

These are the Terms and Conditions on which McGrath Interiors will carry out work for you. By accepting our quote, you are deemed to have accepted these Terms and Conditions.

1. DEFINITIONS

Additional Fees means fees applicable to Services not foreseen or not requested by the Client before commencement of the Services including:

- (a) additional design hours in addition to what was included in Client package;
- (b) requested additional design concepts/alternations;
- (c) requested changes to the design after final approval has been requested or provided;
- (d) purchasing Content required to provide the Services; and
- (e) additional consultations and/or appointments at showrooms in addition to the consultations and/or appointments included in the Client package.

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

Confidential Information of a party means any information regarding that party's business or affairs or that party's customers, employees, or other people doing business with that party which is:

- (a) by its nature confidential;
- (b) designated as confidential by that party at the time of disclosure; or
- (c) which the other party knows or ought to know is confidential.

Confidential information does not include information, documents or materials that are common property, are required to be disclosed by law or are available in the public domain in Australia otherwise than by a breach of these Terms and Conditions.

Content includes reference material, measurements, building information and any other written material/copy, images, photos, fonts, audio and video reasonably requested by McGrath Interiors during the provision of the Services.

Copyright has the meaning in the *Copyright Act 1968* (Cth).

Fees means the fees provided in a quotation or otherwise provided to the Client plus any applicable Additional Fees.

Final Specifications means the document containing internal and external colour selections and finishes as well as recommendations for fittings and fixtures in accordance with the suggestions of McGrath Interiors and the Client's instructions.

Intellectual Property Rights includes all worldwide registered and unregistered copyrights, trade marks, designs, patents, inventions, brands, logos, circuit layout rights, concepts, catch phrases and other similar industrial property rights and rights to registration of such rights.

Moral Rights are defined in Section 189 of the *Copyright Act 1968* (Cth), and includes any similar rights in any jurisdiction outside Australia.

Services means interior design services, including but not limited to the consultation, conceptual design and recommendation of interior finishes, textiles, furniture and other products provided by McGrath Interiors or any part thereof.

Tax Invoice means includes any document or records treated by the Commissioner of Taxation as a tax invoice or as a document entitling a recipient to an input tax credit.

Term means the term commencing on the date the Services commence and ending in accordance with clause 4 of these Terms and Conditions.

2. PROVISION OF SERVICES

- 2.1 McGrath Interiors shall provide the Services to the Client on dates and times to be mutually agreed between the parties.
- 2.2 The Client may request a variation of the Services by notice in writing to McGrath Interiors. If McGrath Interiors accepts such variation, McGrath Interiors will advise the Client of the date the variation will take effect and the Fees applicable to such Services will vary as advised by McGrath Interiors.
- 2.3 The Services does not include the order or supply of any item contained in the Final Specifications, unless otherwise stated in writing by McGrath Interiors.

3. FEES

- 3.1 At the discretion of McGrath Interiors giving regard to the size of the project, Fees will be payable by the hour or as a packaged deal.
- 3.2 Fees for Services provided by the hours will be payable monthly in arrears.
- 3.3 Fees for packaged deal Services are payable as follows:
 - (a) Initial consultation fee in advance; and
 - (b) Balance upon client approval of the Final Specifications.
- 3.4 Fees are payable within 7 days of receipt of a Tax Invoice.
- 3.5 The Client must pay interest on any outstanding Fees at a rate of 10% per annum, calculated daily.

- 3.6 McGrath Interiors reserves the right to suspend the provision of Services until any overdue Fees are paid.
- 3.7 Fees may be varied from time to time by 30 days' notice in writing to the Client.
- 3.8 Unless otherwise, the Fees are exclusive of GST.

4. TERM AND TERMINATION

- 4.1 The provision of Services will expiry upon the Client's approval of the Final Specifications and handover of the Final Specifications to the person previously nominated by the Client in writing.
- 4.2 Notwithstanding clause 4.1, either party may terminate the Services by 30 days written notice to the other party.
- 4.3 If McGrath Interiors becomes incapable of providing the Services through illness or otherwise, McGrath Interiors may terminate the Services by notice in writing to the Client effective immediately.
- 4.4 McGrath Interiors may terminate the Services immediately without notice and without any right for the Client to claim damages of any kind if:
- (a) the Client breaches these Terms and Conditions;
 - (b) the Client becomes the subject of bankruptcy, administration, liquidation or winding up procedures or otherwise is or becomes or threatens to become insolvent;
 - (c) the Client becomes a person whose person's estate is liable to be dealt with any way under the laws relating to mental health; or
 - (d) the Client ceases, or threatens to cease to carry on business for any reason.
- 4.5 In the event that the Services are terminated, the Client must pay to McGrath Interiors any Fees due for Services performed up to the date of termination.

