the Services within the required timeframe; or
- (e) you fail to pay an invoice by the due date.

11.3 You may terminate these Terms immediately upon written notice to us if:

- (a) we commit a non-remediable breach of these Terms; or
- (b) you, acting reasonably, consider that our working relationship has broken down including a loss of confidence or trust.

11.4 On termination of these Terms in accordance with clause 11.3 or clause 11.4 you agree that any Deposit or payments made are not refundable to you to the extent of all Services provided prior to termination, including Services which have been performed and have not yet been invoiced to you.

11.5 On termination of these Terms, you agree to promptly return (where possible), or delete or destroy (where not possible to return), our Confidential Information and Intellectual Property, and/or documents containing or relating to our Confidential Information and/or Intellectual Property.

11.6 On termination of these Terms, we agree to promptly return (where possible), or delete or destroy (where not possible to return), your Confidential Information and Intellectual Property, and/or documents containing or

relating to your Confidential Information and/or Intellectual Property.

11.7 On completion of the Services, we will retain your documents (including copies) as required by law or regulatory requirements. Your express or implied agreement to these Terms constitutes your authority for us to retain or destroy documents in accordance with the statutory periods, or on termination of these Terms.

11.8 The accrued rights, obligations and remedies of the Parties are not affected by the termination of these Terms.

12. CONSUMER LAW, LIMITATION OF LIABILITY AND DISCLAIMERS

12.1 **Service Standard:** We will provide the Services with due care and skill, the Services will be fit for the purpose that we advertise, and we will supply the Services within a reasonable time.

12.2 **ACL:** Certain legislation including the Australian Consumer Law (**ACL**) in the *Competition and Consumer Act 2010* (Cth) and similar consumer protection laws and regulations may confer you with rights, warranties, guarantees and remedies relating to the provision of Services by us to you which cannot be excluded, restricted or modified (**Statutory Rights**).

12.3 **Statutory Rights:** Nothing in these Terms excludes your Statutory Rights as a consumer under the ACL. You agree that our liability for the Services is governed solely by the ACL and these Terms.

12.4 **Warranties:** Except for your Statutory Rights, we exclude all express and implied warranties representations and guarantees and all material and work is provided to you without warranties, representations and guarantees of any kind.

12.5 **Delay:** Where the provision of Services depends on your information or response, we have no liability for a failure to perform the Services, where it is affected by your delay in response or supply of incomplete or incorrect information.

12.6 **Referrals:** We may provide you with contact details of third party specialists. This is not a recommendation by us for you to seek their advice or to use their services. We make no representation or warranty about the third party advice or provision of services, and we disclaim all responsibility and liability for the

third party advice or provision of services, or their failure to advise or provide services.

12.7 **Availability:** To the extent permitted by law, we exclude liability for:

- (a) the Services being unavailable; and
- (b) any Claims for loss of profits, revenue, production, opportunity, access to markets, goodwill, reputation or any loss or damage relating to business interruption or otherwise, suffered by you or made against you, arising out of or in connection with your inability to access or use the Services or the late supply of Services, even if we were expressly advised of the likelihood of such loss or damage.

12.8 **Disclaimers:** To the extent permitted by law we disclaim all responsibility and liability for:

- (a) any time delays. All time frames are an estimate only;
- (b) while we do our best to remove any rubbish and clean up after ourselves, we are not contractually responsible for cleaning the site to the standards they were in before the commencement of works;
- (c) the costs of any plaster repairs, this is to be expected during removal;
- (d) any appliances/sinks shown in drawings are not included unless set out in our Quote (they are a representation of the space only);
- (e) products or services you purchase from a third party. If you have ELECTRICAL or PLUMBING in the relevant area, it is your sole responsibility to arrange disconnection prior to scheduled cabinetry removal and installation;
- (f) any faults in work performed by us that has been tampered with or worked on by a third party. This will void our workmanship warranty;
- (g) any damage caused where you have failed to provide us with plans as requested;
- (h) personal injury caused to you or any third party other than due to our negligent act or omission;

- (i) any leaks caused by our penetration through the wall or roof;
- (j) any mistakes or discrepancies in measurements provided to us. All specifications must be provided prior to us ordering materials; and
- (k) damage caused to your property other than due to our negligent act or omission. This includes any damage such as marks or scratches caused to your property during removal and installation where we have taken reasonable care in our discretion.

12.9 **Limitation:** To the extent permitted by law, our total liability arising out of or in connection with the Services, however arising, including under contract, tort including negligence, in equity, under statute or otherwise, is limited to us re-supplying the Services to you, or, at our option, us refunding to you the amount you have paid us for the Services to which your claim relates. Our total liability to you for all damages in connection with the Services will not exceed the price paid by you under these Terms and pursuant to the Quote for the 12 month period prior to the act which gave rise to the liability, or one hundred dollars (AUD\$100) if no such payments have been made.

12.10 This clause will survive the termination of these Terms.

13. INDEMNITY

13.1 You are liable for and agree to indemnify, defend and hold us harmless for and against any and all Claims, liabilities, suits, actions and expenses, including costs of litigation and reasonable legal costs, resulting directly or indirectly from:

- (a) any information provided by you to us that was not accurate, up to date or complete or was misleading or a misrepresentation;
- (b) your breach of these Terms;
- (c) any misuse of the Services by you, your employees, contractors or agents; and
- (d) your breach of any law or third party rights.

