

MCG Quantity Surveyors – Standard Terms of Engagement

1 Definitions and Interpretation

1.1. In this document, unless the context indicates a contrary intention:

Agreement means these Terms of Engagement and includes the Quotation, the Schedule of Fees and the Schedule of Services.

MCG means M Consulting Group Pty Limited (ACN 150 345 654) trading as “MCG Quantity Surveyors”.

Client means the entity, which appoints MCG to perform the Services in accordance with this Agreement.

Client’s Site means a site or part of a site other than the premises from which MCG carries on its business.

Confidential Information means information that is by its nature confidential is designated by a party as confidential, but does not include information, which is or becomes public knowledge other than by breach of the Agreement or any other confidentiality obligation.

Deliverable means any report, assessment, estimate, plan, study, evaluation, recommendation, forecast or any other document or material to be provided by MCG to the Client as part of the Services under this Agreement.

Fees means MCG’s fees as set out in the Schedule of Fees or as otherwise agreed under this Agreement.

GST means a tax imposed under GST Law.

GST Law has the meaning given in section 195-1 of *A New Tax System (Goods and Services) Act 1999* (Cth).

Insolvency means:

- (a) in the case of a corporation:
 - (i) a party is liquidated, whether compulsorily or voluntarily (other than for the purpose of amalgamation or reconstruction whilst solvent);
 - (ii) a party enters into any arrangement with creditors;
 - (iii) a party becomes subject to external administration within the meaning of Chapter 5 of the *Corporations Act 2001* (Cth) including having a receiver or administrator appointed over all or any part of its assets; or
 - (iv) anything analogous or having a substantially similar effect to the events specified in (i) to (iii) above occurs in relation to a party in any jurisdiction, or
- (b) in the case of an individual:
 - (i) a party commits an act of bankruptcy within the meaning of the *Bankruptcy Act 1966* (Cth);

- (ii) a party enters into any arrangement with creditors; or

- (iii) anything analogous or having a substantially similar effect to the events specified in (i) and (ii) above occurs in relation to a party.

Intellectual Property Rights means all intellectual property rights, including but not limited to, the following rights:

- (a) patents, copyright, rights in circuit layouts, designs, trade marks (including goodwill in those marks) and domain names;
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and
- (c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in Australia or elsewhere,

whether or not such rights are registered or capable of being registered.

Personnel means a party’s officers, employees, agents and contractors.

Quotation means MCG’s written proposal to provide the Services to the Client in accordance with this Agreement.

Schedule of Fees means the Schedule of Fees attached to the Quotation.

Schedule of Services means the Schedule of Services attached to the Quotation.

Services means the tax depreciation services set out in the Schedule of Services and any other services to be provided by MCG to the Client under this Agreement as agreed between the parties.

Work means the Services to be provided by MCG under this Agreement.

1.2. In this document, unless the context indicates a contrary intention:

- (a) headings are for convenience only and do not affect interpretation;
- (b) a reference to a person includes a natural person, corporation, partnership, and any other organisation or legal entity;
- (c) the word “include” in all its grammatical forms is not a word of limitation;
- (d) a word that is derived from a defined word has a corresponding meaning;
- (e) the singular includes the plural and vice versa; and
- (f) a reference to “dollars” or “\$” is to Australian currency.

