

# Terms and Conditions

These Terms and Conditions form the basis on which the firm will undertake ecological assessment, environmental planning and landscape architecture consultancy services. They may be supplemented by special terms and conditions, definitions of services and/or scope of work, and details of fee and expense charges. Unless otherwise specified in a signed contract or other form of written agreement, these terms and conditions apply to engagement of the Firm as consultant or sub-consultant.

## 1. INTERPRETATION

### 1.1 For the purposes of these Terms and Conditions:

- (a) "Agreement" means an Agreement between you and the Firm;
- (b) "Firm" means Chenoweth Environmental Planning and Landscape Architecture Pty Ltd (which may be abbreviated as Chenoweth EPLA);
- (c) "Written" or "in writing" means a signed letter or form, or an email sent by you or your agent;
- (d) "Project products" means all outputs produced by the Firm in relation the services provided, including documents, plans, data, expert testimony and advice; and
- (e) "You" or "your" means the client or related entity unless the contrary intention is plain.

### 1.2 Where the Firm is engaged as a subconsultant, the terms and conditions apply to the entity which engages the Firm, unless otherwise specified in writing and agreed to by the Firm.

## 2. OUR SERVICE TO YOU

- 2.1 A proposal by the Firm is an offer of services, and requires a written and signed and/or emailed acceptance as the basis of engagement. Unless otherwise specified in the Agreement, the proposal sets out the scope of services.
- 2.2 The work the Firm is instructed to do is the scope of services in the Agreement and any subsequent written instructions from you that are accepted by the Firm.
- 2.3 The Firm will act as professional adviser and in accordance with the Codes of Ethics of the Environmental Institute of Australia and New Zealand and the Australian Institute of Landscape Architects. The Firm will exercise skill and care in providing professional services in accordance with contemporary standards of professional practice, but is not your agent or representative in any matters (including acting as the named party for applications) except as specified in the Agreement
- 2.4 The Firm will notify you of any change to the scope of services provided within a reasonable time of circumstances changing, and will advise you regarding additional fees and costs likely to result from such changes.
- 2.5 The Firm will only be responsible for work carried out by the Firm. You are liable for any third party's Invoice whether hired by you or by the Firm on your behalf, unless otherwise specified in the Agreement.
- 2.6 The advice provided by the Firm is done so to the best of our knowledge and is accurate at the date of issue. However, changes may occur to the site conditions, the site context or the applicable legislative and regulatory framework. Any advice prepared by the Firm should not be relied upon after any such changes or if a significant period of time has passed since preparation of the advice without consulting the Firm.
- 2.7 Any advice the Firm gives is based on our opinion regarding issues that arise from statutory provisions. The Firm's comments and conclusions in any advice relating to matters of law cannot and should not be relied upon and no warranties are given in this regard. You should only rely on the advice of your professional legal advisors with respect to matters of law.
- 2.8 Any verbal advice the Firm gives cannot be relied upon and no warranties are given in relation to verbal advice unless that verbal advice has been confirmed by the Firm in writing.

## 3. WHAT YOU CAN DO TO HELP

- 3.1 You agree to the following things to assist us in the provision of the services:
  - (a) confirm in writing all instructions;
  - (b) assist us to avoid misunderstanding by clarifying your instructions, so we have a clear appreciation of your needs;
  - (c) assist us to avoid professional misconduct or discourtesy by advising if the required services are intended to supplant or replace similar services which are being or have been provided by another professional consultant in the same or closely related fields of expertise;
  - (d) allow us to keep copies of receipts or outlays related to your instruction;
  - (e) allow us to keep copies of all correspondence and relevant documents and data owned or controlled by you including maps, plans and electronic files, except as specified in the Agreement or other written undertakings regarding data;
  - (f) tell us if you have any important time limits;
  - (g) notify us immediately (or ensure that we are immediately notified by others) of any changes to the scope or timing as specified in the Agreement, and/or changes to base plans or any other fact or circumstance that you become aware of which affect the services;
  - (h) let us know immediately if you require any further explanation or advice on any point.
- 3.2 You must:
  - (a) provide the Firm with timely, accurate and proper instructions, including all documents, updated plans and other records relevant to the services;
  - (b) confirm in writing any instructions which change the scope of work or services in the Agreement, and respond
  - (c) promptly in writing to any request for authorisation of fee variations;
  - (d) act reasonably and take reasonable care to protect your own interests in respect of the services;
  - (e) satisfy yourself as to the commercial viability of transactions (if any) which may be affected by our advice and
  - (f) arrange and make available access to any site necessary for the Firm to provide the services.

