



Association of Consulting Architects
The Business of Architecture

Short Form Architect Client Agreement

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an ACA member resource

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***DISCLAIMER:** The standard terms in the ACA Short Form Architect Client Agreement are intended to be used without amendment. Accordingly, anyone intending to amend them should seek legal advice.*

ACA SHORT FORM ARCHITECT CLIENT CONTRACT STANDARD TERMS – REFERENCE COPY

THIS AGREEMENT IS COMPRISED OF OUR LETTER OF OFFER (INCLUDING THE ATTACHED SERVICES SCHEDULE) AND THESE STANDARD TERMS

1. PERFORMANCE

1.1 Architect's Responsibility

The Architect must:

- (a) perform the Services with the professional skill, care and diligence that would be expected of a professional architect experienced in providing services for projects similar to the Project;
- (b) promptly notify the Client of each matter of which the Architect becomes aware that could have a material impact on the Services or the Architect's ability to perform them;
- (c) report to the Client, at least monthly, as to the progress of the Services; and
- (d) keep accurate records (including financial records) relating to the performance of the Services and give the Client access to those records on reasonable notice.

1.2 Client's Responsibility

The Client must:

- (a) appoint the Architect as the Client's agent to the extent necessary for the Architect to perform the Services;
- (b) in a timely manner:
 - (i) provide all information and documents required by the Architect to perform and complete the Services; and
 - (ii) cooperate fully with the Architect to ensure the efficient performance of the Services;
- (c) directly engage any specialist consultants reasonably requested by the Architect, and pay all fees and expenses associated with their engagement, which are in addition to the Fees the Client must pay the Architect; and
- (d) allow the Architect to erect signage at the Project site.

1.3 Provision of equipment and materials

The Architect's obligations under this agreement exclude (and the Fee does not cover) providing equipment, material or services not expressly referred to in the Services Schedule.

1.4 Prior Services

The terms of this agreement apply to any Services performed by the Architect prior to the date of this agreement.

1.5 Stages

- (a) Subject to clause 1.4, the Client consents to the Architect performing any Services forming part of the Concept Design, Design Development or Construction Documentation Stages:
 - (i) concurrently;
 - (ii) non-sequentially; and
 - (iii) on and from the date of this agreement.
- (b) The Architect:
 - (i) must obtain the Client's consent before performing any Services forming part of the Contractor Selection Stage; and
 - (ii) may thereafter sequentially perform any Services forming part of the Contract Administration Stage without seeking the Client's consent.

1.6 Design

The Services must comply with:

- (a) the Client's reasonable requirements for the Project;
- (b) the law, including any authority having jurisdiction in respect of the Services or the Project; and
- (c) the National Construction Code.

2. COST OF WORKS

The Cost of Works stated in the Services Schedule:

- (a) is indicative only;
- (b) includes:
 - (i) the greater of:
 - (A) the final adjusted contract price (excluding GST) in accordance with any building contract; and
 - (B) the estimated final cost (excluding GST) of all work approved by the relevant consent authority at the end of the Design Development Stage, including work not proceeded with;

- (ii) the equivalent final cost (excluding GST) of any work or items supplied to the building contractor by the Client as if provided by the building contractor under the building contract; and
- (iii) the final cost (excluding GST) of any part of the Project provided otherwise than under the building contract; and
- (c) excludes:
 - (i) removal and relocation costs;
 - (ii) professional fees;
 - (iii) authority fees and charges; and
 - (iv) finance charges.

3. VARIATIONS

3.1 Agreement to Vary

The Client may vary the scope of the Services only by agreement with the Architect and confirmed by the Architect in writing detailing:

- (a) the scope of the variation; and
- (b) the:
 - (i) Fees for the variation;
 - (ii) rates to apply to the variation; or
 - (iii) alternative mechanism for valuing the variation,

which must be reasonable.

