



## TERMS & CONDITIONS OF ENGAGEMENT

National Shield Pty Ltd trading as Trustee of 3 Chickadees trading as **BUILTFORM AU**  
Liability limited by a scheme approved under professional standards legislation.

### 1. DEFINITIONS

- 1.1. In this agreement:-
- (a) *National Shield Pty Ltd* trading as *Trustee of 3 Chickadees* trading as **BUILTFORM AU** (and Builtform Boutique) and its directors, officers, employees, agents or subcontractors is referred to as the "Certifier, Building and Development Consultant, Access Consultant, LHA Assessor, Pool Safety Inspector" or "BUILTFORM AU".
  - (b) Consultant(s) include Queensland Government departments (eg Queensland Fire Service [QFS], etc), Local Government (Council), architects, building designers, engineers (eg, structural, civil, electrical, etc), town planners, fire engineers, hydraulic designers, energy efficiency assessors, other industry consultants or the alike.
  - (c) Private Certifier as defined by Section 9 of the Building Act 1975 is referred to as the "Certifier" and/or "Building Surveyor".
  - (d) Pool Safety Inspector as defined by Section 246BG of the Building Act 1975 is referred to as the "Pool Inspector".
  - (e) The applicant, referred to in this agreement is referred to as the "Client".
  - (f) "Client" means the person/s or any person acting on behalf of and with the authority of the registered Property Owner requesting BUILTFORM AU to provide the Services as specified in any proposal, quotation, order, invoice or other Documentation, and:
    - (i) if there is more than one registered Property Owner, is a reference to each registered Property Owner jointly and severally; and
    - (ii) if the registered Property Owner is a part of a Trust, shall be bound in their capacity as a trustee; and
    - (iii) includes the registered Property Owner executor's, administrators, successors and permitted assigns.
  - (g) The Building Act 1975 is referred to as the BA75.
  - (h) The Building Regulation 2021 is referred to as the BR21.
  - (i) The Planning Act 2016 is referred to as the PA16.
  - (j) The Disability Discrimination Act 1992 is referred to as the DDA92

### 2. INTRODUCTION

- 2.1. Entire agreement;
- 2.1.1. Comprises of the following documents;
    - 2.1.1.1. Quotation / Tax Invoice,
    - 2.1.1.2. Engagement and Fee Agreement,
    - 2.1.1.3. Terms & Conditions of Engagement as a Private Certifier, and
    - 2.1.1.4. Any schedules and annexures attached to this agreement.

### 3. ACKNOWLEDGEMENT

- 3.1. The parties acknowledge that the Certifier is the *Assessment manager* in accordance with section 48 of the PA16. As the *Assessment manager*, the Certifier is a regulator and not a 'consultant' or project manager or the alike.
- 3.2. The parties acknowledge that the Pool Inspector is the *Pool Safety Inspector* in accordance with Chapter 8 of the BA75. The Pool Inspector can be a 'pool safety inspector' and/or a 'consultant' under the functions of the BA75 and as set out under the engagement terms and fee agreement.
- 3.3. The parties acknowledge that the terms of their agreement are fully set out in this Agreement, and may not be altered, varied, deleted or otherwise affected by reference to any prior representations, conditions or agreements, whether written or verbal.
- 3.4. By signing of the Engagement Agreement the Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions contained herein.
- 3.5. By signing of the Engagement Agreement the Client is taken to have appointed BUILTFORM AU as the exclusive Consultant/ Certifier/ Pool Inspector for the duration of the contract and the nominated Services unless otherwise agreed in writing.
- 3.6. Where BUILTFORM AU considers that an external consultant or contractor is required to enable BUILTFORM AU to provide Services, then BUILTFORM AU may (with the approval of and as the agent of the Client) engage such Consultant or Contractor on terms determined by BUILTFORM AU.
  - 3.6.1. In respect of any such engagement, the Client acknowledges that the Consultant or Contractor is the agent of the Client and the Client indemnifies BUILTFORM AU against all liability arising from the engagement including, without limitation, liability to third parties.
  - 3.6.2. Alternatively, if it is mutually agreed that BUILTFORM AU engaged the consultant or contractor as a sub-contractor to BUILTFORM AU then the

client shall buy BUILTFORM AU an administration fee equal to 15% of the total cost of that consultant or contractor.

- 3.7. The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow them to do so. The Client is not insolvent and that this agreement creates a binding and valid legal obligation on them, to meet all of their debts as and when they fall due.
- 3.8. Signing of the Engagement Agreement forms a contract of engagement between the Client and BUILTFORM AU pursuant to the BA75 for the provision of private certifying functions and pool safety inspections for the nominated agreed **Total fee**.
- 3.9. Signing of the Engagement Agreement forms a contract of engagement between the Client and BUILTFORM AU for the provision of building and development consulting and access consulting for the nominated agreed **Total fee**.
- 3.10. These fees are subject to confirmation by the relevant authority, and any additional amounts or shortfalls are required to be paid by the Client for any/all application/s to be considered 'Properly Made'.
- 3.11. This fee proposal is based on the information shown on the proposed plans provided (e.g. Version A) to and retained by BUILTFORM AU and does not constitute a technical analysis or building assessment of the project.
- 3.12. The quote does not include any amendments etc to the plans and or documents issued to prepare the original quote.
- 3.13. The quote may include additional items (where itemised) that may require approval against relevant current legislation and preparation of these applications, referrals and/or response on behalf of the client. Eg, Bush Fire, Energy Efficiency, Steep Land, Built Over and Adjacent to Sewer's, Material Change of Use, Boundary Relaxation, etc.
- 3.14. Lodgement of a building development application in the future may raise other issues not considered in the original quote and therefore the above advice/quote does not bind BUILTFORM AU, in any way when considering a future building development application. Additional fees may apply.
- 3.15. In the event the supporting documents {plans (e.g. Version C) and or documents} lodged for a building application etc have been amended in any way from the plans (e.g. Version A) and or documents issued to prepare the original quote, BUILTFORM AU reserves the right to amend and reissue the quote and Engagement & Fee Agreement or:-
  - 3.15.1.1. If revised / amended supporting documents (e.g. Version C) have been lodged by the Client after the invoice has been paid and prior to the commencement of the assessment of the application, BUILTFORM AU reserves the right to amend and reissue the invoice in accordance with clause 3.9.
  - 3.15.1.2. If revised / amended supporting documents (e.g. Version C) have been lodged by the Client after the invoice has been paid and the application is deemed not 'Properly Made' (eg missing info as noted in the lodgement check list or preliminary written advice) a minimum re-submission fee of \$300 + gst will apply.
- 3.16. The fee proposal is based on that no external fees have been allowed or included other than the costs that are listed in this fee proposal and attached quote / tax invoice.
- 3.17. While we have endeavoured to ensure this proposal is inclusive of all associated regulatory fees, such matters cannot be unequivocally finalised in the absence of full assessment of the application and/or service/s.
- 3.18. Pursuant to the s146 of the BA75 the Certifier must be paid the fee agreed to, even if the Certifier does not approve (refuse) the application or certify works because of noncompliance with any applicable codes or other valid reason.
- 3.19. Plumbing Applications may be lodged on behalf of the Client/Owner; BUILTFORM AU takes no responsibility in relation to plumbing approvals, plumbing inspections and or plumbing finals.
- 3.20. Referral Applications and other Council/ Regulatory Body Permit applications (e.g. Local Law) may be lodged on behalf of the Client/Owner; BUILTFORM AU takes no responsibility in relation to their decision, fee discrepancies, inspections and/or finals.
- 3.21. The proposed building work at the Site must not be commenced until a Development Permit for Building work has been issued by BUILTFORM AU and or its representative Certifier. If work does commence before approval is issued by the Assessment Manager. BUILTFORM AU takes no responsibility for the work and/or any rectification of the work.



- 3.22. As Certifiers, Pool Inspectors and or Consultants, BUILTFORM AU will not act as the builder's supervisor/quality controller. Both the building contractor, Client (which may not be the Property Owner and or the builder) and Property Owner are responsible for ensuring the building work is carried out to a standard of quality and finish required by the Property Owner (s) under the conditions of the relevant building contract.
- 3.23. None of the Certifier's, Consultant's and/or Pool Inspector's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by Management of BUILTFORM AU in writing nor is BUILTFORM AU bound by any such unauthorised statements.
- 3.24. Where BUILTFORM AU has been provided with an email address from the Client for e-communications, both parties agree to fully comply with all current requirements by law pertaining to electronic messaging.
- 3.25. You are entitled to seek independent legal advice about these Terms. You acknowledge that you have either obtained that advice or elected not to do so. You acknowledge that, by agreeing to these Terms, you may be obliged to pay higher fees than those which would be payable in their absence or which may be recoverable from other parties in the event of successful litigation.
- 3.26. The Client acknowledges that the Certifier is subject to the requirements of the Act and the code of conduct for building certifiers adopted under the Act. This means that the Certifier is obligated by law to act in the public interest at all times and must assess the Project on its merits and in strict accordance with law. As a result, the Client understands that the Certifier's obligations are to assess the Project and comply with the Act, and this means that the Certifier cannot guarantee that the Project will be approved and that the Certifier may be required to act against the Client's interests.
- 3.27. The Client acknowledges that the Pool Inspector is subject to the requirements of the Act and the code of conduct for Pool Safety Inspectors adopted under the Act. This means that the Pool Inspector is obligated by law to act in the public interest at all times and must assess the Project on its merits and in strict accordance with law. As a result, the Client understands that the Pool Inspector's obligations are to assess and inspect the Project and comply with the Act, and this means that the Pool Inspector cannot guarantee that the Project will be approved and/or a certificate issued and that the Pool Inspector may be required to act against the Client's interests.
- 3.28. The Client acknowledges that the Access Consultant and/or SDA/LHA Accredited Assessor is subject to the requirements of the Act and the code of conduct for Access Consultants and/or SDA/LHA Accredited Assessors adopted under the respective Associations (Association of Consultants in Access Australia (ACAA) and the National Disability Insurance Agency (NDIA). This means that the Access Consultant and/or SDA/LHA Accredited Assessor is obligated by law to act in the public interest at all times and must assess the Project on its merits and in strict accordance with law. As a result, the Client understands that the Access Consultant and/or SDA/LHA Accredited Assessor's obligations are to assess the Project and comply with the Act, and this means that the Access Consultant and/or SDA/LHA Accredited Assessor cannot guarantee that the Project will be approved and that the Access Consultant and/or SDA/LHA Accredited Assessor may be required to act against the Client's interests.
- 3.29. The Client acknowledges that the Building and Development Consultant is subject to the requirements of the Act. As a result, the Client understands that the Building and Development Consultant's obligations are to assess the Project and comply with the Act, and this means that the Building and Development Consultant cannot guarantee that the Project will be approved or profitable and that the Building and Development Consultant may be required to act against the Client's interests.
- 3.30. The Client acknowledges that BUILTFORM AU may engage in any other business, occupation or activity during the Term.
- 3.31. If the Client engages another person to provide services substantially the same in respect of the Project, then BUILTFORM AU may terminate this agreement.
- 3.32. The Client acknowledges and agrees that any instructions and/or payment received by BUILTFORM AU for the supply of any Services constitutes acceptance of the terms and conditions contained in this agreement.

#### 4. PROPERTY OWNERS CONSENT

- 4.1. If the Client is a corporation, partnership or joint venture then the signatory on this Engagement warrants that they have the authority to engage

BUILTFORM AU to do all necessary by BUILTFORM AU pursuant to this Engagement.

- 4.2. If the Client is not the Property Owner of the site, the Client warrants that the Property Owner has authorised the Client to engage BUILTFORM AU under this Engagement.
- 4.3. **Personal Guarantee:** the Client agrees that if they are acting on behalf of and with the authority of the registered Property Owner, the Client shall be personally liable for the performance of the Client's/ Property Owners' responsibilities under this contract.