- 2. This Agreement to prevail** The terms and conditions of this Agreement prevail over any other terms and conditions (including those of the Client, if any) and can only be varied by written agreement between parties.
- 2.2. Any request by the Client for the provision of the Services by MCG, which purports to include terms not expressly included in this Agreement is of no effect and the Client's request is deemed to be an offer on the basis of this Agreement.
- 3. Appointment and Scope of Work** This Agreement becomes binding on the Client when MCG is in receipt of acceptance from the Client (including by email) or instruction to proceed has been given verbally by the client.
- 3.2. By instructing to proceed verbally or by sending a Quotation acceptance by email, the Client is requesting that MCG perform the Services based upon the terms and conditions of this Agreement.
- 3.3. Upon receipt of 3.2, MCG will provide the Services subject to this Agreement.
- 3.4. The Client is responsible to ensure that MCG receives all necessary materials, documents, instructions and other information required in a timely manner to enable MCG to perform the Services in accordance with this Agreement.
- 3.5. When receiving all necessary materials, documents, instructions and other information required, if the client provides more than 10 documents and or materials, MCG reserve the right to charge an additional fee for the accumulation of relevant information. This fee will be advised to the client prior to the request of payment. Unless otherwise agreed between the parties, the Client must provide a reasonable number of copies of all documents to MCG for the supply of the Services under this Agreement, free of charge to MCG and in digital format.
- 3.6. Any oral or written instructions, materials, documents or other information given by the Client's representative or lead consultant to MCG will be deemed to have been given by the Client.
- 3.7. The Client may issue further directions and request variations to the Services in writing to MCG from time to time. MCG may accept any such reasonable directions or variations and the Client must pay MCG in accordance with Clause 4 for any directions accepted or variations agreed with MCG.
- 4. Fees** Unless otherwise provided under this Agreement, the Client must pay MCG the Fees for the Services.
- 4.2. Unless otherwise agreed between the parties, if the scope of the Work is varied by the Client in a manner which requires additional Services to be performed by MCG (including as a result of or in connection with a delay which is beyond the reasonable control of MCG), the Client must pay MCG for the additional Services in accordance with the rates set out in the Schedule of Fees or, if there are no such rates, at the Standard Rates.
- 4.3. Unless otherwise agreed between the parties, if the scope of Work is varied by the Client in a manner, which reduces the Services required, the Client must pay MCG for all Services performed under this Agreement in accordance with the Standard Rates.
- 4.4. If any Work fails to proceed through no fault of MCG and each of the phases is separately priced in the Schedule of Fees, the Client must pay MCG for the completed Work and reimburse MCG for any costs MCG incurs in contemplation of completing all stages of Work. If the stages of Work are not separately priced in the Schedule of Fees, the reduction in scope or termination will be dealt with under Clause 4.3 or 4.5 as appropriate.
- 4.5. In the event of termination of this Agreement prior to the completion of Work (except under Clause 9.1), the Client must pay MCG for all the Services performed under this Agreement to the date of termination in accordance with the rates set out in the Schedule of Fees or, if there are no such rates, at the Standard Rates. Minimum charge for cancellation after a Site inspection has been carried out is \$200.00 + GST.
- 4.6. If the scope of Work is reduced under Clause 4.3, any Work fails to proceed under Clause 4.4 or the Agreement is terminated under Clause 4.5, the Client must reimburse MCG for any costs of demobilising its operations, retrenching Personnel and other costs arising from or in connection with the reduction in the scope of Work, the failure to proceed with any Work or the termination of the Agreement.
- 5. Terms of payment** Settlement of MCG's Fees and expenses will be requested at the times indicated in the Quotation.
- 5.2. The Client must pay within the time set out in the Quotation.
- 5.3. Without prejudice to any other right or remedy available to MCG, MCG may charge the Client for interest on any Fees and expenses remaining unpaid after the due date at the interest rate stated in the Schedule of Fees and such interest will accrue daily from the due date until the date of payment.
- 5.4. MCG may withhold the performance of any Services if the Client fails to pay all amounts owing under a Quotation in accordance with Clause 5.2.
- 5.5. The Client must not withhold any amount of the Fees or expenses under an invoice issued by MCG by reason of any dispute that exists between the Client and MCG or by reason of any set-off or counterclaim by the Client.
- 5.6. For security purposes, all payments will be processed on receipt of client authorised credit card information for the agreed fee amount to allow the securing of credit card details.
- 6. Performance**
- 6.1. MCG will perform Work in accordance with agreed times, but any such agreed times are estimates only and MCG will not be liable for any claim for late or non- performance.
- 6.2. The Client must pay MCG for any reasonable costs incurred by MCG arising from or in connection with any delay in the provision of the Services that is beyond the reasonable control of MCG.

7. Site and other facilities

If MCG is required to attend a Client's Site to perform any part or all of the Services, the Client must ensure all parts of the Client's Site comply with all laws and the requirements of any relevant authority from time to time, including those relating to workplace health and safety.

8. Intellectual property

8.1. Ownership of all Intellectual Property Rights in respect of any Deliverable or the provision of the Services by MCG to the Client is vested in, and will vest in, MCG.

8.2. All Intellectual Property Rights arising out of or in connection with the provision of Services (including the Deliverables) by MCG to the Client vest in MCG on their creation absolutely and nothing in this Agreement confers any such Intellectual Property Rights on the Client.

8.3. The Client must not provide any Deliverable prepared by MCG to any third party for use in any prospectus, sales or promotional material or for any other purpose without the prior written consent of MCG.

9. **Termination** The Client may terminate this Agreement by written notice to MCG if MCG is in substantial breach of this Agreement and MCG has not commenced action to remedy the breach within 7 days after receipt from the Client of a written notice specifying the breach and requiring it to be remedied.