3.2 No Prior Agreement to Vary

If, in the Architect's reasonable opinion, the Client has given the Architect a direction:

- (a) that will result in a variation to the scope of the Services; and
- (b) without the matters referred to in clause 3.1 first having been agreed upon in writing,

the Architect must, before complying with the direction, provide a written notice to the Client:

- (c) identifying the direction;
- (d) advising the Client:
 - (i) of the Fees for the variation; or
 - (ii) if the Fees cannot reasonably be determined in advance, the reasonable mechanism the Architect will use for valuing the variation once it is completed.

3.3 Client Confirmation

If the Client receives a written notice from the Architect under clause 3.2, the Client may, within three business days after the date of the notice:

- (a) direct the Architect in writing:
 - (i) to proceed with the direction; or
 - (ii) not to proceed with the variation; or
- (b) give no direction, in which case:
 - (i) the Client will be deemed to have given a direction under clause 3.3(a)(ii); and
 - (ii) the Architect will not proceed with the variation.

3.4 Client Liable for Additional Fees

If the Architect proceeds with a variation under clause 3.3(a)(i), the Client will be liable for the additional Fees referred to in the written notice from the Architect under clause 3.2.

3.5 Deemed Variations

It will be a deemed variation to the scope of the Services if:

- (a) the Architect is delayed in the performance of the Services:
 - (i) by a default or negligent act or omission of the Client or anyone for whom the Client is liable, including:
 - (A) any failure by the Client to comply with its obligations under clause 1.2; or
 - (B) any error or omission in the information or documents the Client provides under clause 1.2(b)(i);
 - (ii) by any of the following:
 - (A) war, invasion, acts of foreign enemies, acts of terrorists, hostilities (whether war is declared or not) civil war, rebellion, revolution, insurrection or military or usurped power, martial law, terrorism or civil commotion, riot or disorder;
 - (B) hurricane, flood, earthquake, epidemic, or pandemic; or
 - (C) ionising radiation, contamination by radioactivity from any nuclear fuel or nuclear waste from the combustion of nuclear fuel;
 - (iii) by a suspension of all or part of the Services under clause 4.2; or
 - (iv) by a change to an existing law, or the introduction of a new law, with which the Architect must comply;
- (b) the Fees for the Contract Administration Stage are:
 - (i) stated to be a lump sum; or
 - (ii) calculated by reference to a percentage of the Cost of Works,

and the time between:

 - (iii) the date of any building contract; and
 - (iv) the date of practical completion under that building contract,

exceeds the time that should have been anticipated by a competent architect at the date of this agreement for any reason beyond the Architect's reasonable control;
- (c) the Architect is required to perform any part of the Services more than once, including where:
 - (i) the Client is comprised of more than one person; and
 - (ii) the Architect receives (from those different individuals comprising the Client) inconsistent instructions, information, or documents; or
- (d) the Client directs the Architect to provide any supplementary drawings or other documents after the Client has entered into a building contract.

3.6 Valuation of Deemed Variations

If there is a deemed variation under clause 3.5, the Architect must promptly provide a written notice to the Client:

- (a) identifying the delay; and
- (b) advising the Client:
 - (i) of the Fees for the deemed variation; or
 - (ii) if the Fees cannot reasonably be determined in advance, the mechanism the

Architect will use for valuing the deemed variation once it is completed.

4. TIME

4.1 Performance of the Services

The Architect must:

- (a) provide a timeframe for the provision of the Services, and must provide an updated timeframe whenever it is adjusted under clause 4.1(b)(ii);
- (b) perform the Services:
 - (i) in a timely manner; and
 - (ii) in accordance with the timeframe, as may be adjusted:
 - (A) in respect of any variation under clause 3.3(a)(i) or deemed variation under clause 3.5; or
 - (B) otherwise in accordance with this agreement; and
- (c) use its best endeavours to mitigate any delays in the performance of the Services.