13.2 We are liable for and agree to indemnify, defend and hold harmless for and against any and all Claims, liabilities, suits, actions and expenses, including costs of litigation and

reasonable legal costs, resulting directly or indirectly from:

- (a) any information provided to you by us that was not accurate, up to date or complete or was misleading or a representation;
- (b) our breach of these Terms;
- (c) any defect or omission in the Services from or by us, our employees, contractors or agents;
- (d) our breach of any law or third party rights in connection with our provision of the Services to you.

13.3 The Parties agree to co-operate with each other (at their own expense) in the handling of disputes, complaints, investigations or litigation that arises as a result of these Terms.

14. GENERAL

14.1 **Privacy:** We agree to comply with the legal requirements of the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth) and any other applicable legislation or privacy guidelines.

14.2 **Publicity:** You consent to us stating that we provided Services to you, including but not limited to taking photographs/videos of our work and mentioning you on our website, social media platforms and in our promotional material, unless you give us written notice that you withdraw your consent in this regard.

14.3 **Email:** You acknowledge that we are able to send electronic mail to you and receive electronic mail from you. You release us from any claim you may have as a result of any unauthorised copying, recording, reading or interference with that document or information after transmission, for any delay or non-delivery of any document or information and for any damage caused to your system or any files by a transfer.

14.4 **GST:** If and when applicable, GST payable on the Fee for the Services will be set out on our invoices. You agree to pay the GST amount at the same time as you pay the Fee.

14.5 **Relationship of Parties:** These Terms are not intended to create a relationship between the Parties of partnership, joint venture, or employer-employee.

- 14.6 **Assignment:** These Terms are personal to the Parties. A Party must not assign or deal with the whole or any part of its rights or obligations under these Terms without the prior written consent of the other Party (such consent not to be unreasonably withheld).
- 14.7 **Severance:** To the extent permitted by law, if any provision (or part of it) under these Terms is held to be unenforceable or invalid in any jurisdiction, then it will be interpreted as narrowly as necessary to allow it to be enforceable or valid. If a provision (or part of it) under these Terms cannot be interpreted as narrowly as necessary to allow it to be enforceable or valid, then the provision (or part of it) must be severed from these Terms and the remaining provisions (and remaining part of the provision) of these Terms are valid and enforceable.
- 14.8 **Force Majeure:** Neither Party will be liable for any delay or failure to perform its obligations under these Terms if such delay is due to any circumstance beyond their reasonable control.
- 14.9 **Notices:** Any notice required or permitted to be given by either Party to the other under these Terms will be in writing addressed to the relevant address in the Quote. Any notice may be sent by standard post or email, and notices will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.
- 14.10 **Jurisdiction & Applicable Law:** These terms are governed by the laws of Queensland and the Commonwealth of Australia. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in Queensland.
- 14.11 **Entire Agreement:** These Terms and any document expressly referred to in them represent the entire agreement between the Parties and supersede any prior agreement, understanding or arrangement between the Parties, whether oral or in writing.
- 14.12 **Special Conditions:** The Special Conditions will prevail to the extent of any inconsistency with these Terms.
- 15. DEFINITIONS**
- 15.1 **Business Day** means a day which is not a Saturday, Sunday or bank or public holiday in Queensland, Australia.
- 15.2 **Claim/Claims** includes a claim, notice, demand, right, entitlement, action, proceeding, litigation, prosecution, arbitration, investigation, judgment, award, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute, whether indirect, incidental, special, consequential and/or incidental, and whether involving a third party or a Party to the Terms or otherwise.
- 15.3 **Confidential Information** includes confidential information about you, your credit card or payment details, and the business, structure, programs, processes, methods, operating procedures, activities, products and services, trade secrets, know how, financial, accounting, marketing and technical information, customer and supplier lists (including prospective customer and supplier information), ideas, concepts, technology, and other information of either Party whether or not such information is reduced to a tangible form or marked in writing as "confidential".
- 15.4 **Deposit** (if any) set out in the Quote.
- 15.5 **Expenses** (if any) are set out in the Quote.
- 15.6 **Fees** are set out in the Quote.
- 15.7 **GST** means GST as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended from time to time or any replacement or other relevant legislation and regulations.
- 15.8 **Intellectual Property** includes any and all present and future rights to intellectual and industrial property throughout the world, and includes all copyright and analogous rights, all rights in relation to inventions (including patent rights), patents, improvements, registered and unregistered trademarks, designs, any corresponding property rights under the laws of any jurisdiction, discoveries, circuit layouts, trade names, trade secrets, secret processes, know-how, concepts, ideas, information, processes, data or formulae, business names, company names or internet domain names, and any Confidential Information.
- 15.9 **Moral Rights** means the right of attribution of authorship, the right not to have authorship falsely attributed and the right of integrity of authorship, as defined in the *Copyright Act 1968* (Cth).

- 15.10 **Party** and **Parties** means a party or parties to these Terms.
- 15.11 **QBCC Act** means the *Queensland Building and Construction Commission Act 1991*.
- 15.12 **Quote** means the Quote to which these Terms are attached.
- 15.13 **Services** are set out in the Quote.
- 15.14 **Special Conditions** means the special conditions, if any, detailed in these Terms and/or in the Quote.
- 15.15 **Terms** means these terms and conditions.
- 15.16 **Variation** means:
- (a) when advised by us to you, necessary amended or additional services, including but not limited to changes to the Quote, Services, or Fees. or Expenses; or
 - (b) amended or additional services as requested by you.