

SCRIBE TERMS AND CONDITIONS

These terms and conditions (collectively referred to as “**the Terms**”) apply to all dealings, and are incorporated into any agreement, between Scribe and the Customer.

1. DEFINITIONS

Within these Terms:

- (a) “**Agreement**” means the Proposal and the Terms.
- (b) “**Customer**” means the person receiving the Services, in consideration of paying the Fees, as identified within the Proposal;
- (c) “**Fees**” means the amount set out within the Proposal to be paid by the Customer in consideration of receiving the Services, or otherwise on a fair and reasonable basis as set by Scribe in consideration of the Services provided.
- (d) “**Parties**” means Scribe and the Customer.
- (e) “**Proposal**” means the written Fee Proposal provided by Scribe to the Customer, or if none, the agreement between the Parties in relation to Services to be provided.
- (f) “**Scribe**” means the person providing the Services as set out within the Proposal, being:
 - i. where the Services comprise architectural design and documentation, Scribe Design Group Pty Ltd (ACN 106 855 921);
 - ii. where the Services comprise building surveying compliance and bushfire assessments, Scribe Building Compliance Pty Ltd (ACN 169 468 017);
 - iii. where the Services comprise planning advice and services, Scribe Group Pty Ltd (ACN 608 910 050);
 - iv. where the Services comprise commercial, retail and office interiors and fitouts, Kym Maree Hawkins as trustee for The Nu Realizable Trust (ABN 30 235 283 932); or
 - v. where the Services comprise energy efficiency assessments and thermal imaging, Scribe Energy Assessments and Inspections Pty Ltd (ACN 608 910 078).
- (g) “**Services**” means the services provided by Scribe to the Customer as particularised within the Proposal.

2. INTERPRETATION

To the extent that there is any inconsistency between the Proposal and the Terms, these Terms shall prevail.

3. INSTRUCTIONS AND SITE PREPARATION

The Customer warrants that it has provided Scribe with all necessary information, specifications, documentation and instructions in order to allow the Services to be carried out. The project site where the Services shall be carried out, if any (“**Site**”), must be prepared by the Customer prior to the provision of the Services commencing. Specifically, the Customer must ensure that the Site is clear, dry, clean and free of materials, plant and equipment, and above all, a safe working environment. Access arrangements to the Site are to be the responsibility of the Customer. The Fee within the Proposal assumes that access to the Site will be unhindered. The Customer must ensure that the Site is a safe working environment and complies with all occupational health and safety requirements and that any potential dangers are communicated to Scribe before entry onto the Site. Any delays or rescheduling costs incurred by Scribe on account of a Site not being ready will be an additional charge under this Agreement

4. SERVICES

The nature and extent of the Services which Scribe provides to the Customer are as set out within, or agreed by, the Proposal, with any additional works or services requested by the Customer required to be in writing and signed by the Parties, the reasonable costs of any such additional works or services being payable to Scribe by the Customer on demand.

5. PROJECT TEAM

Scribe will provide a project team capable of providing the Services. Members of the project team may vary from time to time, subject to availability, requirements of other Scribe projects, leave requirements, specific skill-sets applicable to different stages of the project, and other factors which may arise from time to time.

6. FEES

The Fees for the project will be based upon the hourly and/or fixed rates as detailed within the Proposal in respect of the provision of the Services, including equipment, labour and ancillary matters – the costs within the Proposal shall be valid and capable of acceptance by the Customer for a period of thirty (30) days from the date of the Proposal, unless otherwise specified.

7. DISBURSEMENTS

The Customer shall be liable for, and reimburse Scribe when invoiced, for all expenses reasonably and properly incurred in connection with the Services provided. Such disbursements shall include but not be limited to consumables, air travel and freight, accommodation, title and survey searching fees.