5. CLIENT OBLIGATIONS

- 5.1 The Client must supply all Content required to allow McGrath Interiors to provide the Services, and all other Content McGrath Interiors reasonably requests, in a timely manner.
- 5.2 McGrath Interiors may charge Additional Fees if Content is not supplied when requested and McGrath Interiors is required to source Content from third parties in order to carry out the Services.

5.3 The Client acknowledges responsibility for the accuracy of all Content provided to McGrath Interiors. In particular, McGrath Interiors emphasises the important of the accuracy of any measurements provided by the Client.

5.4 McGrath Interiors will seek the Client's approval during the provision of the Services of the design concept and Final Specifications. The Client must provide its approval or otherwise as soon as practically possible after receiving a request for approval from McGrath Interiors. The Client will be deemed to have approved where a response is not received by McGrath Interiors within 5 business days of a request.

5.5 By providing approval of the Final Specifications, the Client confirms that it has checked, is satisfied that the Final Specifications are accurate, complete and meet the Client's requirements.

5.6 If a variation of the Services or any part thereof is required after approval is given in accordance with clause 5.4, Additional Fees will apply and McGrath Interiors will provide the Client with an updated quotation before carrying out any further Services.

5.7 The Client is solely responsible for ensuring their satisfaction with the paint, textile or natural and synthetic surface colours recommended by McGrath Interiors or contained in the design concept or Final Specifications.

6. INTELLECTUAL PROPERTY

6.1 Except for the retained rights described in clause 6.2, Copyright in material produced during the Services will remain the property of McGrath Interiors until payment of all Fees has been made.

6.2 Any material or ideas prepared or submitted to the Client which the Client chooses not to use or for which the Client has not paid, within 60 days of submission to the Client, will remain the property of McGrath Interiors (regardless of whether the physical embodiment of creative work is in the Client's possession in the form of copy, artwork, plates, recordings, films, tapes, etc.) and may be submitted to other clients of McGrath Interiors for their use.

6.3 The Client warrants that any materials or Content provided to McGrath Interiors, will not breach any rights (including Intellectual Property Rights or Moral Rights) of any third party or compromise the security or operation of McGrath Interiors' computer systems, through a virus or otherwise.

6.4 The Client acknowledges that where Content is purchased or licensed from a third party by McGrath Interiors, McGrath Interiors will be

the purchaser or license holder and must comply with the terms of any purchase or licence. Any breach of these Terms and Conditions by the Client may result in a breach of any licence McGrath Interiors has entered into in obtaining the Content and the Client indemnifies McGrath Interiors for any such loss.

6.5 The Client agrees that McGrath Interiors may use any of part of the Services for promotional and portfolio purposes.

6.6 The Client authorises McGrath Interiors to place its case study on its website or promotional collateral for promotional purposes.

7. WARRANTY DISCLAIMER

7.1 Nothing in this Agreement excludes, restricts or modifies any right or remedy, or any guarantee, warranty or other term or condition implied or imposed by legislation which cannot be lawfully excluded or limited. Such legislation includes the Australian Consumer Law which contains guarantees that protect the purchasers of goods and services in certain circumstances, each a non-excludable provision.

7.2 Subject to McGrath Interiors' obligations under the non-excludable provisions, and to the fullest extent permissible by law, McGrath Interiors expressly disclaims all warranties and representations of any kind with respect to the Services whether express, implied, statutory, or arising out of the course of performance, course of dealing or usage of trade including any warranties or merchantability, fitness for a particular purpose, satisfactory quality, accuracy, title or non-infringement.

8. LIMITATION OF LIABILITY AND WARRANTY

8.1 The Client acknowledges that the Services provided by McGrath Interiors is intended to be a guide only and the choice to implement the items contained in the Final Specifications ultimately rests with the Client.

8.2 To the fullest extent permissible by law, McGrath Interiors is not liable (whether in contract or tort) for:

(a) faults or defects in any services or goods provided by third parties in connection with the Services; or

(b) any indirect, special or consequential loss (including loss or corruption of data, loss of profits, revenue, goodwill, anticipated savings and business interruption) however arising, whether or not McGrath Interiors knew of the possibility of

such loss and whether or not such loss was foreseeable.

