

# SHORT FORM ENGAGEMENT TERMS

## BACKGROUND

A. The Client wishes to engage NOBLE SURVEYS to provide the Services to the Client.

B. NOBLE SURVEYS has agreed to provide the Services to the Client upon and subject to the following terms and conditions.

## NOW THE PARTIES AGREE as follows:

### 1. DEFINITIONS

Unless otherwise required by the context or subject matter:

**Agreement** means this agreement including any Proposal or annexure to it;

**Australian Consumer Law** means Schedule 2 of the Competition and Consumer Act 2010 (Cth);

**Business Day** means a day that is not a Saturday, Sunday or public holiday in the jurisdiction where the majority of the Services are carried out by NOBLE SURVEYS;

**Composition with Creditors** is an agreement between a financially pressed debtor and two or more creditors whereby a specific partial payment is divided pro rata among the creditors in full satisfaction of their claims.

**Due Date** has the meaning given in clause 5;

**Fee** means the fee set out in, and to be paid to NOBLE SURVEYS in accordance with the Proposal;

**GST Act** means the A New Tax System (Goods and Services Tax) Act 1999 as amended from time to time;

**GST** has the meaning attributed in the GST Act;

**Invoice** means each invoice issued by NOBLE SURVEYS to the Client for Services provided or to be provided;

**IPR** means any intellectual property rights, whether arising at common law, in equity or under statute, including but not limited to:

(i) patents, copyright (including but not limited to rights in any software), rights under the Circuit Layouts Act 1989 (Cth) (and equivalent rights outside Australia in circuit layouts), database rights, copyright works under the Copyright Act 1968, registered and unregistered designs and other industrial property, trade marks, inventions and any right to have any confidential information kept confidential; and

(ii) any licence or other application or right to use, to grant the use of or apply for registration of, any of the above intellectual property rights.

**Permitted Use** means the use of the Products by the Client in the ordinary course of business and at all times excludes the distribution, transfer, sale, sub-licensing or passing of possession of the Products (in whole or in part) for the purpose of direct commercial benefit or gain by the Client;

**Products** means plans, files, documents, surveys, imagery, scans, maps, output, know-how and/or products (individually or collectively) howsoever produced in or in connection with the provision of the Services and includes all associated IPR;

**Proposal** means a written offer (including email) to conduct specified work;

**Services** means the services set out in the Proposal.

### 2. INCORPORATION OF BACKGROUND

This Agreement includes the Background clauses (above).

### 3. THE SERVICES

a) In consideration for the payment of the Fee NOBLE SURVEYS agrees, on the terms of this Agreement, to provide the Services.

b) If the Client does not sign and return a copy of this Agreement to NOBLE SURVEYS, but the Client gives NOBLE SURVEYS instructions to perform the Services, the Client will accept this Agreement by conduct.

### 4. OWNERSHIP AND LICENCE TO USE THE PRODUCTS

a) Subject to the terms of this Agreement including payment by the Client of the Fee, NOBLE SURVEYS grants to the Client a perpetual, non-exclusive, non-transferable licence to use the Products for the Permitted Use (Licence).

b) Notwithstanding the Licence, the Products shall remain the property of NOBLE SURVEYS.

c) The Licence is only granted to the Client. The Client must not transfer, resell, assign or sublicense any Product or any rights under the Licence unless the Client obtains the prior written consent of NOBLE SURVEYS.

d) The obligations under this clause 4 shall survive termination of this Agreement.

### 5. TERMS OF PAYMENT

a) Subject to any special terms of payment specified in the Proposal or otherwise agreed in writing by NOBLE SURVEYS, the Client agrees to pay each Invoice in full within thirty (30) days from receipt of the Invoice (**Due Date**).

b) Unless otherwise stated, the Fee does not include GST.

c) The Client shall pay to NOBLE SURVEYS, in addition to the Fee, an amount equivalent to any GST or equivalent tax payable by NOBLE SURVEYS at the prevailing statutory rate in relation to the supply of the Services.

### 6. DEFAULT OF PAYMENT

If payment for Services is not made by the Due Date NOBLE SURVEYS may:

a) retain all Products (including documents prepared for lodgement) in NOBLE SURVEYS'S possession;

b) charge interest on any overdue amount at the rate of 10% per annum, calculated and payable daily from the Due Date until the Invoice is paid in full;

c) charge the Client for all of the costs and expenses incurred by NOBLE SURVEYS in the recovery of the overdue amounts;

d) recover the outstanding balance of any outstanding Invoices and all associated costs (including interest) as a debt owing to NOBLE SURVEYS by the Client; and/or

e) terminate the Agreement pursuant to clause 8.

### 7. NOBLE SURVEYS WARRANTIES

NOBLE SURVEYS represents and warrants that it:

a) will complete the Services in a professional, competent and timely manner;

b) has fully considered the scope of works required for the provision of Services and that it and its staff have the knowledge, skill, experience and capacity to provide the Services in accordance with this Agreement;

c) holds all professional qualifications or licenses necessary to carry out the Services;

d) has procedures in place to comply with all of its obligations under relevant occupational health and safety legislation; and

e) will not knowingly infringe any intellectual property rights of a third party during the performance of this Agreement.