4.2 Architect's Suspension

If the Client fails to pay in full (within the time provided under clause 5.5) any one or more of the tax invoices provided by the Architect (under clause 5.4), the Architect may:

- (a) on giving written notice to the Client:
 - (i) suspend the performance of all or part of the Services; and
 - (ii) charge the Client interest at the rate set out in the Services Schedule, until such time as the outstanding amount (including interest) is paid in full; and
- (b) exercise its rights under clause 9.2 if the outstanding amount remains unpaid five business days after the date of the notice referred to in clause 5.2(a).

4.3 Resuming Performance after Suspension

The Architect may, on giving two business days' written notice, resume the performance of the Services or the relevant part.

4.4 Consequences of Suspension

If the Architect exercises its rights under clause 4.2, the licence granted under clause 8(b) is revoked during the period of the suspension.

5. PAYMENT

5.1 General

The Client must:

- (a) pay the Architect the Fees (as adjusted under this agreement) and the Reimbursable Expenses incurred (including any administration fee set out in the Services Schedule); and
- (b) otherwise perform its obligations, in accordance with this agreement.

5.2 Percentage Fees – generally

Where:

- (a) the Fees for any Stage are calculated as a percentage of the Cost of Works; and
- (b) the Cost of Works increases after the date of this agreement by an amount less than or equal to the amount shown in the Services Schedule,

then:

- (c) the respective Fees for all those Stages will be calculated as a percentage of the Cost of Works as at the date of this agreement; and
- (d) there will be no adjustment to the Fees due to the Architect in respect of those Stages.

5.3 Percentage Fees – increases and decreases

Where:

- (a) the Fees for any Stage are calculated as a percentage of the Cost of Works; and
- (b) the Cost of Works:
 - (i) increases after the date of this agreement by an amount greater than the amount shown in the Services Schedule:
 - (A) the respective Fees for all those Stages will be recalculated by reference to the adjusted Cost of Works; and
 - (B) the Architect will be entitled to retrospectively adjust the Fees due in respect of those Stages; or
 - (ii) decreases after the date of this agreement by an amount greater than the amount shown in the Services Schedule:
 - (A) the respective Fees for all those Stages will be recalculated by reference to the adjusted Cost of Works; and
 - (B) the Client will not (in any circumstances) be entitled to any retrospective adjustment of the Fees previously paid in respect of those Stages but will not be obliged to pay any Fees in excess of the adjusted total for all Fees calculated as a percentage of the Cost of Works.

5.4 Tax Invoices

The Architect may (on or after the times set out in the Services Schedule) provide a tax invoice to the Client setting out:

- (a) the total value of the Services performed to the date of the relevant tax invoice; and
- (b) the Reimbursable Expenses incurred (including any administration fee set out in the Services Schedule),

by the Architect in respect of the Project less the payments received to date.

5.5 Payment Due to the Architect

The Client must pay the Architect:

- (a) the amount of each tax invoice referred to in clause 5.4 within the time provided for in the Services Schedule; and
- (b) interest at the rate set out in the Services Schedule on any overdue payments until the outstanding amount is paid.

6. INSURANCE

The Architect must maintain:

- (a) public liability insurance; and
- (b) professional indemnity insurance, covering legal liability in connection with the Architect performing the Services and its other obligations under this agreement.

7. LIMIT OF LIABILITY

7.1 Generally

The Architect's maximum aggregate liability to the Client (or anyone claiming through the Client) arising out of or in connection with this agreement (including

liability for breach of contract, for tort including negligence, or on any other legal basis) is limited to the greater of:

- (a) the insurance proceeds actually recovered; or
- (b) the Fees paid or payable by the Client to the Architect under this agreement.