8. PAYMENT TERMS

The Customer shall pay the Fees as set out in the Proposal or otherwise set out by Scribe, and any GST and/or disbursements, without any set-off or counterclaim whatsoever, to Scribe in the manner set out within the Proposal, or otherwise within fourteen (14) days of the date of the invoice(s). Invoices will be submitted by Scribe in accordance with the Proposal, or otherwise on either a weekly or monthly basis (in Scribe’s sole discretion), unless otherwise agreed, depending upon the nature of the project.

9. VARIATION TO COSTS

In the event that the Services are amended, Scribe shall be entitled to review the value of the Fees previously agreed, and the Customer shall be obliged to pay all additional costs associated with such amendments as is agreed in writing between Scribe and the Customer. Scribe will only accept variations to the Services when requested by the Customer's duly authorised representative.

10. GST

Good and Services Tax (GST) shall be paid on Scribe's fees in accordance with current taxation laws. All amounts contained within the Proposal are exclusive of GST, unless otherwise stated, with all GST being paid by the Customer.

11. OVERDUE PAYMENTS

Scribe shall be entitled to charge interest on any and all outstanding Fees, being 15% per annum, calculated daily. Payment of any or all interest charges from time to time will not relieve the Customer of the obligation to pay the outstanding Fees.

12. LEGAL COSTS

All legal costs (on a full indemnity basis), charges, duties and other expenses incurred by Scribe as a result of the Customer failing to perform its covenants and obligations herein, and associated with Scribe enforcing any of the Terms against the Customer, shall be paid by the Customer to Scribe, on demand.

13. DEFAULT

If the Customer defaults in the due and punctual observances of all or any of its obligations or covenants under these Terms, all monies owed by the Customer to Scribe shall become immediately due and payable.

14. COPYRIGHT RETAINED

Scribe shall retain copyright in all proposals, tenders, documents, drawings, calculations, designs, plans and data (collectively, "the Data") prepared by it in relation to the project, and in any works executed by them. Scribe also reserves all present and future moral rights in all intellectual property in the Data, and in any works executed or to be executed from them. The Data must not be given, reproduced or disseminated, to any person, public authority, institution or organisation without the express permission of an authorised representative of Scribe.

15. LICENCE TO USE THE DATA

Scribe shall grant the Customer a license to use the Data in connection with the project, conditional upon the following:

- the licence applies only to the project or that part of the project to which the Data relates;
- Scribe has completed the particular stage or stages of the project for which Scribe has been commissioned; and
- All fees properly due to Scribe have been paid

16. DISPUTE RESOLUTION

In the event of a dispute between the Parties, either Party may serve a notice on the other detailing matter of dispute and requiring that senior representatives of each Party meet and attempt to settle the dispute within five (5) working days. If the dispute is not settled by the senior representatives within ten (10) working days of the service of the notice, the Parties may agree to refer the dispute to mediation by a single mediator. Either Party may initiate mediation, the costs of which shall be shared equally by the Parties. If the Parties cannot agree upon the identity of the mediator, the dispute may be referred for mediation to a mediator nominated by the Institute of Mediators and Arbitrators.

17. TERMINATION

Scribe may terminate the Agreement:

- if the Customer defaults in the due and punctual observance of all or any of its obligations or covenants under that Agreement;
- in the event of monies payable to Scribe pursuant to these Terms being outstanding for more than thirty (30) days;
- in the event of any other breach by the Customer of its obligations under such Agreement, which breach is not remedied within thirty (30) days of written notice from Scribe requiring the breach to be remedied;
- in the event the Customer requires Scribe to act unlawfully or unethically, or fails to provide necessary instructions; and / or
- without any notice whatsoever and within the sole discretion of Scribe.

The Customer may terminate its obligations under any Agreement entered into with Scribe:

- in the event of a breach by Scribe of its obligations under such Agreement, which breach is not remedied within thirty (30) days of written notice from the Customer requiring the breach to be remedied; or
- Upon giving Scribe thirty (30) days' written notice of its intention to do so.

If the Agreement is terminated by either party, the Customer is still obligated to pay all monies owed to Scribe for Services performed up to and including the date of termination pursuant to Terms as well as for the additional costs incurred by Scribe in relation to demobilising personnel and equipment from site, together with any subsequent loss of profit by virtue of the termination.