9.2. MCG may terminate this Agreement for any reason without liability to the Client with 14 days written notice to the Client.

9.3. Either party may immediately terminate this Agreement if the other party is:

(a) Insolvent; or

(b) commits any breach of the terms of this Agreement and:

A. the breach is material and not capable of being cured; or

B. the breach is capable of being cured and the party in breach fails to cure or provide a suitable plan proposing steps to be taken to cure the breach within 7 days of being notified in writing of the breach.

9.4. If this Agreement is terminated for any reason except under Clause 9.1, the Client must pay MCG in accordance with Clause 4.4 or 4.5 (as applicable) and reimburse MCG for any reasonable costs MCG incurs in contemplation of completing all the Services under this Agreement.

9.5. If MCG is prevented from performing the Services for more than 30 consecutive days for any reason beyond MCG's reasonable control, MCG may immediately terminate this Agreement and:

(a) the Client must pay MCG in accordance with Clause 4.4 or 4.5 (as applicable); and

(b) the Client releases MCG from all claims in connection with or arising out of the partial or total non-performance of the Services under this Agreement.

9.6. On termination of this Agreement, for any reason, each party must (as soon as reasonably practicable):

A. return or destroy (as directed in writing by the other party) any documents, handbooks, CD-ROMs or DVDs or other information provided to it by the other party or data for the purposes of this Agreement, including all documents and materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information. If required by the other party, it will provide written evidence (in the form of a letter signed by its relevant officer) no later than 14 days after termination of this Agreement that these have been destroyed and that it has not retained any copies of them, except for one copy that it may use for audit purposes only, and subject to the confidentiality obligations set out in this Agreement;

B. delete (to the extent possible) any proprietary software belonging to the other party and all the other party's Confidential Information from its IT network and hard disks or other storage means associated with any computer equipment owned or controlled by the other party. Each party will provide written confirmation (in the form of a letter signed by its relevant officer) no later than 14 days after termination of this Agreement that this software and Confidential Information has been deleted; and

C. return all of the other party's equipment and materials, failing which, the other party may enter the relevant premises and take possession of them. Until these are returned or repossessed, the party remaining in possession will be solely responsible for their safe-keeping.

9.7. Termination of this Agreement, for any reason, will not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.

10. **Limitation of liability** Except as otherwise provided in this Agreement, all terms, conditions, warranties, undertakings, inducements or representations whether express, implied, statutory or otherwise relating in any way to the provision of the Services or to this Agreement are excluded to the fullest extent permitted by law.

10.2. Without limiting the generality of Clause 10.1, except where this Agreement provides otherwise, MCG's total liability for any claim for loss, damage or expense incurred or suffered by the Client, whether arising under or in connection with or incidental to this Agreement, including the performance or non-performance of MCG's obligations under this Agreement or anything incidental to it, and whether by way of indemnity, by statute, in tort (for negligence or otherwise) or on any other basis in law or in equity will be limited to the total Fees paid by the Client for the Services provided by MCG to the Client under this Agreement preceding the date on which the loss, damage or expense arose.

10.3. Where any law implies in this Agreement any term, condition or warranty (**Implied Term**) and that law voids or prohibits provisions in a contract excluding or modifying the Implied Term, the Implied Term will be deemed to be

included in this Agreement but the liability of MCG for any breach of the Implied Term will be limited, at the option of MCG, to any one or more of the following:

- (a) the supply of the Services again; or
- (b) the payment of the costs of having the Services supplied again.

10.4. The Client must not commence proceedings against any of MCG's Personnel in respect of the facts, matters or circumstances giving rise to any loss, damage or expense under Clause 10.2 and this Clause 10.3 may be pleaded in bar to any such proceedings.

10.5. Despite any other provision in this Agreement, MCG will not be liable for any consequential, indirect or special loss, such as loss of profits or revenue, loss of business opportunity, loss of production or loss of goodwill, suffered by the Client whether arising under or in connection with or incidental to this Agreement, including the performance or non-performance of its obligations under this Agreement or anything incidental to it, and whether by way of indemnity, by statute (to the extent that it is possible to limit such liability), in tort (for negligence or otherwise), or on any other basis in law or in equity.

10.6. The provision to MCG of any documents or information evidencing or relating to any relationship, arrangement, contract or understanding between the Client and any third party is for information purposes only and does not affect, and must not be used to interpret the scope of MCG's engagement to perform the Services under this Agreement.

10.7. MCG does not assume any responsibility to any third party or undertake to discharge any duty or responsibility of the Client to any third party by performing the Services or providing any Deliverables to the Client.