#### 5. CLIENT / PROPERTY OWNER WARRANTIES & OBLIGATIONS

- 5.1. The Client/ Property Owner warrants:
- 5.1.1. It is the Client/ Property Owner responsibilities for ensuring all approvals and permits other than 'Building Development Approval' have been obtained.
- 5.1.2. That any Data provided to the Certifier is accurate and complete in all respects;
- 5.1.3. That, in performing the Development Application Assessment Services, the Certifier acts with the Client's authority.
- 5.1.4. That no other person or entity has been appointed by the Client to perform the Services in relation to the Project; unless otherwise approved in writing and permitted by law.
- 5.2. In addition to the obligations of the Client's under the PA16 and BA75, the Client/ Property Owner agrees to:
- 5.2.1. Provide to BUILTFORM AU plans showing existing and proposed building work and supporting documentation that must on its face demonstrate compliance with the current building legislation and the carrying out of the building work will comply with the building assessment provisions;
- 5.2.2. Provide to BUILTFORM AU all existing Development Approvals (e.g. Material Change of Use [MCU] permit (Decision Notice and plans) approved by the local Council, Covenants, etc) and any applications for Development Applications not yet issued (decided);
- 5.2.3. Provide all information required by BUILTFORM AU within the time specified by BUILTFORM AU and/or its representative to enable BUILTFORM AU to perform the Development Application Assessment Services and/or other Services under this agreement;
- 5.2.4. Give BUILTFORM AU and/or its representative Certifier, Pool Inspector and/or Consultant such access to the Project and any relevant site as is required by them to perform the Services;
- 5.2.5. Agrees to obtain all other approvals that may be required for this development (Town Planning Decision [MCU/ OW], Boundary Relaxation, etc);
- 5.2.6. Advise BUILTFORM AU if the Client or any other person associated with the development is engaged in any litigation and the nature of the litigation;
- 5.2.7. Advise BUILTFORM AU if the Client or any other person associated with the development is engaged in any appeal and the nature of the appeal;
- 5.2.8. Advise BUILTFORM AU of any enforcement action (Show Cause Notice, Enforcement Notice or any other notice, including a Notice under a Local Govt law);
- 5.2.9. Ensure that safe access is available to/from and on the site for consulting, assessment and inspection purposes by BUILTFORM AU or their agents.

#### 6. RECITALS

- 6.1. **BUILTFORM AU** is a Certifier under section 160 of the BA75. The Client has requested BUILTFORM AU to undertake building certification functions outlined in the *Scope of Building Certification Work*.
- 6.2. **BUILTFORM AU** is a Pool Safety Inspector under Chapter 8 of the BA75. The Client has requested BUILTFORM AU to undertake pool safety inspection and/or consulting functions outlined in the *Act*.

#### 7. SCOPE OF BUILDING CERTIFICATION AND POOL SAFETY INSPECTION FUNCTIONS

- 7.1. During the assessment and inspection processes, it may be determined that additional works, beyond that nominated in the *Scope of Building Certification Work* and by the BA75, is required to properly assess the application and inspect the works.
- 7.2. In these circumstances, BUILTFORM AU reserves the right to review the amount quoted in the *Scope of Work*, to cover the additional works. Examples of when this may occur include but not limited to when additional site inspections are required (for example to undertake a



bushfire hazard assessment, site inspection for preparation of other development and permit applications, owner requested inspections) or non-compliance with the BA75. It is proposed that our service may include:

1. Assessment in accordance with PA16 & BA75 (including the BCA and relevant Australian Standards),
2. Town planning compliance assessment,
3. Issuing of a Decision Notice (Building Development Approval/ Refusal) in accordance with the PA16,
4. Inspections during construction (Maximum site time is ½ hour), and
5. The issuing of a 'Final Inspection Certificate' (before occupation of the building) once the building is completed in accordance with the BA75.
6. Preparing and compiling reports and applications (Development Applications, Referral Agency and/or Regulatory Bodies) for the Client.
7. Inspecting, Preparing and Issuing Reports and/or Certificates relating to compliance and non-compliance.

**Excluded** from this engagement are functions not expressly mentioned in the **Scope of Building Certification Work** and/or functions not usually carried out by Certifiers and/or Pool Safety Inspectors under the BA75.

#### EXCLUSIONS

The following items, unless specifically mentioned in the above Scope of Building Certification Work and or on the Quotation / Tax Invoice, are not included in the fee proposal and this includes, but is not limited to the following:

- (a) Any guarantee by the Certifier that the Project will obtain approval/ refusal and/or certification under the Act,
- (b) Supervision and building quality control (quality and finish) of works,
- (c) Authority fees not expressly nominated on the Quote / Invoice,
- (d) All other statutory fees including payment of the Q-Leave Levy, etc,
- (e) Assessment for compliance with any other Act or code (eg. Town Planning compliance check, Workplace Health and Safety Act, Disability Discrimination Act 1992 (Commonwealth) & the Anti-Discrimination Act 1991 (Qld)),
- (f) Codes that are self-assessable under a Council Planning Scheme,
- (g) Preparation of an Alternative Building Solution (performance solution) etc
- (h) Assessment of an Alternative Building Solution (performance solution) etc,
- (i) Additional meetings and inspections not accounted for in the scope of works (including re-inspections for defective works),
- (j) Undertaking enforcement action required under State legislation,
- (k) Any submission of Amended Plans and associated fees,
- (l) Information Request and associated fees,
- (m) Other Town Planning / Local Law issues,
- (n) Possible Built Over Sewer / Stormwater/ Water (e.g.BOS / BOSW etc),
- (o) Other Local Government (Council) Lodgements and associated fees,
- (p) Fees by consultants (eg. QFS, Designers, engineers, town planners, energy efficiency assessment, etc) (Consultants etc will invoice the Client),
- (q) Staged building approval meaning more than one Decision Notice for building work to be issued. (eg Building approval for Demolition, or up to Footing stage and then another building approval (Stage 2) for the building work to continue after obtaining other approvals in accordance with section 83 of the BA75 or the alike,
- (r) Costs related to obtain planning approval and other approvals (e.g. minor works) or other consultants or Solicitors are not included,
- (s) Costs related to obtain minor and other amended decisions and other approvals (e.g. minor works) or other consultants or Solicitors are not included,
- (t) Preparation, lodgement of Appeal documents, and attendance and resulting actions relating to appeals at Tribunals (Queensland Development Tribunal (Tribunal), Queensland Civil and Administrative Tribunal (QCAT)) or the alike. All costs will be by the Client,
- (u) Costs related to any legal action or the alike. All costs will be by the Client,
- (v) Examination of all information relevant to the risk, contingencies and other circumstances having an effect on cost and which is obtainable by making reasonable enquiries, and satisfied itself as to the correctness and sufficiency of the contract documents and that it's price covers the cost of complying with all the requirements of the Consultancy Agreement and of all matters and things necessary for the due and proper performance and completion of the work.
- (w) The costs/fees for aspect inspections of building works completed by competent persons, eg: a Registered Professional Engineer of Queensland or Licensed cadastral land surveyor, licenced fire safety professionals, are not covered by the building application fee proposal and the Client is responsible

for paying for the services of those persons, in accordance with their terms of engagement.

- (x) The provision of any supervision, labour, materials, equipment, etc to complete the design and construction in accordance with the Building Approved documents, etc.
- (y) Progress Claims for any of the building certification as payment will be as per the Payment terms within this agreement.
- (z) Travelling expenses such as Airfares, accommodation, vehicle hire and petrol associated with any site inspection or site meeting are excluded from this fee proposal.
- (aa) Costs associated with any response to or the issue of notices and Local Government (Council) queries are excluded from this fee proposal and are payable by the Client.
- (bb) The preparation of plans or related documents (role of a QBCC Building Designer or the alike).
- (cc) Provision of design advice, etc (role of the respective consultant). Please direct your queries to the consultant and have them produce the required detailed design drawings with the applicable documentation. (eg: Test Results for the proposed system which will then need to be submitted to the Certifier for Decision).
- (dd) Engineering advice, structural plans and/or related documents etc (role of a RPEQ engineer or the alike).
- (ee) Consultation to resolve issues between the builder, subbies and the property owner or the alike (role of QBCC, QMBA or the alike).
- (ff) Responses to or issues of notices and Local Authority queries.
- (gg) Cost of printing hard copy approved plans & related documents.

#### 8. ADDITIONAL SERVICES

- 8.1. Upon request, BUILTFORM AU may provide additional services as per the fee schedule, such as:
  - (a) Attendance at design and/or preliminary planning meetings,
  - (b) Preliminary site inspection and provide building code consultancy advice,
  - (c) Preliminary assessment & advice prior to formalisation of the application for building work,
  - (d) Collating & lodgement of other applications to other organisations. (E.g. Plumbing, Water, QFS, and Boundary Relaxation, Local Law Permit etc);
  - (e) Review Town Planning decision documentation and drawings and provide compliance advice,
  - (f) Advise on any Referral Agency decisions required prior to issue of the Development Permit for Building Work,
  - (g) Liaise with QFS in order to obtain final inspection approval for Special Fire Services.
  - (h) Liaise with and prepare documentation for expert witnesses, consultants, licensees other professionals relating to the Project.
- 8.2. Additional services and consulting services which include referral agency and discretionary assessments against planning, building and other assessment provisions are provided on the basis that the application is discretionary (may or may not be approved on the information/report provided by BUILTFORM AU or its agents) and that the assessing authority (i.e. Council, Referral Agency under PR17) has jurisdiction to decide whether to refuse a development application or approve a development application under certain conditions per section 57 of the BA75. This authority can therefore determine the outcome of the building application. BUILTFORM AU and its agents will not be held responsible for the outcome. Appeal rights under PA16 are afforded to the client in circumstances where applications are refused or conditions imposed in addition to Internal Review Policies to the relevant authority. This is the responsibility of the client.
- 8.3. Where BUILTFORM AU performs additional work performed as a result of a direction issued by the Client, BUILTFORM AU shall be entitled to payment from the Client for those additional works. Unless otherwise agreed, the amount payable for such additional works performed by BUILTFORM AU is to be calculated at BUILTFORM AU's hourly rate in clause 12.
- 8.4. Any variation to the *Total Fee* payable to BUILTFORM AU in accordance with this clause shall be payable by the Client within 7 days of invoice issued by BUILTFORM AU, and prior to BUILTFORM AU commencing the additional works.

#### 9. WORKS

- 9.1. Pursuant to the BA75 and the agreement herein, the Client hereby engages BUILTFORM AU to undertake the work specified in the Fee Proposal.





- 9.2. Unless nominated in the Fee Proposal, the Works are limited to the services contained within the Fee Proposal.
- 9.3. The Client will ensure that the proposed building work is carried out in accordance with any relevant development permit and legislation that applies to the building work.

## 10. ASSESSMENT

- 10.1. Pursuant to section 56 of the BA75, the Client acknowledges the Certifier in the carrying out of building assessment (including building inspection) allows for a discretionary decision about building design or specification for building work.
- 10.2. The Client acknowledges BUILTFORM AU including the Certifier, Pool Inspector, Consultant and its agents may refuse to accept the use of material, product, form of construction or design which meets a Performance Requirement or an Acceptable Construction Provision of the BCA.

## 11. ACCEPTANCE OF ENGAGEMENT AND COMMENCEMENT OF WORKS

- 11.1. BUILTFORM AU is not required to commence the Services until the Client has accepted these terms and conditions by signing and returning a copy of the Fee Proposal referencing these Terms and Conditions of Engagement, or
- 11.2. If the Client submits a building development application without including a copy of a signed Fee Proposal, it is taken that these Terms and Conditions have been accepted, or
- 11.3. If the Client issue instructions and/or on going instructions (emails, phone calls, etc) to Builtform Boutique prior to, during or after the issuing of a building development application, in signifies acceptance of the engagement and it is taken that these Terms and Conditions have been accepted by the Client.
- 11.4. The Client will provide to the Certifier as a complete package of all documents including but not limited to - signed Engagement and Fee Agreement, application forms, consents, plans, any prior approvals and specifications as BUILTFORM AU may require enabling the Certifier to undertake the Works.
- 11.5. BUILTFORM AU will require payment in advance for all Services and applications before undertaking the Works, such requirement to be advised by BUILTFORM AU in writing.
- 11.6. BUILTFORM AU is not required to commence processing of an application or Works in relation to provide the Services until all required documentation has been provided and payment of the *Total fee* is received in full.

