

BLUE SKY BUILDING DESIGNS

DESIGN · DRAFTING · APPROVALS · 3D VISUALISATION

E: info@bsbd.com.au | M: 0414 310 171 | www.blueskybuildingdesigns.com.au

Conditions of Engagement

DESIGNER: Blue Sky Building Designs (ABN 38 163 506 536)
CLIENT: The person/s, company or firm nominated above.
PROJECT: The project identified above.

Payment Terms

- The invoices will be issued per Stage, plus expenses. If the project is cancelled, fees will be payable for work completed to date.
- Disbursements and expenses are not included within the BSBD proposal and are to be reimbursed directly by the client.
- Payment is due within 7 days of the date of the invoice, and interest will accrue at 10% per annum from the due date on overdue invoices.
- Provision of services will be suspended if payment is overdue, and the agreement may be terminated if invoices remain unpaid for more than 28 days. A debt collection agency may be engaged to recover outstanding fees, and the cost of the recovery will be added to the outstanding balance plus interest.
- Fees are for services provided, are not related to client feedback or satisfaction, and are not contingent on approvals or compliance.
- Documents for submission to authorities (eg. Council applications) will not be released until all invoices are paid in full.
- Additional fees may become payable where the services are protracted, suspended, deferred or altered.
- The client may not deduct, reduce or withhold any payments due by reason of claims or alleged claims against the designer.

Scope of Services

- The fee agreement only covers the core services set out above. Any optional or additional services will be invoiced at hourly rates.
- Additional services include work required due to changes in the client's brief, unanticipated circumstances, or council/authority requirements.
- If a break in the continuity of the services for any particular work stages occurs due to the client's instruction, or lack of instruction, then fees for services to date will be calculated as a percentage of the stage completed. Additional fees may become payable for the remaining work.
- Any work required beyond submission of an application will be invoiced at hourly rates. By approving the application by submission, the client accepts and agrees to any departures from planning guidelines and acknowledges that additional work may be required to achieve compliance and/or approval.
- The scope of services does not include the provision of cost estimations or budgets. Any discussions regarding construction cost during the course of the project are not to be construed as a cost estimate, or agreement that the project or works, will or can, be completed in accordance with any schedule or budget, whether prepared by the client or others.

Partial Services

- These conditions apply to any project where the designer has not been engaged to provide full services for the project, regardless of when the decision to limit the designer's services occurs. Any services for which the designer is not engaged will be considered "Excluded Services" for the purposes of this agreement.
- It is understood and agreed that the Designer's services under this Agreement do not include the Excluded Services and that the Excluded Services will be provided by the Client.
- The Client assumes all responsibility for the Excluded Services and waives any claims against the Designer that may be in any way connected to the Excluded Services.
- In addition the Client agrees, to the fullest extent permitted by law, to indemnify and hold the Designer harmless for any loss, claim or cost, including reasonable solicitor's fees and costs of defence, arising or resulting from the performance of the Excluded Services by other persons or entities and from any and all claims arising from modifications, clarifications, interpretations, adjustments or changes made to the Documents to reflect changes in site or other conditions.
- If the Client requests, in writing, that the Designer provide any of the Excluded Services and if the Designer agrees in writing to provide them, then the Client shall pay the Designer as Additional Services as described above.
- The client acknowledges that it is normal for issues to arise during construction due to inconsistencies, omissions, or discrepancies in the documents or site conditions, and that such issues would normally be addressed by the Designer as part of a Full Service agreement.

Specialist Consultants

- The client will directly appoint and pay all other consultants required by the project, and ensure that said consultants maintain adequate professional indemnity and liability insurances.
- The client will engage each such consultant on the basis that the Designer is not responsible for the services provided by the specialist consultant. The Designer will be responsible for the co-ordination of the specialist consultant's services and the consultant will be required to co-operate with the Designer to properly and effectively perform the services.
- The client is to pay each consultant all its fees and disbursements, but may seek the Designer's confirmation that the services have been provided as invoices.

Intellectual Property

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- **Copyright** – the Designer retains copyright in all designs, concepts, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials and an other materials provided by the Designer in connection with the project, as well as in the works executed from those documents.
- The client agrees that the Designer may issue data electronically to it and other involved in the project. The Designer is not responsible for the accuracy, completeness or any contamination of electronically transmitted data. The cost of electronic data preparation and/or file conversion is to be reimbursed by the client.
- In the event that the project to which the services relate is leased, transferred, sold or other disposed of in part or whole to other persons, the Designer will be entitled to reimbursement for the cost of providing the information, report, electronic data, etc to the other party. All outstanding invoices, copyright and license issue are to be resolved prior to any information being released. In the event that the Designer is engaged to provided services relating to a project where a design, or documents have been prepared by a third party, the client is to provide express written permission from the copyright holder/s and indemnify the Designer for an errors, omissions or discrepancies in the documents provided. The costs of any services required to address such errors, omission or discrepancies will be borne by the client.
- **Moral rights** – the Designer reserves its rights of attribution under the provisions of the Copyright Act. The client, its agents and any other party responsible for the construction, marketing and delivery of the project, is required to obtain written consent from the Designer for all publicity relating to the project.
- The Designer shall be entitled to royalties on any invention, new product or exploitation of any images arising out of the services.
- The Designer shall have the right to publish photographs and information about the the project, and the client shall allow the Designer and/or their representative to photograph the works during and after completion for the purposes of records and marketing. In the event that the project is sold to, or completed by a third party, the client should ensure that this right is guaranteed.
- Any documents relating to the project may be destroyed after expiration of statutory record keeping timeframes.