### 8. TERMINATION

NOBLE SURVEYS may by notice in writing to the Client terminate this Agreement if:

a) the Client fails to perform or observe any of the covenants or provisions of this Agreement and (if capable of remedy) such default continues for more than five (5) Business Days after notice in writing from NOBLE SURVEYS requiring the Client to remedy the same;

b) the Client, or any guarantor of the Client, negotiates for or enters into a Composition with Creditors generally;

c) being an individual the Client dies, becomes permanently incapacitated, or has a trustee appointed;

d) being an individual the Client is served with a receiving order or commits any act of insolvency;

e) being a body corporate or other legal person, the Client or any guarantor of the Client calls any meeting of its creditors or has a liquidator, provisional liquidator, official manager, mortgagee's agent, receiver or administrator of all or any of its assets

appointed or enters into any liquidation (or commits any other act of insolvency); or

f) the financial position of the Client, or some other fact or circumstance, leads NOBLE SURVEYS to believe on reasonable grounds that the Client is likely to materially fail to complete its obligations under this Agreement.

9. CONSEQUENCE OF TERMINATION

If the Agreement is terminated under clause 8:

a) the Licence immediately terminates and the Products will no longer be available for the Client's use;

b) the Client must immediately destroy, delete or return to NOBLE SURVEYS all Products; and

c) all accounts for Services rendered up to the time of termination are immediately due and payable to NOBLE SURVEYS.

### 10. COMPLETION OF THE SERVICES

NOBLE SURVEYS may require the Client to sign a certificate evidencing the completion of the Services.

### 11. FORCE MAJEURE

If by reason of any fact, circumstance, matter or thing beyond the reasonable control of NOBLE SURVEYS or the Client either is unable to perform in whole or in part any obligation under this Agreement then:

a) that party is relieved of that obligation under this Agreement to the extent and for the period that it is unable to perform such obligation; and

b) that party will not be liable to the other party to this Agreement for failure to perform such obligation to the extent and for the period of non-performance contemplated by this clause 11.

### 12. EXCLUSION OF LIABILITY

a) To the maximum extent permitted by law, NOBLE SURVEYS shall not be liable for, and excludes liability for, any loss (including indirect, special, incidental or consequential loss) or damage or injury of any kind whatsoever caused to the Client or its customers arising from or in connection with the Services whether such loss or damage was caused by an act, default, omission or negligence by NOBLE SURVEYS or otherwise.

b) The Australian Consumer Law may give to the Client certain guarantees. Where liability for breach of any such guarantee cannot be excluded or limited pursuant to clause 12(a), NOBLE SURVEYS'S maximum liability to the Client, whether in contract, tort (including negligence) or otherwise arising from or in connection with the Services for any costs, losses, claims, damages, expenses or proceedings incurred or suffered by the Client or its customers will be limited in aggregate to:

(i) the net proceeds recovered by NOBLE SURVEYS under the insurance policies described at clause 13; or

(ii) one million dollars (\$1,000,000);

(iii) the Fee, whichever is the lesser.

### 13. INSURANCE

NOBLE SURVEYS shall maintain at all times during the provision of the Services the following insurance policies (or comparable policies)

- Professional Indemnity Insurance;
- Public and Products Liability Insurance;
- Motor Fleet Insurance; and
- Workers' Compensation and cover for common law claims. Certificates of Currency are available on request.

### 14. WAIVER

If NOBLE SURVEYS waives any breach of this Agreement by the Client, this will not constitute a waiver of any other breach. No waiver will be effective unless made in writing.

### 15. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties with respect to the supply of the Services.

### 16. COUNTERPARTS

This Agreement may be executed in any number of counterparts.

### 17. ALTERATION OF TERMS

A variation of any term of this Agreement must be in writing and signed by the parties.

### 18. MEDIATION

Any dispute arising in connection with this Agreement, which cannot be settled by negotiation between the parties, shall be submitted to mediation before commencement of any litigation, to a mediator appointed by the Chairperson of the Resolution Institute.

### 19. NOTICES

All notices given under this Agreement shall be in writing and shall be sent, or hand delivered, to an address of the recipient as set out in the Proposal, or such other address as has been notified by the party in writing.

a) A notice delivered by hand is deemed to have been delivered immediately.

b) A notice sent by post is deemed to have been delivered four (4) Business Days after posting.

c) It is acknowledged that, while the parties may communicate by email and facsimile, notices under this Agreement are only valid if they are posted or delivered by hand pursuant to this clause 19.

### 20. SEVERABILITY

If any part of this Agreement is found to be void, unlawful, or unenforceable then that part will be deemed to be severed without affecting the validity and enforceability of the remaining provisions.

### 21. ASSIGNMENT

NOBLE SURVEYS shall be entitled to transfer or assign this Agreement. The Client shall not transfer or assign this Agreement without NOBLE SURVEYS'S prior written consent.

### 22. INCREASE IN ACCORDANCE WITH CONSUMER PRICE INDEX

a) In this clause 22, CPI means the weighted average of the All Groups Price Index Numbers for the eight capital cities of the states and territories of Australia published from time to time by the Australian Bureau of Statistics or, if that index number is no longer published, its substitute as a cumulative indicator of the inflation rate in Australia.

b) The Fee may be increased on each anniversary of the commencement of the Services (Review Date) to an amount calculated by multiplication of the then current Fee by a fraction the denominator of which is the CPI current one year previously and the numerator of which is the then current CPI. In no circumstances shall the Fee decrease.

### 23. AUTHORITY

If this Agreement is signed on behalf of the Client, the signatory warrants by his or her signing that he or she has authority to agree to and sign the Agreement on behalf of the Client.

### 24. GOVERNING LAW AND JURISDICTION

This Agreement is governed by the laws of Western Australia and the parties submit to the exclusive jurisdiction of the courts of Western Australia.