## 12. FEE PROPOSAL CURRENCY PERIOD

- 12.1. The fee proposal will remain current (valid) for a period of thirty (30) days from the date of the quotation subject to payment and lodgement of an application within that time. (\* Please Note - Govt fees are subject to change.)
- 12.2. If the signed agreement is not paid within thirty (30) days from the date of the quotation, the quote is no longer valid and payment and a signed agreement will not be accepted.
- 12.3. In the event the Client wishes to proceed with the project a new agreement will be provided.

## 13. FEES

- 13.1. The Client will pay to BUILTFORM AU the *Total fee* for the Work upon receipt from BUILTFORM AU of a Tax Invoice in respect of such Work within the ordinary terms for payment stated on the Tax Invoice.
- 13.2. The Total fee for the Work will be calculated in accordance with the fee structure contained in the Fee Proposal which structure may be changed from time to time and advised to the Client.
- 13.3. Without limiting the generality of the foregoing, the Client acknowledges that in the event that there arise any unforeseen circumstances, or changes in legislative requirements, prescribed agency fees, or need for additional assessment work, inspections or notices not known at the time of the signing of these terms and conditions, BUILTFORM AU may adjust the fees according to the circumstances then prevailing.
- 13.4. BUILTFORM AU may charge an interest at a rate of up to 12% per annum calculated on a daily basis on amounts not paid on or before the 'due date' for payment.
- 13.5. The Client must pay to BUILTFORM AU any costs, expenses or losses incurred by BUILTFORM AU or its agents as a result of the Client's failure to pay BUILTFORM AU all outstanding amounts owed including any debt collection and legal costs on an Indemnity basis incurred in enforcing payment.

- 13.6. Where Fees are charged on a time basis, time is calculated by reference to 15 minute units or part thereof. Charge rates for our staff vary according to their specialist skills and experience.

- 13.7. Hourly rate (2024) works will be on the following basis;

a. Director & Building Certifier	\$400 per hour + gst
b. Director & Access Consultant	\$400 per hour + gst
c. Building Certifier	\$350 per hour + gst
d. LHA Accredited Assessor	\$300 per hour + gst
e. Pool Safety Inspector	\$300 per hour + gst
f. Development Consultant	\$400 per hour + gst
g. Administration	\$300 per hour + gst

- 13.8. We generally review our rates annually in the last week of June (in-line with Govt) but may do so at any time. You agree to be charged at a changed rate from the time we publish a change as described below in "Variation of Fees" whether or not we have notified you of the change.
- 13.9. The time that we charge for includes time spent in preparing or reading documents or correspondence, telephone calls, attending meetings, conducting searches, undertaking research and travelling in the course of undertaking work for you.
- 13.10. GST, other taxes, duties, disbursements and applicable government and council fees and charges will be added to the Fee other than where they are expressly included in the Fee.

## 14. PAYMENT TERMS

- 14.1. In accordance with the PA16, an application is not '*properly made*' unless it is accompanied by the application fee. Therefore, payment of the **Total fee** is required in **full** at the time of lodging the relevant application.
- 14.2. Assessment of the building application and lodgement of the associated applications (QFS, etc.) with Council will commence upon full payment and receipt of the relevant tax invoice '*Properly Made Application*'.
- 14.3. Please email a copy of the *Remittance Advice* for Electronic Funds Transfer to our office.
- 14.4. Please quote your invoice number in the transaction description to ensure we are able to allocate your payment correctly.
- 14.5. Any variation to the fee proposal payable to BUILTFORM AU in accordance with this clause shall be payable by the Client within 5 business days of the date of the 'Tax Invoice' issued by BUILTFORM AU, and prior to BUILTFORM AU commencing the additional works.
- 14.6. If the Client fails to make a payment that is due, BUILTFORM AU may notify the Client in writing that it will suspend performance of the Services, after expiry of at least 3 business days written notice to the Client. Unless the payment has been made, BUILTFORM AU may suspend performance of the Services any time after expiration of the notice period. BUILTFORM AU must lift the suspension within 5 business days after the Client has made the payment.
- 14.7. If the Client owes BUILTFORM AU any money the Client shall indemnify BUILTFORM AU from and against all costs and disbursements incurred by BUILTFORM AU in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own Client basis, BUILTFORM AU's contract default fee, and bank dishonour fees).
- 14.8. Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Client and BUILTFORM AU or its agents.
- 14.9. Receipt by BUILTFORM AU of any form of payment other than cash does not constitute payment until that payment has been honoured, cleared or recognised by BUILTFORM AU or its agents.

## 15. ADDITIONAL WORK FEES

- 15.1. If the Client issues on going instructions (emails, phone calls, etc) to BUILTFORM AU or its agents in effect whereby BUILTFORM AU performs a preliminary assessment and/or a planning assessment and/or a NCC-BCA code advice prior to formalisation of the application for building work it is taken that these Terms and Conditions have been accepted and BUILTFORM AU will be entitled to payment at the Director & Building Certifier hourly rate charged at increments of 15 minutes.
- 15.2. Where changes occur during construction that deviate from the approved plans (and such changes are not considered to be *generally in accordance* with the approval), an application for a *Change to Development Permit* will be necessary. The minimum fee for a *Change to Development Permit* shall be quoted (Min. \$750 +GST) plus the relevant local government authority document lodgement prescribed fee.
- 15.3. Please note, Should the work become unduly protracted, for example unforeseen circumstances, matters beyond our control, inadequate documentation etc, we reserve the right to charge additional fees.



- 15.4. Consultancy Services - will generally be invoiced at the end of each 7 day period. BUILTFORM AU and the Client agree that any overdue payment shall attract an interest rate of 12% p.a.

## 16. DOCUMENTATION

- 16.1. When you accept our proposal the documentation listed in the 'Lodgement Checklist' will be required as a complete package at the time of lodgement of the application.
- 16.2. The Client will provide to BUILTFORM AU all documents including but not limited to application forms, consents, easement documents, relevant plans, prior approvals and specifications as the Certifier may require enabling BUILTFORM AU and its agents to undertake the Works.
- 16.3. The Client will ensure that all supporting documentation for the Building Application must demonstrate compliance with Chapter 3 of the BA75
- 16.4. The Client will ensure that all supporting documentation for the Development Applications, Referral Agency Applications and/or Regulatory Authority Applications must demonstrate compliance with the PA16, BA75, Local Laws and all other relevant legislation.
- 16.5. The Client will ensure that all supporting documentation for the Pool Safety Inspection Functions and Consultancy Services must demonstrate compliance with the BA75.

## 17. PLANS SUBMITTED

- 17.1. The plans submitted for the building application must be the final set of plans 'For Construction'. Plans marked 'Preliminary', 'Draft' or 'Not for Construction' will not be accepted.
- 17.2. The Client declares that the plans that form part of this engagement are a true and accurate representation of the proposed development and allotment and illustrate all features on the land including existing building and structures, vegetation and services either above and/or below the ground including the location of septic system.
- 17.3. Plans submitted must be a minimum A3 size paper, must be originals and must clearly show all new proposed and existing structures / building work on the property.
- 17.4. Plans must be electronic submitted to [office@builtform.au](mailto:office@builtform.au) must be originals and must clearly show all new, proposed and existing structures and/or building work on the property.
- 17.5. Plans must indicate lot size dimensions, distances from boundaries, be to scale (e.g. site plan 1:200 and elevations/floor plans 1:100).
- 17.6. Plans and supporting documents must be prepared and/or drawn by a QBCC licensed builder; QBCC licensed building designer, registered architect, and/or a RPEQ engineer (structural) in accordance with BSA Fact Sheet 'C31-140113 - Building Designer Licensing Requirements or QBCC Fact Sheet- Building Designer Licensing Requirements (as amended). Additional fees will apply for variations to the plans once the assessment process has commenced.
- 17.7. The Client acknowledges in the event the supporting documents have not been prepared by a registered or licensed person under law the application will be held in abeyance and written notice will be issued to the Client advising same.
- 17.8. Plans are to be in PDF format (eg, BlueBeam, Adobe). Additional fees will apply for variations to the plans once the assessment process has commenced.
- 17.9. BUILTFORM AU will promptly give written notice to the Client if and to the extent BUILTFORM AU becomes aware that any document or other information provided by the Client is ambiguous, inaccurate, or otherwise insufficient to enable BUILTFORM AU to carry out the Services.
- 17.10. Should our fee proposal be acceptable the building plans and associated documentation must contain the specified minimum information as shown in the document 'Application Checklist' produced by BUILTFORM AU and the 'DA Forms Guide: Relevant Plans' produced by the Qld State Department.
- 17.11. Note- At the time of assessing the documentation against the BA75, additional information may be necessary to enable the approvals to be issued.
- 17.12. Building work on the Site can only commence once the development application has been approved and issued by the Certifier (BUILTFORM AU or its agents).
- 17.13. The Client may only request a building inspection for building work after the building approval has been issued by the Certifier (BUILTFORM AU or its agents).

## 18. LODGEMENT OF DOCUMENTATION

- 18.1. The Client acknowledges that the lodgement of the building application will be as a complete package with the lodgement check sheet being used

as the transmittal cover sheet. And the application is handled once by BUILTFORM AU staff.

- 18.2. The Client acknowledges that the complete building application package will be lodged within thirty (30) days from the date of the quotation.
- 18.3. In the event the building application is NOT lodged as a complete package the Client will be liable for a minimum fee of \$250 (+gst) for each time a document is received (by email or hand delivered, etc) for lodgement of the building application. The fee will require payment before the application has been considered as '**Properly Made**'.
- 18.4. The Client acknowledges that in the event the required documentation and specifications (eg, truss plan(s), truss tiedown specification document & truss form 15; roller door specifications & form 15, etc) is not provided at lodgement stage, the Client may be liable for a minimum fee of \$250+gst for each time a document is received (by email or hand delivered, etc) for lodgement of the building application. The fee will require payment before the application has been considered as '**Properly Made**'.
- 18.5. For your convenience, all documentation can be lodged electronically, and email sent to [office@builtform.au](mailto:office@builtform.au) (Please ensure the email size is less than 8MB's) or
- 18.6. For your convenience if the email is larger than 8MB's you may wish to lodge, all documentation's electronically via 'Dropbox' and sent an email to [office@builtform.au](mailto:office@builtform.au) advising of lodgement or
- 18.7. Alternatively, 1 complete set or original documents on a USB stick can be posted to us or hand delivered to BUILTFORM AU office.
- 18.8. Files or emails larger than 8Mb can be sent to us on a USB stick, [www.dropbox.com](http://www.dropbox.com) or [www.buildingindustryonline.com.au](http://www.buildingindustryonline.com.au) or the PermAssist application link issued to the client.
- 18.9. Upon receiving a '**properly made**' application a building application number will be issued (e.g. BA2024-0288). Once you have been allocated the building application number, please quote this number in the email subject bar for all correspondence.
- 18.10. A '**Properly Made**' letter will be sent to you in accordance with the PA16.

## 19. QLEAVE & QBCC INSURANCE

- 19.1. The payment of QLeave and QBCC insurance is the responsibility of the Client. BUILTFORM AU will not collect nor make payment on behalf of the Client.
- 19.2. QLeave - The Client will provide the completed Certifier's Copy of the QLeave Notification and Payment Form.
- 19.3. The payer's copy will not be accepted under any circumstance.

## 20. DOCUMENT QUALITY & SCANNING

- 20.1. All plans lodged to BUILTFORM AU are to be originals and created from a computer drafting package, CAD Package, etc. This will ensure the documents are of the highest quality and are accurate. Plans are to be submitted in PDF format. All other documentation is to be submitted in PDF and/or word DOC or DOCX format.
- 20.2. Scanned and or faxed documents may not be accepted for the following reasons,
- 20.2.1. The scale of the plans change each time the document is scanned.
- 20.2.2. The resolution and image clarity vary.
- 20.2.3. The clarity and quality of the documents reduce with each time the documents are scanned.
- 20.2.4. Documents are sometimes scanned on an angle and may miss important information.