## 4. YOUR REPRESENTATIVE

- 4.1 You will nominate in writing a person or persons who will act as "your representative".
- 4.2 You warrant that your representative has authority to act on your behalf and you agree to be bound by your representative's actions and instructions, including payment of all invoices.
- 4.3 You agree that the Firm is obliged to follow your representative's instructions only.
- 4.4 If another consultant or third party engaged by you requests advice or information from the Firm, you hereby give the Firm permission to liaise with and provide information to that person as the Firm see fit unless contrary instructions have been received in writing from you.
- 4.5 If you have not nominated your representative in writing, the entity or person that issues instructions to the Firm or signs an agreement will be responsible for payment of all invoices.

## 5. FEES AND CHARGES

- 5.1 The Firm's professional fees charged will be set out in the Agreement, otherwise you will be charged at the hourly rates specified in the Agreement or, if not so specified, at our standard rates.
- 5.2 The Firm's hourly rates are subject to change without notice and are usually reviewed at the end of each financial year.
- 5.3 The Firm will also charge you either at cost or at industry standard for any outlays it may incur in providing the services

including payments to third parties on your behalf. These may include, for example:

- (a) Plant identification charges;
- (b) Agency fees for applications, searches, filing, lodgement or enquiries ;
- (c) government revenue charges;
- (d) transaction specific banking charges;
- (e) postage, couriers and messengers;
- (f) data, photographs and maps;
- (g) printing, binding, photocopying, facsimile and telephone costs; and
- (h) travel expenses and accommodation costs.
- (i) field expenses (e.g. equipment hire and meals)
- (j) specific contract or sub-consultancy services required by the Firm in providing the agreed services (the Firm will not engage such services unless these services have either been approved in the Agreement or the scope of work or we take your instructions to engage these services)

5.4 An estimate of these expenses and disbursements may be part of the Agreement. The Firm will inform you of additional expenses and disbursements, as well as any other payments required to be made, as soon as is reasonably practicable.

5.5 Should the scope of works be increased during the course of the project, or additional services required after the services are provided, the Firm will charge for these services at the hourly rates specified in the Agreement or, if not so specified, at our standard rates.

## 6. GST

6.1 All rates, charges, expenses, etc in this document are GST exclusive unless otherwise stated to be inclusive of GST. You will pay the Firm an additional amount on account of any GST, which the Firm is liable to pay as a result of any supply the Firm makes to you.

## 7. PAYMENT OF INVOICES

- 7.1 The Firm's tax invoices will be sent to you containing information about professional fees, disbursements and expenses, other charges and GST.
- 7.2 If the Firm is acting for more than one entity, then the Firm's invoices are payable by all of you jointly and each of you individually.
- 7.3 The Firm's invoices are payable within 14 days.
- 7.4 If the Firm's invoices are not paid within 14 days, the Firm may elect, at its sole discretion, to charge interest on any outstanding amount at 1% above the current Westpac overdraft rates.
- 7.5 In the event that you do not pay the Firm's invoice, you agree that the Firm can exercise a lien and grant a lien over all project products, and also over any of your documents we may hold, until the account is paid in full.
- 7.6 In the event you do not pay the Firm's invoice, in addition and without prejudice to any rights of termination the Firm may have, you agree we may also suspend the Firm's services to you for the project or services which are the subject of the Agreement, and any other services which the Firm is engaged by you, until all overdue monies are paid.
- 7.7 For the purposes of this agreement you will be deemed to have received the Firm's invoice:
  - (a) on the day it is given to you or your agent personally or provided to you by way of facsimile or email; or
  - (b) within two days of the Firm posting it to you, at the address provided.