Insurances & Liability

- The Designer shall take out and use reasonable endeavours to maintain the required insurances, including Professional Indemnity, Public Liability and Workers Compensation.
- The Designer shall have no liability for any use of documents other than that for which the same were originally prepared and provided.
- The Designer has no liability 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).
- The Designer has not liability in respect of the Designer's services after the expiration of 3 years from the completion of Designer's Services.
- The Designer is not liable for any damage, loss or expense incurred as a consequence of any change that the client or any other person makes to the architects documents, or from any variation to the works, or any variation to the building consent, made without approval by the Designer. In the event that the Designer is instructed to amend documents by the Client, the liability for any damage, loss or expense incurred as a result of those changes will be borne by the client.
- The Designer shall not be liable to any person other than the client, and disclaims responsibility, in tort or otherwise, for any liability, damage, loss or expenses suffered or incurred by such person. In the event that the project to which the services are related is leased, transferred, sold or other disposed of in in part or whole to other persons, then the client warrants that such persons shall be advised in writing that the Designer accepts no responsibility in law to them. In the event of breach of this clause, the client shall fully indemnify the Designer against any claim by such persons, whether such claim is in tort or otherwise.
- The client acknowledges that the Designer operates through employees, directors, officers, agents and contractors and agrees that no reliance has or will be placed on them personally by the client in connection with this agreement on the performance of the services.
- If any of these clauses is void as a result of any applicable legislation, or any regulations or rules promulgated thereunder, then the Designer's liability for a breach of condition is limited to supplying the relevant services again, or the payment of the reasonable cost of having the relevant services supplied again.
- Nothing makes the ineffective, or reduces, any protection at law from liability, which the Designer is entitled to.

Termination, Suspension & Dispute Resolution

- Either party may terminate this agreement after giving the other party 14 day's notice in writing, and the Designer is entitled to suspend provision of services at the time such notice is issued.
- Any licenses granted or implied are automatically revoked in the event that the agreement is terminated for non-payment of fees.
- If the project is cancelled, or the agreement terminated, the client must pay the balance of all outstanding invoices and for work completed between the last invoice and the delivery date of the notice. The Designer must, on receipt of all outstanding payments, issue to the client a copy of the design, as it exists up to the date of termination.
- Both parties are entitled to submit any dispute or difference in any matter arising from this agreement to mediation after serving the other party with written notice of the dispute or difference and the matter not being resolved by the parties within 5 working days of the date of the notice.

General

- The law applicable to this agreement shall be the law of the state or territory of the Designer's address stated in this agreement.
- The Designer shall provide the services set forth in the agreement exercising a reasonable level of skill and care ordinarily provided by Designers practicing in the same or similar locality under the same or similar circumstances.
- The Designer does not warrant that the services, project or works, will or can, be completed in accordance with any schedule or budget, whether prepared by the client or others. The Designer is not required to provide or agree to any cost plan or budget for the works. Whilst every care will be taken, the cost of building works is driven by market forces, and is outside the Designer's control.

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- The Designer shall be entitled to rely upon the accuracy and completeness of the information furnished by the client, or the client's consultants and the client's approvals.
- We rely on site information provided by the client, including the survey and previous approvals, drawings, etc and are not liable for errors or omissions in, or resulting from these documents.
- The Designer is not responsible for ensuring the project complies with the building contract documents, but when engaged for contract administration services, is required to instruct the building contractor regarding the requirements of the building contracts documents, according to the contract terms.
- The Designer gives no express or implied warranty that the project is fit for the client's purpose.
- Any natural materials selected for the project may change in appearance and dimension following exposure to use or climatic conditions and this is normal behavior for such materials.
- The scope of services does not include any services in relation to asbestos, other hazardous materials or any other site contaminant.
- Upon completion of the project, the client is responsible for the ongoing and regular maintenance of the project, including its systems, finishes and equipment.
- Except by the operation of law, neither party can assign or transfer their obligations or entitlements under this agreement without the prior written consent of the other party.

The Client must:

- Appoint the Designer to act as its agent for the project as necessary for the Designer to carry out the services.
- Provide at its own expense all relevant information regarding the site, the briefing materials, and all its other requirements for the project. The client is responsible for the accuracy and completeness of anything provided and the Designer may rely upon such information.
- Promptly respond to all enquiries seeking clarification of the information it has provided.
- Recognize that their requirements may alter during the process.
- Pay the fees due including GST for the services and reimbursable expense provided in accordance with this agreement.
- Pay for the additional services in the event that they are required after the execution of this agreement on the basis of the time charge rates set out in this agreement, including when changes are made which require redesign or redrawing of existing documents.
- Engage consultants required by the project after consultation and shall pay all fees and expenses associated with their engagement.
- Work co-operatively to ensure satisfactory progress through all stages of the development of the design and other services provided.
- Pay additional fees at the rate set out in this agreement to cover protracted services where there are delays in the progress of the project beyond the control of the Designer.

CONFIRMATION OF ENGAGEMENT OF SERVICES

We confirm the engagement of Blue Sky Building Designs (A.B.N 38 163 506 536) to carry out the Design services as noted in the scope of works on the Project/Property listed above.

We accept the quoted fee and have read and understood the Conditions of Engagement.

Client Details Name: _____

Signature/s: _____

Print Name/s: _____

Date: _____

Please return completed and signed form to either info@bsbd.com.au or Blue Sky Building Designs, PO Box 167, Newport Beach NSW 2106.