## 21. INTELLECTUAL PROPERTY AND DATA

- 21.1. Nothing in this agreement affects the Intellectual Property Rights of either party, except as set out in this clause.
- 21.2. The Client grants BUILTFORM AU an unrestricted, royalty free licence to use and manipulate all Intellectual Property Rights in any Data which the Client provides to the Certifier to the extent reasonably necessary for BUILTFORM AU to perform the Services.
- 21.3. The Client warrants that any Data provided by it to BUILTFORM AU will not infringe the Intellectual Property Rights of any person. The Client indemnifies BUILTFORM AU against any direct loss, costs, expenses, demands or liability arising out of a claim by a third party against BUILTFORM AU and its agents alleging that such Data infringes any such Intellectual Property Rights.



## 22. CONSULTANTS DOCUMENTS

- 22.1. Consultant documents include details of information from Queensland Government departments (eg Queensland Fire Service [QFS], etc), Local Government (Council), architects, building designers, engineers (eg, structural, civil, electrical, etc), town planners, fire engineers, hydraulic designers, energy efficiency assessors or the alike.
- 22.2. Consultants' role is to provide professional or expert advice to their Client.
- 22.3. All reports, plans, specifications, computer files, field, law, notes and other documents and instruments prepared by the Consultant as instruments of service shall remain the property of the Consultant. The Consultant shall retain all common law, statutory and other reserved rights, including the copyright thereto.
- 22.4. In the event the Client consents to, allows, authorises or approves of changes to any plans, specifications or other construction documents and these changes are not approved in writing by the Consultant, the Client recognizes that such changes and the results thereof are not the responsibility of the Consultant and or BUILTFORM AU.
- 22.5. Therefore, the Client agrees to release the Consultant and BUILTFORM AU from any liability arising from the construction, use or result of such changes. In addition, the Client agrees, to the fullest extent permitted by law, to indemnify and hold the Consultant harmless from any damage, liability or cost (including reasonable solicitors' fees and costs of defence) arising from such changes except only those damages, liability and costs arising from the sole negligence or wilful misconduct of the Consultant.

## 23. OTHER CONSULTANTS

- 23.1. In the event the Client requests or the project requires input from other consultants, BUILTFORM AU and/or BUILTFORM AU agents and servants, takes no responsibility for the content of their reports / plans / documentation. BUILTFORM AU may not be expert in these fields.
- 23.2. The Client agrees, to the fullest extent permitted by law, to indemnify and hold BUILTFORM AU harmless from any damage, liability or cost (including reasonable solicitors' fees and costs of defence) arising from other consultant's or professional's services.
- 23.3. BUILTFORM AU shall not be liable to the Client for: the acts, omissions or defaults of other contractors or consultants engaged by the Client (including consultants or contractors engaged by BUILTFORM AU as agent for the client.: Any changes, alterations or additions to the Services made by others without the express approval of BUILTFORM AU.: the accuracy of any costs estimates; any loss of use, opportunity or production, loss of interest, earnings or profit, holding or financial costs, business interruption or any indirect or consequential losses; and any loss damage or claim to the extent that such loss, damage or claim was caused or contributed to by the Client or its employees, agents, consultants, or contractors. To the fullest extent permitted by law, all warranties implied by Statute or otherwise is excluded. In the event of a breach by BUILTFORM AU of a warranty implied under the Trade Practices Act 1974 and which cannot be contractually excluded, BUILTFORM AU's liability to the Client for such breach shall be limited to the cost of supplying the Services again. BUILTFORM AU shall be deemed to have been discharged from all liability in respect of the Services, whether under the law of contract, or tort or otherwise, at the expiration of one year from the completion of the Services, and the client (and persons claiming through or under the Client) shall not be entitled to commence any action or claim whatsoever against BUILTFORM AU (or any employee contractor or sub-consultant of BUILTFORM AU (or any employee contractor or sub-consultant of BUILTFORM AU) in respect of the Services after this date.

## 24. BUILDING APPROVAL & APPLICATIONS - DELIVERY

- 24.1. A copy of the building approval will be sent to the 'Client', the 'registered property owner' and the 'Local Government' (Council). The building approval may be placed in our online building permit management application software 'PermAssist' or similar for the Client to obtain / retrieve. An electronic copy of the Building Approval will be lodged with the 'Local Government' (Council) as required by the BA75. The email and documents will be available for download by the registered property owner for a period of 30 days from the day of the Certifier sending the email.
- 24.2. Printing and postage (if requested) costs for a copy of the building approval and associated documents and plans is excluded from the Total Fee and payable by the Client before the release of the documents.

## 25. INFORMATION REQUEST. – (if applicable)

- 25.1. The assessment manager (Certifier) may ask the Client, by written request (an **information request**); to give further information needed to assess the building application (PA16) to carry out the building assessment.

- 25.2. An **information request** is primarily used to gather information to help make a decision. The information request procedure is used where it is necessary to confirm the interpretation of a detail, specification or note on the construction drawings or to secure a documented directive or clarification from the architect or Client that is needed to continue work. (E.g. Town Planning Approval, Septic Plumbing Approval, Bush Fire Assessment, additional structural information, etc.)
- 25.3. It is common and accepted practice for the assessment manager (Certifier) to use an **information request** to state his concern related to the omission or misapplication of a product, etc, and seeks further clarification to demonstrate compliance with the BA75.
- 25.4. The Client has up to 3 months to provide the information documents in the **information request**. Please Note: The **information request** fee will apply.
- 25.5. In the event the response to the information request is NOT lodged as a complete package the Client will be liable for a minimum fee of \$250 (+gst) for each time a document is received (by email or hand delivered, etc) for lodgement of the building application. The fee will require payment before the application has been considered as '**Ready for Assessment**'

## 26. PLAN AMENDMENTS

- 26.1. Where changes are required to be made to the approved plans (eg revised specifications truss plan(s), truss tiedown specification document, truss form 15; roller door specifications & form 15, etc that may not have been available at lodgement stage), a development application to **Change an existing approval** – Form 5, will be required and additional fees will apply. BUILTFORM AU and/or its agents and servants should be consulted prior to plan amendments/ variations occurring. Payment for all variations must be made in full prior to amended decision notice being issued.
- 26.2. The process involves - Assessment of changes, the issuing of Amended Decision Notice and associated amended documents, and issued to the Client, property owner and the Local Government (Council).

## 27. VARIATIONS TO SCOPE OF WORKS

- 27.1. If the scope of work is varied after acceptance of this quotation The Client will provide such direction in writing. BUILTFORM AU invoice price and completion date will be varied accordingly.
- 27.2. Where changes occur during construction that deviate from the approved plans (and such changes are not considered to be generally in accordance with the approval), an application for a Change to Development Permit will be necessary.
- 27.3. The fee for a Change to Development Permit shall be calculated as per BUILTFORM AU fees and charges.

## 28. NON-CONFORMING BUILDING PRODUCTS

- 28.1. Due to events and legislative review surrounding non-conforming building products and auditing by the QBCC, etc it is important to note the following:
  - 28.1.1. The Queensland State Government introduced the Building and Construction Legislation (Non-conforming Building Products - Chain of Responsibility) Act on 31 August 2017.
  - 28.1.2. The builder and/or builder's agent (building designer, etc) and/or property owner take full responsibility in the event the words 'Selected' or 'Selected Products', or the a like is used instead of specifying a product, and any changes of a specified product or materials as noted on the plans or methods of construction have been made without the approval of the Certifier.
  - 28.1.3. Any products and or material supplied or installed by the Property Owner or building occupier (eg shop fit-out for shop owner, etc) is deemed to have been installed by the Builder and the Builder takes full responsibility for the product and ensuring products and or material supplied or installation in accordance with the manufacturer's specification, product technical statements and test reports and Form 15 and Form 12.
  - 28.1.4. Any proposed amendments to the approved plans, including substitution of materials or methods of construction, must be fully documented and approved by the Certifier prior to undertaking the work and additional assessment fees will apply. In the event the proposed amendments are not approved by the Certifier, then the builder and/or builder's agent (building designer, etc) and/or property owner take full responsibility.
  - 28.1.5. All Form 15, Form 12 and Form 16's must reference the current Australian Standard (eg AS3660.1-2014 not AS3660.1-2000 - for the Termite management system).





## 29. INSPECTIONS BOOKING

- 29.1. Inspections will be those nominated in the development permit for building work '**Decision Notice**', client brief or '**Form 26 Non-conformity notice**'.
- 29.2. The **builder or his/her representative** will provide the Certifier a minimum of 2 business days' notice for all inspections to be completed and a minimum of 2 business days' notice for the final inspection to be undertaken.
- 29.3. A duly completed '**Request for Inspection**' form emailed to the Certifier will be required at each inspection stage. (BA75, Section 27).

## 30. ACCESS & ENTERING SITE FOR INSPECTION

- 30.1. The Client must provide to BUILTFORM AU and any of its authorised agents or employees clear, free and unencumbered access to the Site at all times to undertake any inspections or to perform any functions within the scope of BUILTFORM AU's engagement.
- 30.2. All dogs etc shall be restrained at the time of the inspection.
- 30.3. If the **builder / or his representative** fails to provide such access or the building works is not sufficiently complete to carry out such inspection contrary to a previous agreed time frame, the **builder / or his representative** will pay any additional costs that may apply. eg reinspection, etc.
- 30.4. The occupier of the premises and the builder for the building work must, at all reasonable times during business hours, allow the Certifier or a competent person to enter the premises to inspect the building work associated with this building approval.
- 30.5. The medical profession has advised that all dog bites or the alike are reported to council. Council may contact the person subject to the incident for a statement.
- 30.6. Any financial costs (medical / time off work etc) incurred by BUILTFORM AU, its agents and/or employees or a competent person associated with unsafe access (Dog bite or the alike) will be invoiced back to the dog owner (eg, property occupier, property owner, client) for payment.

## 31. INSPECTIONS - STAGE

- 31.1. Inspections are normally undertaken between 8.00am and 4.30pm, Monday to Friday excluding public holidays.
- 31.2. The inspections noted on the Decision Notice are to be completed personally by the nominated inspection agency by physically going to the building site, they are not optional and cannot be waived nor inspect via photograph, face time or the alike.
- 31.3. By signing the engagement and fee agreement you are agreeing to the inspector to enter your property to perform inspections of the building works.
- 31.4. Inspections will be completed by BUILTFORM AU staff or its agents. At no stage will photos, face time or the alike be accepted from the relevant builder and or property owner and or occupier and or Client in place of BUILTFORM AU inspector physically conducting the inspection.

## 32. INSPECTIONS - ASPECT

- 32.1. Aspect inspection certificate (Form 12, Form 43) is permitted in accordance with section 47 of the BR21 and to be signed by a competent person for aspects such as building set out, structural engineering, waterproofing, mechanical ventilation, etc.
- 32.2. The aspect inspection certificate (Form 12, Form 43) does not replace a Stage of building work inspection (Inspection Certificate) such as pier, footing, slab, frame, etc.
- 32.3. The aspect certificate (Form 12, Form 43) is used to assist the building certifier in assessing that particular aspect of building work compliances (section 47a of the BR21) and forms part of the stage inspection that must be assessed and approved by the Certifier.
- 32.4. The Certifier is to review the Form 12, Form 43 Aspect Certificate and related inspection documents for compliance with the BA75 and the development approval.
- 32.5. During the review process, it is established the aspect certificate does not provide the correct information, a request for information will be sent and an administration fee of \$250 (+gst) per form 15, 12, or 43 may apply.
- 32.6. The Certifier may, at the Certifier's absolute discretion accept or refuse to accept the aspect inspection certificate / document from the inspection person, if the person has not documented the actual aspects of the inspection stage that has been inspected.
- 32.7. The Certifier may refer to the aspect inspection certificate in the issuing of the mandatory stage inspection Form 16 Inspection Certificate.