18. CHARGE

The Customer hereby, in favour of Scribe, charges its obligations pursuant to the Agreement, including the due and punctual payment of all monies due to Scribe, and the due and punctual and complete performance of all its liabilities and obligations herein or on any account whatsoever, all its legal and equitable interest of whatsoever nature held in any real property both present and future and the Customer hereby consents to Scribe lodging a caveat or caveats noting its proprietary interest hereunder – all costs associated with the lodging and withdrawal of any caveat or caveats shall be paid by the Customer on demand.

19. OPERATING HOURS

Standard operating hours are between 8am and 5pm Monday to Friday, unless otherwise agreed between Scribe and the Customer. Scribe will endeavour to complete all Services during standard operating hours. If a situation arises which requires Services to be provided outside the standard operating hours, reasonable attempts will be made by Scribe to gain prior approval from the Customer.

20. NO WARRANTIES

Notwithstanding anything contained herein, the Customer acknowledges that no representation, warranty or condition, express or implied, is given by Scribe that the Services provided comply with the rules, regulations, laws and legislation of the place where the Services are being provided and Scribe will not be liable under any circumstance for any claims, losses or damages of any kind whatsoever (including but not limited to any indirect, special or consequential damage, loss of profit or injury to any person, corporation or other entity) by reason of or arising out of the Services not complying with such rules, regulations, laws and legislation, or by reason of or arising out of any inaccuracy, error or omission in the information provided by or to Scribe.

Where the *Australian Consumer Law* and other laws imply conditions or warranties in certain contracts and also give parties to those contracts certain other rights against suppliers of goods and services, to the extent that it is not lawful or possible to exclude them, then such conditions, warranties or other rights shall (but only to the extent required by law) apply to these terms and conditions and all other conditions, warranties or rights which might but for this provision be implied are hereby expressly excluded. Where the law implies any term or warranty into these terms and condition which cannot be excluded, then the liability of Scribe for any breach of such term will be limited in the manner permitted under section 64A of the *Australian Consumer Law* to either supply of the Services again or payments of the cost of having the services supplied again (as Scribe may determine, in its complete discretion). Scribe shall only be liable for direct loss or damage suffered by the Customer as a result of a breach of the Agreement, and shall not be liable for any loss of profits and/or any consequential losses.

21. JOINT AND SEVERAL LIABILITY

If the Customer comprises two or more parties each of those parties is jointly and severally liable on the covenants and obligations herein.

22. JURISDICTION

The relationship between Scribe and the Customer shall be governed and construed in accordance with the laws of Western Australia and the parties shall submit to the jurisdiction of the Courts of Perth, Western Australia.

23. AMENDMENT

No amendment or variation of the Scribe standard terms and conditions is valid and binding on Scribe unless it is in writing and signed by a director of Scribe.

24. WAIVER

A provision of the Terms may not be waived except in writing and signed by a director of Scribe. No waiver or breach of any provision of the Scribe standard terms and conditions shall constitute a waiver or breach of any other provision.

25. GENERAL

If any part of these terms and conditions become void or unenforceable then that part shall be severed to the intent that all parts that are not void or unenforceable shall remain in full force and effect. None of the terms and conditions will merge in or upon the execution of this or any other agreement, document, act, matter or thing and will continue to remain in full force and effect for so long as is necessary to give effect to these terms and conditions.

26. DISCLAIMER

To the extent permitted by law, Scribe hereby disclaims any right to rescind or cancel the Agreement or to sue for damages or to claim restitution arising out of any misrepresentations made to the Customer by any servant or agent of Scribe, and the Customer acknowledges that it is using the Services, relying solely upon its own skill and judgment and the provisions of this Agreement.

27. GUARANTEE

Where the Customer is a corporation, each of the directors of the Customer jointly and severally guarantee the payment by the Customer of all outstanding amounts in relation to the Services to Scribe, and guarantee the Customer's performance of the Terms.