

Terms and Conditions of Architect Engagement

1. Core Service

Core services are the professional services required by most clients for a building project from the initial design to completion of construction on site. While the majority of commissions will include all core services some projects may not or may require other services as described in clause 2.0 of this agreement. Where the term "Contractor" appears in this agreement it shall include and have the same meaning as Builder and/or Building Contractor

The architect/designer will provide where nominated in the fee letter the following services at each stage of the project

1.1. Schematic Design Pre-design Stage

- 1.1.1. Obtain the client's design brief and other requirements.
- 1.1.2. Provide recommendations as required for fees and for the appointment of consultants.
- 1.1.3. Arrange, attend and record client meetings as agreed.
- 1.1.4. Inspect the site and assess site conditions and constraints.
- 1.1.5. Undertake preliminary analysis of authority regulations and requirements.

Design Stage

- 1.1.6. Arrange and attend meetings with authorities, consultants and others.
- 1.1.7. Arrange, attend and record client meetings as agreed.
- 1.1.8. Prepare sketch drawings including sketches, diagrams and other information to adequately explain the design.
- 1.1.9. Prepare design briefs for consultants.
- 1.1.10. Co-ordinate cost consultant in the preparation of the preliminary estimate of the Cost of Works.
- 1.1.11. Prepare preliminary selections of materials and finishes.
- 1.1.12. Obtain the client's approval to proceed to Design Development Stage.
- 1.1.13. Obtain the client's approval to prepare Town Planning Application/Development Approval Application as required.

1.2. Design Development

- 1.2.1. Develop the approved Schematic Design into a final design solution with drawings at an appropriate scale and other details or documents to adequately explain the design.
- 1.2.2. Arrange, attend and record meetings with the client, authorities, other consultants and other relevant parties as agreed.
- 1.2.3. Co-ordinate the design work undertaken by consultants.
- 1.2.4. Provide schedule of proposed materials and finishes.
- 1.2.5. Review the final design against the budget established by the cost consultant and co-ordinate the cost consultant in the preparation of the updated estimate of the Cost of Works.
- 1.2.6. Obtain the client's approval to proceed with the Construction Documentation Stage.

1.3. Construction Documentation

- 1.3.1. Prepare recommendation to the client on the preferred method of contractor selection.
- 1.3.2. Arrange, attend and record meetings with the client, authorities, other consultants and other relevant parties as agreed.
- 1.3.3. Prepare drawings at an appropriate scale including plans, elevations and sections, together with other details and schedules to enable the project to be tendered.
- 1.3.4. Co-ordinate and integrate the work of consultants with the architectural drawings.
- 1.3.5. Prepare a specification describing the quality of materials, finishes and workmanship necessary to complete the project in accordance with the drawings and the client's requirements.
- 1.3.6. Submit documents for certification/building approval to the building surveyor/certifier.
- 1.3.7. Co-ordinate the cost consultant in the preparation of a pre-tender estimate of the Cost of Works.
- 1.3.8. Obtain the client's approval of all construction documents.
- 1.3.9. Obtain the client's approval to proceed with selection of a contractor.

1.4. Contractor Selection

The architect/designer will undertake one of the following methods of selection of a contractor to complete the construction of the works:

Tendering

- 1.4.1. Assist client in selecting the method of tender required.
- 1.4.2. Prepare list of prospective tenderers for approval by client.
- 1.4.3. Call tenders.
- 1.4.4. Prepare tender documents and issue to all tenderers.
- 1.4.5. Respond to enquiries from tenderers.
- 1.4.6. Close and assess the tenders.
- 1.4.7. Negotiate with the preferred tenderer if required to obtain an offer acceptable to client.
- 1.4.8. Prepare report and recommendation of tenderer's offer for acceptance by client.
- 1.4.9. Prepare the contract documents.
- 1.4.10. Arrange for the signing and execution of the contract documents by both parties.

or

Negotiated Offers

- 1.4.11. Establish selection of the preferred contractor with client.
- 1.4.12. Brief selected contractor.
- 1.4.13. Issue all relevant documents to selected builder/contractor to describe the scope of the works.
- 1.4.14. Arrange and co-ordinate negotiations with selected builder/contractor together with client's cost consultant.
- 1.4.15. Respond to enquiries from selected builder/contractor.