## 33. ADDITIONAL INSPECTIONS OR REINSPECTIONS FEE

- 33.1. The Certifier may, at the Certifier's absolute discretion, determine that additional inspections are required, for example, when the works are found to be non-compliant and require a re-inspection to ensure compliance; and/or other reason the Certifier may determine.
- 33.2. The Certifier will notify the Client in writing (eg email) of the requirement for additional inspections including the reason for the inspection.
- 33.3. Additional inspections are to be at the Client's cost. The inspection fee and any associated costs will be charged as per our fee schedule. The re-inspection or additional inspections fee and any associated costs must be paid prior to the carrying out of the inspection, etc. The Client may be required to provide a receipt number to confirm the payment of the inspection fee at the time of booking the inspection.
- 33.4. Additional inspections (eg pool fence) will be at the Client's cost even if the Property Owner is responsible for installation of the building product (eg the pool fence, etc). The inspection fee and any associated costs will be charged as per our fee schedule to the Client. The re-inspection or additional inspections fee and any associated costs must be paid prior to the carrying out of the inspection (eg pool fence) etc. The Client may be required to provide a receipt number to confirm the payment of the inspection fee at the time of booking the inspection.

## 34. INSPECTION GUIDELINES

- 34.1. The **Guidelines for inspections** set out the aspects for each of the stages for Class 1 and Class 10 buildings - Section 26 of the BR21.
- 34.2. The **Guidelines for inspections** made under s258 of the BA75 and published by the Qld State Department set out stages or aspects for Class 2 to 9 buildings.

## 35. USE OF COMPETENT PERSONS / CONSULTANTS

- 35.1. The use of "competent persons" approved by the Certifier will require a certificate from the competent person to be submitted to the Certifier so that an inspection stage completion certificate can be issued prior to the works proceeding.
- 35.2. The first page of the Decision Notice contains relevant details such Site Address, Lots & Plan Numbers, Local Government (Council) details and Building Approval Number, please ensure consultants, subcontractors and suppliers are provided with these details for inclusion on the Form 15's and 12's and 43's at your earliest convenience as incomplete certificates (including missing or incomplete references to the correct version of the NCC - Building Code of Australia and Australian Standards) will not be accepted and may cause delays in finalising the Approval and/or in gaining lawfully occupancy of the premises.

## 36. SUITABILITY OF COMPETENT PERSON / CONSULTANTS

- 36.1. Pursuant to s17 to s19 of the BR21 and in accordance with Building Codes News Flash 42, the Certifier is required to assess the competency of
  - 36.1.1. Consultants - Professional and Semi-Professional.
  - 36.1.2. Contractors who are required to certify installation, products or construction methods (including inspections) during construction. (The issuing of a Form 15, Form 12 or a Form 43).
- 36.2. In order for the Certifier to assess whether a contractor is properly able to carry out and certify work, you are required to provide a list of contractors who are responsible for their work, their qualifications, and their license or registration details together with details of their experience.
- 36.3. Form 15 - Design & Form 12 & Form 43 - Inspection/ Aspect examples include but not limited to the following:
  - (a) Survey - Set out,
  - (b) Structural - Building Elements - Footing, Slab, Frame, etc,
  - (c) Glazing - Aluminium framed windows and/or doors, etc,
  - (d) Termite Management Method/ Systems,
  - (e) Waterproofing - Wet Areas,
  - (f) Waterproofing - Roof Areas,
  - (g) Fire Safety Systems - Smoke Alarms, Fire Hydrants, Fire Hose Reels, etc,
  - (h) Emergency Lighting & Exit Signs,
  - (i) Fire Hazard Properties - Finishes,
  - (j) Energy Efficiency,
  - (k) Livable Housing,
  - (l) Items required to be certified in accordance with manufacturer's requirement and/or prototype test certificates, etc.
  - (m) Any other certificates as noted in the building approval conditions.



### 37. FORM 15's and FORM 12's and FORM 43's

- 37.1. Form 15's and Form 12's and Form 43's as listed in the 'Decision Notice' may be checked to ensure the contents is true and correct.
- 37.2. All Form 15's and Form 12's and Form 43's must reference the current Australian Standard pertinent to the applicable NCC – BCA version, time of application lodgement/ decision and any applicable transitional provisions.
- 37.3. Referenced documents noted in the Forms may be checked to ensure the documents are relevant to the project, current and complies with the BA75.
- 37.4. The details of the competent person may be checked for current registration or licensed under the law as required by the BA75.
- 37.5. If the content of the Form 15's and/or Form 12's and/or Form 43's is inaccurate for any of the previous points the Form 15's and/or Form 12's and/or Form 43's may be refused.
- 37.6. It will be the Client's responsibility to provide updated Form 15's and Form 12's and/or Form 43's that complies with the BA75.

### 38. INSPECTION - RECORDING

- 38.1. The Certifier may record the inspection electronically (photos, video, audio, or the alike) to confirm the relevant compliance and any non-compliance aspects etc for the building approval.
- 38.2. These recordings (photos, video, audio, or the alike) remain the property of the Certifier.

### 39. INSPECTION - NON-COMPLIANCE NOTICE

- 39.1. In the event a **Non-Compliance Notice - Form 61** has been issued, the re-inspection must be undertaken by the Certifier to confirm the relevant non-compliance has been made compliant.
- 39.2. The Building Certifier or nominated competent person (by the Certifier) may personally take photos to confirm compliance and or non-compliance.

### 40. AS CONSTRUCTED BUILDING WORK

- 40.1. In the event BUILTFORM AU becomes aware building works has commenced and or completed a surcharge will apply to the building portion of the quote and will require payment before the building approval being issued.

### 41. FINAL INSPECTION & CERTIFICATES

- 41.1. The Client will provide the Certifier the required certificates (Form 15 - Certificate of Compliance [Design Appraisal] and or Form 12 - Certificate of Inspection) as nominated in the 'Decision Notice' at final inspection stage.
- 41.2. Final Inspection Certificate will only be issued upon receipt of all (compliant with BA75) Form 15's and/or Form 12's and/or Form 43's as nominated in the 'Decision Notice' and payment clearance of all payments associated with the project.
- 41.3. A Certificate of Occupancy/ Certificate of Classification can only be issued when the building work has been deemed as *substantially completed* in accordance with s101 of the Building Act 1975.

### 42. WHEN APPROVAL LAPSES

- 42.1. The engagement of BUILTFORM AU under this Agreement is for the duration of the building approval and will automatically terminate if the approved building work in relation to the development application is not completed within the period specified in the Decision Notice. (eg, Building Approval lapses on 08<sup>th</sup> August 2024 then the agreement between BUILTFORM AU and the applicant will also terminate on 08<sup>th</sup> August 2024.) There is no engagement agreement between a private certifier and applicant to perform a building certifying function eg to undertake inspections, finalise the building approval etc.
- 42.2. **A Reminder Notice For The Lapsing Of An Approval** - will be sent to the Property Owner and builder and Client of the building work at approximately 4 months before the building approval lapses / expires.
- 42.3. The BA75, Section 95 requires only 1 (only) Lapsing Reminder Notice to be sent out and is to be sent between 6 and 3 months before the file lapses / expires.
- 42.4. The Certifier will **not** provide any further status of the building approval as it is **not** the role of the Certifier to project manage the building approval and or the building work.
- 42.5. In the event the building work has not been issued with the final inspection certificate (eg Form 11, Form 17, Form 21) a *Notice advising the building approval has lapsed / expired* will be sent to the Property Owner and Builder and Client of the building work after the building approval lapses / expires advising the Building Approval has been closed.

- 42.6. Lapsing Period - The currency period that will be applied as noted in the Decision Notice and will require all building work to be completed inclusive of satisfactory final inspection certificate issued (eg Form 17, Form 21 or a Form 11) and submission of all associated certificates and documents.
- 42.7. If an extension to the 'currency period' is required; the **Client** must make an application in writing (e.g. email) to the Certifier to extend the 'currency period' a minimum of 1 month prior to approval lapsing. (Fees will apply.)
- 42.8. A further Lapsing Reminder Notice will NOT be issued before the 'extension of time period expires. Section 95 (4) of the BA75 does not allow for additional lapsing reminder notices to be issued for the same building approval.
- 42.9. A 'Form 22 - Notice of discontinuance of engagement' may be issued in accordance with s144 of the BA75 as the contract between the applicant and the Certifier has expired (s138 BA75).
- 42.10. BUILTFORM AU may offer advice or service after the file has expired, however by offering the service it is not deemed or considered the Building Approval file has not expired or the file has been re-opened or the Form 22 has no effect.
- 42.11. If the building approval lapses and the Client wish to proceed with the building work, a new building application is required to be lodged. The original lapsed building approval cannot be reactivated.
- 42.12. If outstanding documents (eg Form 15, Form 12, Form 43) and inspections (eg Final) is provided to the Certifier, after the lapsing / expiry date of this Decision Notice, a new building application will be required as the original lapsed building application cannot be reactivated.
- 42.13. **Removals/ Demolition/ Reinstatements (specific)** - Request for extensions to the 'currency period' for demolition/ removal/ rebuild cannot be granted under the BA75 and are only valid for one (1) year. If the building approval lapses and the Client wish to proceed with the building work, a new building application is required to be lodged for completion of the relevant stages. The original lapsed building approval cannot be reactivated. The **Client** must make an application in writing (e.g. email) to the Certifier for the new application a minimum of 1 month prior to approval lapsing. (Fees will apply).
- 42.14. **New Swimming Pool/ Spa/ Pool Safety Barrier** - Request for extensions to the 'currency period' for swimming pools may not be granted under the BA75 as certain timeframes apply (i.e. 6 months). If the building approval lapses and the Client wish to proceed with the building work, a new building application is required to be lodged for completion of the relevant stages. The original lapsed building approval cannot be reactivated. The **Client** must make an application in writing (e.g. email) to the Certifier for the new application a minimum of 1 month prior to approval lapsing. (Fees will apply).

### 43. ACCESS & DEVELOPMENT CONSULTING

- 43.1. BUILTFORM AU also provides Queensland based Accessibility and Development Consultancy Services. BUILTFORM AU applies terms and conditions to the purchase of our services. These terms and conditions cover the scope of services to be provided, contract management, client responsibility, fees, payment terms, liability, and other contractual arrangements. These terms and conditions are stipulated in the individual Short Contract Form (provided below), provided within each fee proposal which is signed by both parties prior to commencement of work. General descriptions of services provided by BUILTFORM AU are set out in our website. General descriptions are provided as a guide only, and do not constitute professional advice. A signed Fee Proposal between BUILTFORM AU and the client will determine the type, scope, and fee for services to be provided by BUILTFORM AU to meet client, statutory and regulatory requirements. No variation of the signed Fee Proposal, whether about the description of services, fees or otherwise, can be made unless the variation is agreed by BUILTFORM AU and the client in writing.
- 43.2. Notwithstanding the above, BUILTFORM AU undertakes to deliver all services:
  - (a) As pre-agreed in the signed Fee Proposal between BUILTFORM AU and the client
  - (b) With reasonable care and skill
  - (c) For a reasonable fee and payment terms as pre-agreed in the signed Fee Proposal between BUILTFORM AU and the client
  - (d) Within a reasonable timeframe as pre-agreed in the signed Fee Proposal between BUILTFORM AU and the client.
- 43.3. It is the responsibility of the client to:
  - (a) Ensure that the specification provided for services in the Fee Proposal is accurate and meets client needs
  - (b) Co-operate with BUILTFORM AU in matters relating to the provision of services, for example to provide us and our authorised employees





- with access to any premises under the clients control as required, to provide all information required to perform a service, and obtain any necessary licenses and consents as required to perform a service
- (c) Make payment to BUILTFORM AU when payment is due as pre-agreed in the signed Fee Proposal between BUILTFORM AU and the client
- (d) Undertake any other responsibilities stipulated in the pre-agreed signed Fee Proposal between BUILTFORM AU and the client.