10.8. MCG assumes no responsibility in respect of, and is not liable for any error, omission, discrepancy or defect in any materials, documents, information or instructions provided by the Client or the Client's Personnel to MCG under Clause 3.5. The Client must pay MCG at the Standard Rates for the performance of any additional Services by MCG due to any such error, omission, discrepancy or defect in the materials, documents, information or instructions.

10.9. The Client indemnifies MCG from and against any and all loss, damage or expense directly or indirectly arising from or in connection with any breach of this Agreement by the Client or any unlawful, negligent or wilfully wrong act or omission by the Client or the Client's Personnel.

11. Confidentiality

11.1. A party must not disclose any Confidential Information (including technical, commercial, financial, or other information which could reasonably be regarded as being confidential) of the other party to any person except:

- (a) with the prior written consent of the other party;
- (b) to its officers, employees or professional advisers (to the extent they need to know the Confidential Information); or

(c) if applicable, as required by an applicable law, including the rules of any relevant stock exchange, after first consulting with the other party about the form and content of the disclosure, and must use its best endeavours to ensure all permitted disclosures are kept confidential.

11.2. Each party must take all reasonable steps to ensure that its officers, employees and professional advisers do not make public or disclose the other party's Confidential Information.

11.3. This Clause 11 does not apply to information which:

- (a) is or becomes public knowledge other than by a breach of this Agreement;
- (b) a party already possesses at the time the other party discloses the information to it; or
- (c) a party acquires from a third party entitled to disclose that information.

11.4. MCG does not sell, rent or lease its customer lists to third parties. As a MCG client, MCG may, from time to time, contact you about a particular MCG service that may be of interest to you. In all cases, your unique personally identifiable information (e-mail, name, address, telephone number) is not transferred to the third party. Should you not wish to receive this information you can unsubscribe at any time.

12. Disputes

12.1. If a dispute arises between the parties in connection with this Agreement, the parties undertake in good faith to use all reasonable endeavours to settle the dispute by way of good faith negotiation (including escalating the dispute to executive level).

12.2. If the parties do not resolve the dispute within 30 business days of one party notifying the other party in writing of the dispute, the parties agree that either party may refer the dispute to mediation. Mediation is to be administered by the Australian Commercial Disputes Centre Limited (ACDC), conducted in Sydney and held in accordance with the ACDC Guidelines for Commercial Mediation.

12.3. The parties agree to appoint an independent third party as mediator. If the parties are unable to agree on the mediator to be appointed, then the mediator is to be appointed by ACDC in accordance with the ACDC Guidelines for Commercial Mediation.

12.4. Each party agrees that it must not commence legal proceedings relating to a dispute under this Agreement (except where a Party seeks urgent interlocutory relief) unless the dispute has first been first referred to mediation in accordance with this clause.

13. Assignment

- 13.1. The Client must not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of MCG, which consent will not be unreasonably withheld.
- 13.2. MCG may assign its rights or sub-contract its obligations under this Agreement.

14. Notices

- 14.1. Any notice to be given under this Agreement may be given in writing addressed to the party at the address specified at the commencement of this Agreement or at its last known business address or, if the party is a company, at its registered office.
- 14.2. Any such notice will be deemed to have been received by the recipient on the third Business Day after the date of posting.

15. Applicable law and jurisdiction

The law governing this Agreement will be the law of the State or Territory in which the Services are performed by MCG and the parties submit to the non-exclusive jurisdiction of the courts in that State or Territory.

- 16. **Tax** All Fees exclude Government taxes introduced or levied after the date of this agreement. New government taxes and charges will be added to invoice amounts.
- 16.2. All Fees exclude GST. The amount of any GST will be added to invoice amounts.

17. General

- 17.1. This Agreement constitutes the sole and entire agreement between the parties with regard to its subject matter and a warranty, representation, guarantee or other term or condition of any nature not contained or recorded in this Agreement is of no force or effect.
- 17.2. The rights, duties and remedies granted or imposed under the provisions of this Agreement operate to the extent not excluded by law.
- 17.3. A right or remedy created by this Agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.
- 17.4. Nothing in this Agreement constitutes or will be deemed to constitute a partnership between the parties or the appointment of one party as the agent of the other, or the employment of one party by the other. Other than as expressly provided in this Agreement, no party has the authority or power to bind the other or to contract in the name of, and create a liability against, the other in any way or for any purpose.
- 17.5. Clauses 1, 8, 10, 11, 15 and 17 survive termination or expiry of this Agreement.