## 8. TERMINATION, VARIATION AND DISPUTES

- 8.1 Either party may terminate the Agreement, at any time upon written notice being given to the other party.
- 8.2 The Firm may also terminate the Agreement if:
  - (a) you fail to pay monies in accordance with this Agreement;
  - (b) you fail to provide the Firm with adequate instructions within a reasonable time;
  - (c) you give instructions that are deliberately false or misleading;
  - (d) you fail to accept advice the Firm gives to you;
  - (e) you engage another environmental planning, landscape architecture or related Firm to advise you on this matter without the Firm's consent;
  - (f) the Firm believes, on reasonable grounds, that it has a conflict of interest;
  - (g) you ask the Firm to act unethically; or
  - (h) for other just cause, at our discretion.
- 8.3 The agreement may also come to an end if the subject matter of the agreement comes to an end; for example, if the negotiations for the sale of a business break down or a contract for the sale of land is terminated by consent.
- 8.4 If the Agreement is terminated either by you or the Firm or for any other reason, you must pay the Firm's professional fees, fees for other items and expenses and disbursements

up to the date of termination and for any work reasonably done to conclude the matter.

- 8.5 On termination, the Firm is entitled to retain possession of your documents or money while there is money owing to the Firm for our professional fees, fees for other items and expenses and disbursements, unless and until security acceptable to the Firm is provided for the Firm's costs.
- 8.6 These Terms and Conditions may be amended by mutual consent in writing of all parties.
- 8.7 In the event of a dispute, the matter will be referred for arbitration to a mutually-agreed third party or professional institute, or failing agreement to the President of the Institute of Arbitrators Australia.

## 9. COPYRIGHT AND CONFIDENTIALITY

- 9.1 All material provided by you or prepared by the Firm for the purposes of the Agreement is treated as confidential, apart from material already available to the public, and will not be divulged or released to any third party without written permission.
- 9.2 Where details of the project are known to the public, the use of or specific reference to project products by the Firm for marketing, teaching and presentation purposes is at the Firm's discretion, unless the agreement is subject to a signed confidentiality agreement between you and the Firm, or otherwise instructed or agreed in writing
- 9.3 You agree and acknowledge that the Firm retains ownership and copyright of the contents of any project products including reports, drawings, plans, data, figures and other work produced by the Firm. You agree to use the project products only for the purposes for which it was prepared and not to amend or reproduce, in full or in part, any of the project products, unless written approval is given by the Firm. You acknowledge that no third party is entitled to use, rely on or amend the project products without express written approval of the Firm.
- 9.4 You acknowledge that the Firm owns all intellectual property rights in any concepts, ideas or documents the Firm develop in the course of providing services and project products to you. The Firm may use intellectual property associated with the project for marketing, teaching and presentation purposes, without specific reference to the site, the project, you or the client.
- 9.5 You agree to sign any documents required:
  - (a) to give the Firm full legal ownership of any intellectual property rights the Firm owns; and
  - (b) by the Firm in making applications for a patent, a registered trademark or design in Australia or such other countries, as the Firm thinks necessary.

## 10. MISCELLANEOUS PROVISIONS

- 10.1 Where possible, each provision of these Terms and Conditions shall be interpreted in a manner so as to be effective and valid under the proper law. If there is any provision of these Terms and Conditions or the application of any provisions to any person or circumstances would be prohibited by or would be made invalid under the proper law, that provision shall be ineffective to the extent of the prohibition, without invalidating the remainder of the provision or the remaining provisions of the Terms and Conditions or the application of those provisions to you.
- 10.2 Any variations to the Terms and Conditions will only have effect if those variations are in writing and signed by both the Firm and you.
- 10.3 You agree that our total liability to you for any claim, whatever its basis at law, is limited to the amount of Professional Indemnity Insurance carried by the Firm. The Firm is currently insured for claims up to \$10,000,000. The Firm will continue to maintain insurance for at least this amount.
- 10.4 Once you agree to these Terms and Conditions, they continue to have effect for any subsequent jobs undertaken for you or a related entity.
- 10.5 The law of Queensland will apply to any Agreement and these Terms and Conditions.