#### 44. ACCESS & DEVELOPMENT CONSULTING SHORT FORM CONTRACT (Quote/ Fee Proposal)

- 44.1. The Consultant shall provide to the Client the consulting services described in the accompanying letter together with such other services as may be agreed from time to time (the "Services").
- 44.2. The Consultant shall provide the Services with such skill, care and diligence as is generally exercised by competent members of the consulting profession performing services of a similar nature, at the time the Services are provided.
- 44.3. The Services will be performed at either or both the site of the project (the "Site") or at other places reasonably required by the Client. Where the locations of the Consultant's work are not under the Consultant's control (including the Site), the Client must provide reasonable access to allow the Consultant to fulfil its obligations (including to provide the services).
- 44.4. The Client shall, at its own cost, as soon as practicable make available to the Consultant all information, documents and other particulars relating to the Client's requirement for the project as is necessary for the Consultant to carry out the services as expressly set out in this Agreement (the "Requirements"). The Consultant is entitled to rely on such information, documents and other particulars as are provided by the Client pursuant to or in connection with this Agreement.
- 44.5. The Client shall pay to the Consultant:
- (a) The Fee and the Reimbursable Expenses as set out in the accompanying letter/ client agreement together with such other amounts in respect of other services agreed to be provided;
- (b) Reasonable adjustments to the Fee and the Reimbursable Expenses to reflect the additional costs, expenses, liabilities, losses or other amounts incurred or suffered by the Consultant in the performance of the Services and arising out of or in connection with any event or matter beyond the Consultant's control; and
- (c) to the extent that amounts payable under this Agreement are not expressed to be GST inclusive, an additional amount for the GST incurred by the Consultant in relation to the supply of the Services ("GST").
- 44.6. The Consultant may claim payment in accordance with the times set out in the accompanying letter or, if no time is set out, monthly in arrears. The Client must pay to the Consultant, without set-off or deduction:
- (a) The amount payable under this Agreement for the Services provided during the relevant period, within 30 days of the Consultant's invoice; and
- (b) The GST payable under this Agreement for the Services provided during the relevant period, within 30 days of receiving a valid tax invoice.
- 44.7. If the Client does not pay the Consultant in accordance with this Agreement then, without prejudice to any other rights or remedies the Consultant may have, interest will be payable from the date of invoice until payment at a rate per annum equal to the Unsecured Personal Overdraft Rate as most recently published by Westpac, plus 1% per annum.
- 44.8. To the maximum extent permitted by law:
- a. subject to paragraphs (b), (c) and (d) below, the Consultant's liability to the Client arising out of or in connection with this Agreement (including the performance or non-performance of the Services), whether under the law of contract, in tort, in equity, under statute or otherwise, shall be limited in aggregate to the amount specified in the accompanying letter or \$300,000, if no amount is stated in the letter.
- b. the Consultant is not liable 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);
- c. the Consultant shall be deemed to have been discharged from all liability in respect of the Services whether under contract, in tort, in equity, under statute or otherwise, at the expiration of the period specified in the accompanying letter, or if no date is

specified, on the expiration of 3 years from the completion of the Services;

- d. if, and to the extent that, any of this clause is void as a result of section 64 of the Competition and Consumer Act 2010 (Cth) in Schedule 2, then the Consultant's liability for a breach of a condition or warranty is limited to:
- i. the supplying of the relevant Services again; or
- ii. the payment of the cost of having the Services supplied again.
- 44.9. Subject to the Client complying with its obligations under the Agreement, the Consultant grants to the Client a non-exclusive, royalty free and irrevocable licence to use (and allow others to use) any intellectual property (including all drawings, reports, specifications, bills of quantity, calculations and other documents, including "works" as defined in the Copyright Act 1968 (Cth) created or produced by the Consultant) arising out of provision of the Services ("IP Rights") for the purposes of completing the Project. As between the Client and the Consultant, the ownership of the IP Rights vests in the Consultant.
- 44.10. Neither the client nor the Consultant shall disclose to third parties or use for any purpose (other than providing or benefiting from the Services) any information provided by the other unless:
- (a) required by law;
- (b) the information is already generally known to the public; or the other consents to the disclosure.
- All documentation and materials containing confidential information provided by one party to the other shall be returned upon request.
- 44.11. Any dispute or difference ("Dispute") between the Client and the Consultant may be notified by a party to the other party and the parties shall:
- (a) firstly, meet to negotiate, in good faith, resolution of the Dispute; and
- (b) secondly, if negotiation fails to achieve a resolution of the Dispute within 5 working days of the notification of the Dispute, attend mediation, administered in accordance with procedures as set out by the Institute of Arbitrators and Mediators Australia,
- (c) provided that this provision shall not prevent the Consultant from instituting legal action at any time to recover moneys owing by the Client to the Consultant.
- 44.12. The Client may, without prejudice to any other rights or remedies it may have, by written notice served on the Consultant terminate its obligations under this Agreement:
- (a) if the Consultant is in breach of the terms of the Agreement and the breach has not been remedied within 28 days of a written notice served by the Client on the Consultant specifying the breach and requiring the breach to be remedied; or
- (b) upon the Client giving the Consultant 60 days' written notice of its intention to do so; or
- (c) if the Consultant informs the Client that it is insolvent, becomes bankrupt, or becomes subject to any official management, receivership, liquidation, provisional liquidation, voluntary administration, winding up or external administration ("Insolvency Event").
- 44.13. The Consultant may, without prejudice to any other rights or remedies it may have, by notice in writing served on the Client suspend its obligations under this Agreement:
- (a) immediately by written notice if the Client has failed to pay in accordance with this Agreement; or
- (b) if the Client is in breach of any of the other terms of the Agreement and the breach has not been remedied within 10 working days (or longer as the Consultant may allow) of a written notice served by the Consultant on the Client specifying the breach and requiring the breach to be remedied.
- 44.14. The Consultant may, without prejudice to any other rights or remedies it may have, terminate its obligations under this Agreement:
- (a) if the breach referred to in clause 13(a) has not been remedied within 5 days of a written notice served by the Consultant on the Client specifying the breach and requiring the breach to be remedied; or
- (b) if the Client is in breach of any of the other terms of the Agreement and the breach has not been remedied within 28 days of a written notice served by the Consultant on the Client specifying the breach and requiring the breach to be remedied; or
- (c) upon the Consultant giving the Client 60 days' written notice of its intention to do so; or
- (d) if an Insolvency Event occurs in relation to the Client.
- 44.15. If the Consultant considers it appropriate to do so, it may, with the Client's prior approval, which shall not be unreasonably withheld or delayed, engage other consultants to assist the Consultant in specialist



areas. The other consultant shall be engaged at the Client's risk, cost and expense, and on its behalf.

- 44.16. Neither party may assign, transfer or sublet any obligations under this Agreement without the written consent of the other. Unless stated in writing to the contrary, no assignment, transfer or subletting shall release the assignor from any obligation under this agreement.
- 44.17. In the interpretation of this Agreement, no rule of construction applies to the disadvantage of one party on the basis that it put forward this Agreement or any part of.

#### 45. ADDITIONAL SERVICES

- 45.11. Where BUILTFORM AU performs additional work performed as a result of a direction issued by the Client, BUILTFORM AU shall be entitled to payment from the Client for those additional works.
- 45.12. Unless otherwise agreed, the amount payable for such additional works performed by BUILTFORM AU is to be calculated by multiplying BUILTFORM AU's hourly rate (\$400 per hour + gst for the Director/ Building Certifier and \$300.00 + gst for administration officer) by the time worked.
- 45.13. Any variation to the fee proposal payable to BUILTFORM AU in accordance with this clause shall be payable by the Client within 7 days of invoice issued by BUILTFORM AU, and prior to BUILTFORM AU commencing the additional works.
- 45.14. Upon request, BUILTFORM AU may provide additional services as per the fee schedule:
- (a) Attendance at design meetings,
  - (b) Preliminary assessment & NCC - BCA code advice prior to formalisation of the application for building work,
  - (c) Collating & lodgement of other applications to other organisations. (e.g. Plumbing, Water, QFS, Boundary Relaxation etc.)

#### 46. SUPPLIERS OF BUILDING MATERIALS & ACCESS PRODUCTS

- 46.1 BUILTFORM AU may provide supplier information and contact details of building materials, products and systems as well as Disability Access Products in a manner that is impartial and in no form does BUILTFORM AU receive royalties, kick-backs or the like for referrals and recommendations.
- 46.2 Suppliers of building and disability access products for meeting the Australian access requirements of the NCC (BCA) and Australian Standards. Independent Living Centres in each state maintain a database of suppliers as well as the National Disability Insurance Agency provider database has suppliers of disability service providers, products and systems. BUILTFORM AU primarily focuses on the building / construction areas for products and the like and the compliance for the intended use.
- 46.3 There are many complexities when choosing the correct products to ensure compliance with legislation. Please note that BUILTFORM AU provides building and development consulting, 'Form 29 Compliance Advice for building work', pool safety consulting and access consulting and there may be fees applicable for verbal and written advice regarding a specific product or use to satisfy compliance with the relevant legislation, BA75, NCC (BCA), Performance Solution (as applicable) limited to the specific Client Project and/or Service under this agreement.

#### 47. ENFORCEMENT ACTION

- 47.11. Building Certification is acknowledged as a **Statutory Function**; however the *Scope of Building Certification Work* has not allowed for the carrying out of enforcement action under the PA16 or the BA75.
- 47.12. The Certifier may issue a Show Cause or Enforcement Notice in circumstances in which the Client fails or refuses to comply with the requirements of any relevant legislation, regulations, standards or directions of the Certifier in relation to the Works.
- 47.13. Any costs associated with enforcement actions required to be taken as a result of actions or inactions by the Property Owner /Builder will be invoiced to the Property Owner of the land.
- 47.14. All costs associated with any such enforcement action undertaken by the Certifier including lodgement fees and legal fees on an indemnity basis will be paid by the Client and recoverable as a liquidated debt.
- 47.15. Pursuant to section 164 of the PA16, a person must not contravene a development approval (including any condition in the approval).
- 47.16. Section 173(2)(b) of the PA16 permits the enforcement authority to recover any reasonable costs and expenses incurred in doing so as a debt owing by the recipient to the authority.
- 47.17. Building Certification and Pool Safety Inspector functions are acknowledged as a **Statutory Function**. Where BUILTFORM AU, its employees and agents including the Certifier and the Pool Safety Inspector are made aware of unsafe and/or dangerous buildings and

structures and/or a legislative breach that requires immediate remedy (e.g. unfenced and non-compliant pools and safety barriers), a referral to the relevant regulatory authority may be required under the PA16 or the BA75 to meet their duty of care and legislative requirements.

#### 48. LEGAL EXPENSES OR THE ALIKE

- 48.11. BUILTFORM AU (BUILTFORM AU) is empowered as a regulator under PA16 to regulate use of a structure.
- 48.12. In the event BUILTFORM AU is required to take regulatory action (Show Cause Notice, or the alike) or respond to regulatory action (eg, QBCC investigation, QCAT action or the alike) BUILTFORM AU will recover any reasonable costs (eg solicitors, etc) and expenses (research, communication, or the alike) incurred in doing so as a debt owing by the recipient (Applicant) to BUILTFORM AU.

#### 49. SUBCONTRACTING

- 49.11. BUILTFORM AU may subcontract all or part of the work the subject of this contract to a third party.
- 49.12. Nothing shall prevent BUILTFORM AU from employing such persons or companies, as it may deem appropriate to assist it in the performance of the Services. The agreement shall be governed by the law of the State in which the majority of the Services are provided, or the law of Queensland if the majority of the Services are performed outside Australia.

#### 50. PLUMBING PLANS

- 50.11. Should plumbing fixtures (including the location for onsite septic system and evaporation trenches or the alike) be included in the application a detailed set of plumbing and drainage plans will be required showing compliance with the Plumbing and Drainage Act and the BA75 (eg QDC).