- 1.4.16. Assess all submissions and proposals from selected builder/contractor required to establish the contract price.
- 1.4.17. Obtain final offer from selected builder/contractor for review by client's cost consultant and submission to client.
- 1.4.18. Obtain acceptance and approval from client of final offer by selected builder/contractor.
- 1.4.19. Prepare the Contract Documents and arrange for the signing and execution of the contract documents by both parties.

These terms allow for one tender/negotiation period only. Additional fees apply should additional selection phases be required.

1.5. Contract Administration Construction Services

- 1.5.1. Undertake periodic site inspections, check work in progress regarding design quality control, materials selections and performance as described in the contract documents.
- 1.5.2. Review shop drawings and other submissions by builder/contractor.
- 1.5.3. Provide builder/contractor with supplementary details and information.
- 1.5.4. Provide builder/contractor with instructions to clarify the contract documents where required.
- 1.5.5. Administer variations and obtain client approvals.
- 1.5.6. Arrange and attend site meetings and other meetings as required.
- 1.5.7. Provide the client with regular reports regarding time, cost and progress of the works.
- 1.5.8. Assess builder/contractor's progress claims and issue progress certificates.
- 1.5.9. Assess builder/contractor's claims for extensions of time.
- 1.5.10. Adjust prime cost and provisional sums and other monetary sums included in the contract documents.
- 1.5.11. Co-ordinate the construction services provided by consultants and their administration of specialised sub contract work associated with the works.
- 1.5.12. Assess the state of the works and prepare defects lists prior to practical completion.
- 1.5.13. Issue instructions to the builder/contractor for work required to achieve practical completion including rectification of any defects.
- 1.5.14. Inspect rectification of defects and issue notice of practical completion.

Post-Construction Services

- 1.5.15. Assess the final contract account.
- 1.5.16. Co-ordinate the rectification of any further defects found in the works during the defects liability period, and if required, advise the client of the procedure for the rectification of any defective work by others.
- 1.5.17. Inspect the works to ensure all defects are rectified and works under the contract are complete.
- 1.5.18. Issue the Final Certificate.

2. Additional Services

This clause describes project specific services that may be required in addition to the Core Services

2.1. Feasibility Studies

- 2.1.1. Meet with client to determine project objectives and constraints.
- 2.1.2. Arrange meetings with agents and others to determine market potential.
- 2.1.3. Review planning controls, guidelines and site possibilities.
- 2.1.4. Provide planning diagrams of building envelope.
- 2.1.5. Prepare site analysis of opportunities and constraints.
- 2.1.6. Provide anticipated cash flow schedule of the anticipated development costs.
- 2.1.7. Prepare comprehensive report issued as an opinion of probable site development potential to be tested against consultant planning advice.

2.2. Body Corporate/Building Management: Application Services

- 2.2.1. Prepare the necessary drawings and other documents for Body Corporate/Building Management application.
- 2.2.2. Assist the client with lodging application.
- 2.2.3. Prepare report on the design intent as required in support of and to justify the application.

2.3. Body Corporate/Building Management: Negotiation Services

- 2.3.1. As agreed, negotiate and attend meetings with adjoining owners and/or interest groups prior to or after submission of application.
- 2.3.2. As agreed, negotiate and attend meetings with local planning authority or other related authorities following submission of formal planning application.
- 2.3.3. Prepare additional documentation in relation to building management associated with the application.
- 2.3.4. Assist the client in obtaining the required planning approvals.
- 2.3.5. Prepare additional drawings and documentation and/or amend existing drawings and documentation to comply with approval terms and conditions.
- 2.3.6. Submit additional and/or revised drawings and other documentation to authority for endorsement in compliance with approval conditions.