7.2 Consequential Loss

Subject to clause 7.3 (and to the extent permitted by law) neither party will have any liability to the other (including liability for breach of contract, for tort including negligence, or on any other legal basis) for:

- (a) loss of revenue, use, production, goodwill, profit, income, business, contract or anticipated savings;
- (b) financing costs or increase in operating costs; or
- (c) other financial or economic loss or any other special or indirect loss or damage (excluding any losses and damages to the extent arising naturally according to the usual course of things from the relevant conduct or breach).

7.3 Exclusions

Nothing in this agreement limits the Architect's right to bring claims for contribution, recovery, indemnity or similar against the Client where the Client's negligence or other wrongful conduct has contributed to a claim by a third party against the Architect.

8. INTELLECTUAL PROPERTY

- (a) All copyrights coming into existence in connection with the performance of the Services vest in and are owned by the Architect.
- (b) Subject to clause 4.4, the Architect grants to the Client a revocable, non-transferrable licence to use the documents created by the Architect at each Stage of the Services for the purposes of that Stage and for no subsequent Stage.
- (c) The Architect (or any nominee) may:
 - (i) after giving reasonable notice, take such records, including photographs; and
 - (ii) publish (or otherwise distribute) such materials,
 as the Architect considers desirable.
- (d) The Services exclude the provision of any documents in digital formats other than Portable Document Format.
- (e) Each individual comprising the Architect reserves their Moral Rights (as defined in Part IX of the *Copyright Act 1968* (Cwlth)), including:
 - (i) the right of attribution of authorship;
 - (ii) the right not to have authorship falsely attributed; and
 - (iii) the right of integrity of authorship, in the Project.
- (f) The Client must:
 - (i) attribute (and must ensure that anyone with whom it is in any way associated attributes) the authorship of the Architect in any reproduction, publication, or communication related to the Project, including in any:
 - (A) physical or digital publications;
 - (B) social media posts; and
 - (C) radio or internet broadcasts; and
 - (ii) promptly advise the Architect of any attributions of authorship made under clause 8(f)(i).

9. TERMINATION

9.1 Generally

This agreement may be terminated:

- (a) at any time by mutual agreement of the parties in writing;
- (b) by either party at its sole discretion (without giving reasons) by giving no less than 15 business days' written notice to the other party; or
- (c) immediately by the Architect in writing if, in the Architect's professional judgment, the provision of the Services (or any part of the Services) requires the Architect to act:
 - (i) in a manner the Architect considers unethical; or
 - (ii) in contravention of the law.

9.2 Default

If:

- (a) a party:
 - (i) considers that the other party (the **Defaulting Party**) is in breach of its obligations under this agreement; and
 - (ii) gives the Defaulting Party a written notice identifying the breach and the time within which it must be rectified (which must not be less than five business days); and
 - (b) the Defaulting Party fails to remedy the breach within the time provided for,
- the non-Defaulting Party may by further written notice terminate this agreement.

9.3 Consequences

- (a) If the agreement is terminated under clauses 9.1 or 9.2 (or otherwise), the Architect may submit a tax invoice showing:
 - (i) the total value of the Services performed and Reimbursable Expenses incurred (including any administration fee set out in the Services Schedule) up to the date of the termination less the payments received to date; and
 - (ii) all other costs reasonably incurred (or reasonably anticipated to be incurred) by the Architect in bringing the Services to an end.
- (b) The Client must pay the Architect:
 - (i) the amount of the tax invoice referred to in clause 9.3(a) within the time provided for in the Services Schedule; and
 - (ii) interest at the rate set out in the Services Schedule on any overdue payment.

10. TAXES

- (a) The parties acknowledge that, unless otherwise expressly stated, all amounts of monetary consideration in this agreement are exclusive of GST.
- (b) If GST is or becomes payable on a supply made by a party (**Supplier**) under or in connection with this agreement, the party providing consideration for the supply must pay an additional amount to the Supplier equal to the GST payable by the Supplier in relation to the supply.
- (c) Any amount payable under clause 10(b) will be paid to the Supplier at the same time as the consideration for the supply is paid to the Supplier.