#### 51. INDEMNITY

- 51.11. The Certifier is in no circumstances liable in contract, tort, negligence, breach of statutory duty or otherwise to compensate the Client for:-
- 51.11.1. Any increased costs or expenses;
  - 51.11.2. Any loss of profit, anticipated profit, loss of business reputation, revenue, business, contracts or anticipated savings or loss of anticipated savings or wasted overheads;
  - 51.11.3. Any loss or expense resulting from a claim by a third party; or
  - 51.11.4. Any special, indirect or consequential loss or damage of any nature caused by the Certifier's failure to complete or delay in completing the works.
- 51.12. BUILTFORM AU and its directors, officers, employees, agents or subcontractors shall not be liable for loss, damage or expense of whatsoever nature including all legal expenses and related costs arising from the delayed, partial or total non-performance of any private certifying functions, or consultancy services to which this Engagement Agreement relates due directly or indirectly to the inability to obtain renewal of any statutory licences for whatsoever reason.
- 51.13. BUILTFORM AU and its directors, officers, employees, agents or subcontractors shall not be liable for loss, damage or expense of whatsoever nature including all legal expenses and related costs arising from the delayed, partial or total non-performance of any private certifying functions, or consultancy services to which this Engagement Agreement relates due directly or indirectly to the delay in wither the issuing the building approval or finalisation of the building approval.
- 51.14. Where such partial or total non-performance of the private certifying function or consultancy service occurs any unexpended fees held by BUILTFORM AU will be used to discharge our obligations under the BA75 in relation to the Discontinuance of Engagement.
- 51.15. Without limiting the generality of the foregoing, the Certifier is not liable to the Client in relation to any loss, damage, or expense caused by the Certifier's failure to complete the works as a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lockout, breakdown, war, or any other matter beyond the Certifier's control inclusive of obtaining the mandatory PI Insurance coverage required as a function of the private certifier.
- 51.16. In the even that BUILTFORM AU is found to have a liability to the Client arising out of the performance or non-performance of the Services, whether under the law of contract, tort or otherwise, it shall be limited to the total value of \$30.00 payable by BUILTFORM AU pursuant to this Agreement.
- 51.17. The Client hereby indemnifies and agrees to keep fully and effectually indemnified, BUILTFORM AU, Director/s and its employees from any claims, costs, charges or demands relating to the damage and/or loss of property or injury to any person or consequential losses howsoever occurring arising out of or in any way related to the Work whether by the act or omission and whether by negligence or otherwise of the Certifier and/or subcontractor.



## 52. GOVERNING LAW

52.11. This Agreement shall be construed and take effect in accordance with the law of Queensland. Each of the parties hereto submits to the jurisdiction of the Courts of Queensland including all Courts of Appeal and this clause may be pleaded as a bar to action or suit brought in any Court in any other place.

## 53. VARIATION OF FEES

53.11. From time to time, we may wish to vary the fees in relation to building certification. For example, we may conduct an annual review of hourly fee rates from time to time. If we vary these fees we will advise same in normal communication.

53.12. In the event of extraordinary increase (eg, P.I. Insurance increase, etc) in fees we will advise you accordingly.

## 54. PRICE SETTING & ADJUSTMENT

54.11. We generally review our fees as set as soon as our supplier's fees are released around the end of each financial year. Fees are generally set for the financial year. Fees are generally limited to the CPI increase and any taxes imposed by the Government (Federal or State).

54.12. In the event the Government (Federal or State) introduces taxes that are unforeseen, taking into account of any material increase in the cost incurred by the Service Provider in producing the service the Service Provider shall be entitled, once during the term of this agreement, to increase Prices accordingly.

54.13. Such increases in the Price shall be limited to the CPI increase, if any, in the taxes imposed by the Government (Federal or State) during the period of this agreement.

## 55. TERMINATING AGREEMENT

55.11. BUILTFORM AU may at any time discontinue its engagement with the Client by giving written notice of the discontinuance to the Client in the approved form (Form 22) as provided by the BA75 when acting as a Private Building Certifier.

55.12. BUILTFORM AU reserves the right to disengage:

55.12.1. If satisfactory final inspection and submission of all certificates are not completed before the Decision Notice Condition Time.

55.12.2. If the Client or builder fails to comply with the conditions of approval and/or any notices from Local Government (Council).

55.12.3. If works commence prior to the issue of the Development Approval for Building Works.

55.12.4. If the Client, Property Owner, builder or their representatives are rude, abusive, intentionally misleading, threatening, or defamatory to any employees or representatives of BUILTFORM AU or the company itself.

55.12.5. Please be aware we exercise a zero tolerance policy in this regard, where discontinuance of engagement occurs under this provision all fees will be taken as having been expended.

55.13. In the event that BUILTFORM AU discontinues its engagement with the Client by providing the notice in clause 42.1 above, BUILTFORM AU will deliver a copy of the notice of discontinuance to the local government within five (5) business days after such notice has been delivered to the Client.

55.14. The Client is not entitled to discontinue BUILTFORM AU's engagement under this Agreement in accordance with the provisions of the BA75 unless and until:

55.14.1. BUILTFORM AU has committed a substantial breach of this Agreement;

55.14.2. the Client has given a written notice to show cause ("Show Cause Notice") to BUILTFORM AU, which:

55.14.2.1. states that it is a notice given under this clause;

55.14.2.2. sets out the alleged substantial breach and identifies with full particulars the facts supporting the allegations made;

55.14.2.3. requires BUILTFORM AU to show cause in writing why the Client should not discontinue the Agreement as a consequence of the alleged substantial breach; and

55.14.2.4. specifies the time in which BUILTFORM AU must show cause, which time must not be less than seven (7) days;

55.14.2.5. BUILTFORM AU has failed to show reasonable cause within the time specified in the Show Cause Notice and the Client has provided further written notice of the discontinuance to BUILTFORM AU in the approved form as provided by the BA75.

55.14.3. BUILTFORM AU will deliver a copy of the notice of discontinuance to the local government on behalf of the Client within five (5) business days after being provided with same.

55.15. The Client agrees that at BUILTFORM AU's sole discretion, BUILTFORM AU may also deliver a copy of the Show Cause Notice to the local government in conjunction with or in addition to the notice of discontinuance on behalf of the Client.

55.16. In the event of termination of this agreement for any reason, the Client must comply with the PA16 regarding notification of termination and appointment of replacement Certifier.

## 56. CONTRACTUAL TERMINATION

56.11. The engagement of BUILTFORM AU under this Agreement is for the duration of the building approval and will automatically terminate if the approved building work in relation to the development application is not completed within the period specified in the Decision Notice and prior to the building approval lapsing. (eg, Building Approval lapses on 08<sup>th</sup> June 2020 then the agreement between BUILTFORM AU and the applicant will also terminate on 08<sup>th</sup> June 2020.)

56.12. The engagement of BUILTFORM AU under this Agreement will automatically terminate upon the issuing of a 'Final Inspection Certificate' (eg before occupation of the building) once the building is completed in accordance with the BA75.

56.13. The engagement of BUILTFORM AU under this Agreement will automatically terminate in the event the building application does not comply with the BA75 and a 'Refused' Decision Notice has been issued.

56.14. The Certifier may terminate this contract if:

56.14.1. the client breaches the contract in any way; or

56.14.2. the Client fails to pay any amount owing to the Certifier by the date due for payment or otherwise breaches the Agreement in any way; or

56.14.3. within 18 months from the date of this contract a Form 11 - Certificate of Classification is not able to be issued; or

56.14.4. within 60 days of this contract proposed/building work has not commenced (eg: the first inspection completed - footing); or

56.14.5. within 60 days of completion of the building work and a satisfactory form 16 has been issued the Client does not permit the Certifier to issue the Form 11 - Certificate of Classification; or

56.14.6. proposed/building works have commenced without a Building Permit being issued; or

56.14.7. the Client has or becomes;

(i). liquidated

(ii). an official Manager, Receiver, Administrator or Provisional Liquidator appointed

(iii). a mortgagee takes possession of any part of its property

(iv). insolvent or bankrupt

(v). an execution levied against it

(vi). an attempt or intention to make a composition or scheme of arrangement with creditors

(vii). a winding up order made against it.

53.4.8. The Client may by notice in writing to BUILTFORM AU terminate the Agreement if:

53.4.8.1. BUILTFORM AU is in breach of the terms of engagement and the breach has not been remedied within 14 days (or longer period as the Client may allow) of the service by the Client on BUILTFORM AU of a notice requiring the breach to be remedied or

53.4.8.2. The Client serves BUILTFORM AU a notice requiring that the agreement be terminated on a date specified in the notice being not less than 60 days after the date of issue of the notice.

53.4.9. BUILTFORM AU may by notice in writing to the Client suspend the provision of Services or terminate the Agreement if:

53.4.9.1. The client is in breach of any of the obligations as set out above; or

53.4.9.2. The client is in breach of any other obligations under the agreement and the breach has not been remedied with 14 days (or such longer period as BUILTFORM AU may allow) of the service by BUILTFORM AU on the Client of a notice requiring that the agreement be terminated on a date specified in the notice being not less than 60 days after the date of the notice; or

53.4.9.3. The client becomes insolvent or appears unable to pay its debts.

53.4.10. If BUILTFORM AU suspends the provision of the Services at its sole discretion and at any time, either terminate the agreement of recommence the services by notice in writing to the client. All loss, damage, costs, expense or loss of profit incurred by BUILTFORM AU as a result of suspension or termination shall be borne by the Client. Termination shall be without prejudice to any claim that either party may have against the other in respect of any breach of the terms of the agreement which occurred prior to the date of termination.





53.4.11. If the agreement is terminated for any reason other than a breach of the agreement by BUILTFORM AU, then the Client shall pay BUILTFORM AU for the services carried out prior to the date of termination and all other costs and expenses incurred by BUILTFORM AU as a result of the termination (including, without limitation, cancellation charges of external consultants).

#### 57. NORMAL WORKING HOURS

- 57.11. This agreement is based on work being performed during normal 38-hour working week. Monday to Friday, 8.00am to 4.30pm and excluding public holidays.
- 57.12. If The Client requests, the work may be performed outside these hours, in which case, additional costs will be met by the Client.

#### 58. EXCUSE FOR NON-PERFORMANCE

- 58.11. BUILTFORM AU obligations under this agreement are accepted subject to strikes, labour troubles (including strikes or labour troubles affecting any suppliers of seller), floods, fires, acts of God, accidents, delays, pandemics, Covid, and other causes of like or different character beyond the control of BUILTFORM AU control inclusive of obtaining the mandatory PI Insurance coverage required as a function of the private certifier.
- 58.12. Impossibility of performance by reason of any legislative, executive, or judicial act of any governmental authority shall excuse performance of or delay in performance of this agreement.

#### 59. RELATIONSHIP OF THE PARTIES

- 59.11. The Parties acknowledge and agree that the Services performed by the Service Provider, its employees, agents or subcontractors shall be as an independent contractor and that nothing in this Service Agreement shall be deemed to constitute a partnership, joint venture, agency relationship or otherwise between the parties.

#### 60. FILE RECORDS

- 60.11. A copy of the Building Approval and inspection documents will be lodged with the 'Local Government' (Council) Client within five (5) business days as required by the BA75.
- 60.12. All file notes and work papers created by us in the course of performing the Services will remain our property file. We will keep our file in electronic storage off site for approximately 5 years from the date the file is closed. Thereafter we may destroy the file without further notice to you.
- 60.13. If you wish to obtain a copy of any records held on the property file, an archive retrieval fee will be applicable.

#### 61. CONFIDENTIALITY INFORMATION

- 61.11. Subject to the Act, each party agrees that it will not use any Confidential Information of the other party or allow any Confidential Information of the other party to be used for any purpose, except for the purposes of and in the manner contemplated by this agreement, and agrees that it will;
- 61.11.1. keep confidential;
- 61.11.2. take reasonable steps to ensure that the party's officers and employees do not disclose to a third party;
- 61.11.3. maintain proper and secure custody of; and
- 61.11.4. not use or reproduce in any form
- 61.11.5. any Confidential Information belonging to the other party.
- 61.12. Neither Party will use, copy, adapt, alter or part with possession of any information of the other which is disclosed or otherwise comes into its possession under or in relation to this Agreement and which is of a confidential nature.
- 61.13. This obligation will not apply to information which the recipient can prove was in its possession at the date it was received or obtained or which the recipient obtains from some other person with good legal title to it or which is in or comes into the public domain otherwise than through the default or negligence of the recipient or which is independently developed by or for the recipient.