2.4. Town Planning/Development Approval: Application Services

- 2.4.1. Prepare the necessary drawings and other documents for planning application.
- 2.4.2. Assist the client with lodging planning application.
- 2.4.3. Prepare detailed site analysis and streetscape drawings to local authority requirements.
- 2.4.4. Prepare detailed shadow diagrams to local authority requirements.
- 2.4.5. Assist client in the co-ordination of planning consultant and other specialist advisors as required for planning application.
- 2.4.6. Attend pre-application meetings with local planning authority prior to submission of formal planning application.
- 2.4.7. Prepare report on the design intent as required in support of and to justify the application.

2.5. Town Planning/Development Approval: Negotiation Services

- 2.5.1. Engage in community consultation prior to submission of town planning application.
- 2.5.2. As agreed, negotiate and attend meetings with adjoining owners and/or interest groups prior to or after submission of formal planning application.
- 2.5.3. As agreed, negotiate and attend meetings with local planning authority or other related authorities following submission of formal planning application.
- 2.5.4. Prepare additional documentation in relation to planning tribunals associated with the planning application.
- 2.5.5. Prepare evidence, attend hearings and give evidence at planning tribunals associated with the planning application.
- 2.5.6. Assist the client in obtaining the required planning approvals.
- 2.5.7. Prepare/submit additional drawings and documentation and/or amend existing drawings and documentation to comply with the planning permit/development approval terms and conditions.
- 2.5.8. Additional documentation or modifications/adjustments to existing documentation post submission of Town Planning / Development Approval application will be charged to the client at hourly rates as stated in clause 5.2 of this agreement and the covering Fee Arrangement Letter.

2.6. Digital Renderings/Models

- 2.6.1. Prepare detailed 3D rendered images of the project.
- 2.6.2. Provide realistic perspectives by the superimposing of 3D rendered images of proposal into existing site context.
- 2.6.3. Liaison with client appointed 3D visualisation specialists.
- 2.6.4. Additional scale models to the model possibly presented at the first presentation of Schematic Design (model is project dependent) can be prepared at the Client's discretion to assist with clarifying concepts, or to assist during the town planning permit application process.
- 2.6.5. All 3D rendered images are concept only. Please refer to construction documentation for final design.

2.7. Existing Condition Surveys

- 2.7.1. Provide detailed drawings showing existing buildings, visible services and finishes.
- 2.7.2. Prepare existing conditions drawings in digital format.

2.8. Non-Core Documentation

- 2.8.1. Assist client appointed programmer (or programmer appointed by selected construction manager/builder/contractor) in preparation of agreed program trade documentation packages.
- 2.8.2. Provide parts of the works in trade package format.
- 2.8.3. Provide matching specification for each trade package.
- 2.8.4. Provide set of standard preliminaries suitable for inclusion with all trade package documentation.
- 2.8.5. Co-ordinate client appointed consultants in the preparation of trade package documentation for specialist sections of the works.
- 2.8.6. Assist client appointed contractor/construction manager/project manager in responding to queries from trade contractors.

2.9. As-Built Drawings

Complete "as-built" Architectural documentation. Upon Completion of construction, a reproducible set of record documents representing what was actually built can be prepared, incorporating information prepared by all consultants. This set of record documents shows the reported location of the work and significant changes made during the construction process. Because these record documents are based on unverified information provided by other parties, which will be assumed reliable, the Architect cannot and does not warrant their accuracy.

2.10. Interior and Landscape design

2.10.1. Interior design services that include the selection and procurement of loose furniture, accessories, art or equipment. This excludes internal colours, tiles, fixed lighting and built-in joinery which are part of the architect/designer scope of services.

2.10.2. Landscape design and/or co-ordination of landscape contractor.

2.11. Variations in excess of \$5,000.00

2.11.1. The architect/designer may engage on behalf of the Client a Quantity Surveyor to assess variations claimed by the builder in excess of \$5,000 (excl GST).