8.3 To the fullest extent permitted by law, the liability of McGrath Interiors for a breach of a non-excludable condition is limited to the supplying of the Services again or payment of the cost of having the Services supplied again.

8.4 McGrath Interiors will not be held liable for any change of mind once the Final Specifications have been approved by the Client.

8.5 McGrath Interiors makes no warranties or guarantees regarding the measurement, fit, suitability, or fitness for purpose of any item contained in the Final Specifications.

8.6 McGrath Interiors will not be held liable for any difference and variance in appearance of any colour selection contained in the Final Specifications. The Client acknowledges that the colouring of paint, textiles, and natural and synthetic surfaces are subject to variances and may not exactly match the colour previously seen or provided.

8.7 The Client acknowledges that McGrath Interiors does not have knowledge in the areas of engineering or building. The Client agrees to direct all questions in these regards to a third-party expert.

8.8 The Client acknowledges that third party electronic services used by McGrath Interiors are subject to interruption and breakdown and all non-electronic services are subject to disruption, and therefore provision of the Services may not be error-free or uninterrupted.

9. INDEMNITY

9.1 The Client indemnifies and holds harmless McGrath Interiors in respect of all actions, claims, proceedings, demands, liabilities, losses, damages, expenses and costs (including legal fees on a full indemnity basis), in connection with any of the following:

(a) any breach of these Terms and Conditions;

(b) any negligent acts or omissions of the Client;

(c) the Client's use of the Services, including any third party claims made in connection with or arising out of the Client's use of the Services, other than use in accordance with these Terms and Conditions; and

(d) breach of third party Intellectual Property.

10. CONFIDENTIALITY

10.1 Each party agrees to keep confidential, and not to use or disclose except as permitted by

these terms and conditions, any Confidential Information of the other party. The parties agree not to disclose these Terms and Conditions, or any details of Fees. This obligation of confidence extends to Confidential Information obtained by a party before these Terms and Conditions were in force. Each Party shall refrain from making negative comments about the other Party, whether online or in person.

- 10.2 Each party must take all steps and do all such things as may be necessary, prudent or desirable in order to safeguard the confidentiality of the Confidential Information of the other party.

11. DISPUTE RESOLUTION

- 11.1 The parties agree to attempt in good faith to resolve any dispute regarding these Terms and Conditions through negotiation including negotiation with the assistance of an agreed mediator.
- 11.2 If the dispute or difference is not resolved to the satisfaction of the parties within 30 days, either party may request the matter to be heard by an arbitrator.
- 11.3 Arbitration shall be effected:
- (a) by an arbitrator agreed upon in writing by the parties; or
 - (b) in the absence of such agreement, by an arbitrator appointed in accordance with the provisions of the law relating to arbitration in force in the State of New South Wales; or
 - (c) by an arbitrator appointed by the National President for the time being of the Institute of Arbitrators Australia.
- 11.4 McGrath Interiors may pause the provision of the Services to conduct whatever investigations deemed appropriate and, within 90 days of the given written notice, seek to resolve the dispute.

12. GENERAL

- 12.1 Any notice provided under these Terms and Conditions must be in writing, addressed to the other party's contact persons as notified by the other party.
- 12.2 These Terms and Conditions do not create a relationship of employment, agency or partnership between the parties.
- 12.3 McGrath Interiors may sub-contract its obligations under these Terms and Conditions.
- 12.4 The failure of a party at any time to insist on performance by the other party of an obligation under these Terms and Conditions is not a waiver of any of its rights.
- 12.5 If part or all of any of the provisions of these Terms and Conditions are illegal or unenforceable, it will be severed from these Terms and Conditions, and will not affect the continued operation of the remaining provisions.
- 12.6 McGrath Interiors may vary these Terms and Conditions from time to time. Any varied Terms and Conditions will apply to Services which that commences after the date that McGrath Interiors publishes the varied terms and conditions. The Client's engagement of Services after that date signifies acceptance of the varied Terms and Conditions.
- 12.7 These Terms and Conditions are governed by the laws of New South Wales and each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales.
- 12.8 These Terms and Conditions constitute the entire agreement of the parties as to the subject matter and supersede and cancel all prior arrangements, understandings and negotiations in connection with it. Any statement made in negotiations for these Terms and Conditions which is not set out in the Terms and Conditions do not form part of the agreement between the parties.