#### 62. CURRENCY OF ADVICE

- 62.11. Unless we are specifically required to do otherwise, any advice that we give is based upon the information provided and law (eg, Planning, Building, Compliance etc) as in force at the time when the advice is prepared. Our advice will not take into account pending changes or the possibility that changes to the legislation may be pending (eg, BCA updates).
- 62.12. The advice may not have considered other issues not disclosed by the applicant and therefore the advice does not bind BUILTFORM AU, in any way when considering a future building development application, etc.
- 62.13. You should not rely upon our advice provided previously without first confirming with us that there has been no change in circumstances,

amendment to relevant legislation or regulations that might affect our advice.

#### 63. MISCELLANEOUS

- 63.11. BUILTFORM AU shall use its best endeavours to maintain the confidentiality of all confidential information provided by the Client to BUILTFORM AU pursuant to this Agreement.
- 63.12. The laws of Queensland apply to this Agreement.
- 63.13. If any provision of this Agreement is illegal, void, invalid or unenforceable for any reason, all other provisions which are self-sustaining and capable of separate enforcement shall, to the maximum extent permitted by law, be and continue to be valid and enforceable.
- 63.14. The failure of either party to enforce its rights under this Service Agreement, at any time for any period, shall not be construed as a waiver of such rights.
- 63.15. If any part, term or provision of this Service Agreement is held to be illegal or unenforceable neither the validity nor enforceability of the remainder of this Service Agreement shall be affected.
- 63.16. Neither Party shall assign or transfer all or any part of its rights under this Service Agreement without the consent of the other Party.
- 63.17. This Service Agreement may not be amended for any other reason without the prior written agreement of both Parties.
- 63.18. This Agreement constitutes the entire understanding between the Parties relating to the subject matter hereof unless any representation or warranty made about this Service Agreement was made fraudulently and, saves as may be expressly referred to or referenced herein, supersedes all prior representations, writings, negotiations or understandings with respect hereto.
- 63.19. Please note that no external fees have been allowed or included other than the costs that are listed in this fee proposal and attached invoice.

#### 64. INSURANCE

- 64.11. BUILTFORM AU holds Professional Indemnity insurance cover as required by the BR21 and .
- 64.12. The Certifier must maintain at all times during the Term all insurances required by Law or this agreement.
- 64.13. The Certifier must produce evidence of those insurances to the Client upon reasonable request.
- 64.14. The Certifier must not allow any act or omission which would make any such policy of insurance void or unenforceable.

#### 65. GUIDELINES

- 65.11. BUILTFORM AU may make guidelines for matters within the scope of this agreement to provide assistance with compliance with this agreement.
- 65.12. Without limiting subsection (55.1), BUILTFORM AU may make the following guidelines -
- (i). How do I obtain a Building Approval?
- (ii). How do I obtain a final inspection certificate?
- (iii). How do I obtain a final inspection certificate / Certificate of Classification?
- (iv). How do I obtain a copy of my property/building record search?

#### 66. DISCLAIMER

- 66.11. The Client hereby disclaims any right to rescind or cancel the contract or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client.

#### 67. DISPUTE RESOLUTION

- 67.11. If a dispute between the Client and BUILTFORM AU arises out of or in connection with this contract and agreement is not reached within 14 days, the dispute will be referred to Queensland Master Builders by either party in the 1st instance.
- 67.12. General
- 67.12.1. A party must not commence arbitration or court proceedings (except for urgent equitable or injunctive relief) in respect of a dispute under this agreement, unless it first attempts to resolve the dispute by negotiation and mediation under this clause.
- 67.12.2. A party claiming that a dispute has arisen under this agreement must give written notice to the other party specifying the nature and details of the dispute.
- 67.13. Negotiation
- 67.13.1. On receipt of that notice by the other party, the parties must negotiate in good faith to resolve the dispute.
- 67.13.2. Those persons must meet to resolve the dispute and must be authorised to resolve the dispute.



#### 67.14. Mediation

67.14.1. If those persons are unable to resolve the dispute within 10 Business days of referral, a party may refer the dispute for mediation under the mediation rules of the Resolution Institute to Queensland Master Builders.

67.14.2. The role of a mediator is to assist in negotiating a resolution of the dispute. A mediator may not make a decision that is binding on a party unless that party has agreed in writing.

67.14.3. Any information or documents disclosed by a party under this clause: 67.14.3.1. must be kept confidential; and

67.14.3.2. may not be used except to attempt to resolve the dispute.

67.14.4. Each party must bear its own mediation costs. The parties must bear equally the costs of any mediator.

#### 67.15. Performance

67.15.1. If possible, each party must perform its obligations under this agreement during negotiations, mediation and arbitration proceedings.

### 68. WHO IS RESPONSIBLE FOR SUPERVISION?

68.11. Generally, it is primarily the responsibility of the Builder and property Owner to ensure that the structure is properly constructed in accordance with the approved plans and contract documents.

68.12. BUILTFORM AU, its employees and subcontractors do not perform a supervisory role on behalf of the property owner.

68.13. It is recommended the applicant / property owner engage the services of a professional project manager or the like etc.

### 69. DEFINITIONS

69.11. In this agreement:-

69.11.1. **Assessment manager** is the person as described in section 48 of the PA16.

69.11.2. **Assessment manager's - decision** is as described in Chapter 3 of the PA16.

69.11.3. **Authorisation** means any authorisation, agreement approval, licence, permit, consent, qualification, accreditation, filing, registration, certificate, resolution, direction, declaration or exemption and any renewal and variation of them by or with a Governmental Agency.

69.11.4. **BCA (NCC BCA)** means Building Code of Australia (BCA) as part of the National Construction Code (NCC) Series.

69.11.5. **Building Quality** means any matter that could or might be a defective item with respect to any contract between the Client and another party which defines the standards of work to be achieved pursuant to that contract with respect to the Project but does not include matters which relate to conformance by the Project to technical standards including the National Construction Code.

69.11.6. **Building Work** as described in section 5 of the BA75.

69.11.7. **Business Day** is to be calculated by excluding the following;

- (i) a day that is not a Saturday, Sunday or public holiday in the Jurisdiction,
- (ii) any day having a power failure in the vicinity of BUILTFORM AU Office,
- (iii) any day internet services are not available and beyond our control, (e.g. phone line cut, telephone exchange closed, etc)
- (iv) Christmas/ New-year Office closure,
- (v) any day the office is closed beyond our control,
- (vi) and the day before the building application was delivered (emailed, hand delivered or placed in the post).
- (vii) To remove any doubt (Acts Interpretation Act 1954, Clause 38) **excluded day** -
  - a. for filing or registering a document - means a day on which the office is closed where the filing or registration must or may be done; or
  - b. otherwise - means a day that is not a business day in the place in which the thing must or may be done.

69.11.8. **Builder** means a person licensed with QBCC as a registered builder including their sub-contractors.

69.11.9. **Consultant** include Queensland Government departments (eg Access Consultant, Queensland Fire Service [QFS], etc), Local Government (Council), architects, building designers, engineers (eg, structural, civil, electrical, acoustic, etc), building and development consultants, pool safety consultants, town planners, fire engineers, hydraulic designers, energy efficiency assessors or the like.

69.11.10. **Consultant staff** means the people employed or otherwise appointed by the BUILTFORM AU or an external Consultant to deliver the Consultancy Services.

69.11.11. **DA forms** mean the approved forms under section 282 of the PA16.

69.11.12. **Data** means information directly or indirectly relating to this agreement and/or the Development Application Assessment Services and includes software (including source code and object code versions) manuals, diagrams, graphs, charts, projections, specifications, estimates, records, concepts, documents, accounts, plans, formulae, designs, methods, techniques, processes, supplier lists, price lists, market research, information, correspondence, letters, warranties and manufacturer's information and data sheets, personal identification numbers (PINS) and access codes for security and alarm systems, and papers of every description including all copies of and extracts from them.

69.11.13. **Fees** are defined in clause 13.

69.11.14. **Handled more than once** means the application will be handled once at each stage of the application. E.g., the entire application is to be delivered as a complete building application.

- (i) Example lodgement stage - If the applicant sends documents for the application over a period of time (Plans - 1 day, soil report - another day, DA forms - another day, etc.) then it is deemed the application has been handled more than once for the lodgement stage. Additional fees will apply.

69.11.15. **Law** means any statute, regulation, order, rule, subordinate legislation or other document enforceable under any statute, regulation, order, rule or subordinate legislation.

69.11.16. **Owner Builder** means if you perform and or take responsibility for building work carried out on your land / property.

69.11.17. **Project Manager** is responsible for ensuring the project is completed on time, on budget, within scope, to the business requirements and meeting quality standards. A project manager must ensure success of the project by managing risks and minimising their impact throughout the life of the project. The project manager is responsible for the creation of project documents and reports that are used to determine the progress and success of the project.

69.11.18. **Property Owner** means a person / entity that is the register land owner.

69.11.19. **QBCC** means the Queensland Building Construction Commission.

69.11.20. **QMBA** means the Queensland Master Builders Association.

69.11.21. **QFS** means the Queensland Fire Service.

69.11.22. **ACAA** means the Association of Consultants in Access Australia.

69.11.23. **Total Fee** means as detailed in the attached Quotation / Tax Invoice. The Total Fee does not include any additional fees incurred during the process of building of the project.

### 70. NOTICES

70.11. A notice, demand, consent, approval or communication under this agreement (Notice) must be:

- 70.11.1. in writing, in English and signed by a person authorised by the sender; and
- 70.11.2. hand delivered or sent by prepaid post or email to the recipient's address or email address specified in the Schedule, as varied by any Notice given by the recipient to the sender.
- 70.12. Notice is deemed to be received:
  - 70.12.1. if hand delivered, on delivery;
  - 70.12.2. if sent by prepaid post, two Business Days after posting (or seven Business Days after posting if posting to or from a place outside Australia);
  - 70.12.3. if sent by email, at the time deemed to be the time of receipt under the Electronic Transactions (Queensland) Act 2001 (Qld) or Electronic Transactions Act 1999 (Cth) if the notice was being given under a law of the Commonwealth of Australia.

70.12.4. However if the Notice is deemed to be received on a day that is not a Business Day or after 5:00pm, the Notice is deemed to be received at 9:00am on the next Business Day.

### 71. INTERPRETATION

71.11. In this agreement, unless the context otherwise requires:

- 71.11.1. headings do not affect interpretation;
- 71.11.2. the Schedule forms part of the agreement and is correct;
- 71.11.3. singular includes plural and plural includes singular;
- 71.11.4. words of one gender include any gender;
- 71.11.5. a reference to a party includes its executors, administrators, successors and permitted assigns;
- 71.11.6. a reference to a person includes a partnership, corporation, association, government body and any other entity;



- 71.11.7. a reference to this agreement includes any schedules and annexures to this agreement;
- 71.11.8. an agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- 71.11.9. an agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- 71.11.10. reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;
- 71.11.11. a provision is not construed against a party only because that party drafted it;
- 71.11.12. an unenforceable provision or part of a provision may be severed, and the remainder of this agreement continues in force, unless this would materially change the intended effect of this agreement;
- 71.11.13. the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions;
- 71.11.14. an expression defined in the Act or the PA16 has the meaning given by that Act at the date of this agreement;
- 71.11.15. an expression defined in the Corporations Act 2001 (Cth) has the meaning given by the Act at the date of this agreement; and
- 71.11.16. an expression defined in the A New Tax System (Goods and Service Tax) Act 1999 (Cth) has the meaning given by that Act at the date of this agreement.