2.12. Contract Documentation Modifications

2.12.1. Modifications to Contract Documentation should amendments need to be made once negotiations with the preferred builder have been completed at the end of Stage 4 Services Tender and Negotiation. This includes any additions or deletions from the Contract Documents.

2.13. Development Marketing

2.13.1. Preparation of marketing plans and lease plans for sales brochures

3. Time

The client must inform the architect/designer of their initial program for the project, following which the client and the architect/designer must agree an initial program for the architect's/designer's services. The initial program may be revised during the project by mutual agreement in writing.

3.1. Protracted Services

If the architect's/designer's services are protracted by any cause beyond the architect's/designer's control:

3.1.1. The architect/designer must notify the client in writing of the cause and anticipated extent of the protraction, and

3.1.2. The architect/designer is entitled to additional fees and to a reasonable extension of the agreed program.

3.2. Suspended Services

3.2.1. Where the architect's/designer's services are suspended for any reason by the client or the architect/designer, the architect/designer is entitled to payment of all fees and disbursements due.

3.2.2. Where the architect's/designer's services are suspended by the client, the architect/ designer is also entitled to reimbursement of any associated costs.

3.2.3. In either case, all other rights and entitlements of the architect/designer continue as though the suspension had not taken place.

4. Cost

The client and the architect/designer shall jointly determine and agree on a realistic amount for the Total Project Budget and from this, determine the anticipated Cost of Works in consideration of the Scope of Works. The Cost of Works shall be adjusted during project progress in accordance with any advice obtained from the cost

consultant, tenders received for the construction of the works and/or any other adjustments required to determine the final Cost of Works.

4.1. Cost of Works

The *Cost of Works* is exclusive of GST and is defined as the cost of all works designed by the architect/designer and by the consultants as co-ordinated by the architect/designer. The *Cost of Works* includes any adjustments to the final contract price (excluding GST) including all variations to the scope of the works, adjustment of prime cost and provisional sums and any costs for prolongation. The *Cost of Works* includes the cost of all service installations, built-in and loose furniture and equipment appertaining to the project building, as co-ordinated by the architect and included in the documentation, together with the cost of all materials as though they were new. The *Cost of Works* includes the cost of any and all equipment, material, labour and cartage associated with any or part of the works when provided by the client but assessed by the architect/designer as if these additional items were provided by the builder/contractor or other separate contractor.

4.2. Total Project Cost

The Total Project Cost is the total cost of the project to the client and is defined as the Cost of Works together with all other costs associated with the project. Other costs in the Total Project Cost may include, but are not limited to: design and construction contingencies, architectural/design & consultant fees, other professional fees, authority fees & charges, landscaping costs, loose furniture, fittings & furniture, financial charges, marketing and promotional costs, Goods & Services Tax (GST). The architect/designer is not responsible for monitoring or controlling the Total Project Cost for the client.

5. Professional Fees

5.1. Percentage Fees

- 5.1.1. Where fees are to be calculated as a percentage of the Cost of Works, the total percentage fee is allocated to the specific architectural / design services as outlined in the Minett Studio Architecture Pty Ltd Fee Arrangement Letter.
- 5.1.2. Percentage fees are calculated against the Budget for the Cost of Works as outlined in clause 4 of this agreement.
- 5.1.3. Percentage fees will be adjusted progressively against any increase in the Budget for the Cost of Works during the project.
- 5.1.4. At the completion of the project a final adjustment to all fees previously claimed on a percentage basis will be adjusted to reflect the final Cost of Works.
- 5.1.5. Percentage fees will not be adjusted if there is a reduction in either the Budget for the Cost of Works or the actual Cost of Works.

5.2. Hourly Rate Fees

Where the fee is to be calculated on the basis of agreed hourly rates, the architect/designer shall provide, if so requested, substantiation of the charges by way of time sheets or other records to show all hours expended on the project. Hourly rates may be increased periodically without notice and special hourly rates may apply for night-time and weekend work. Please refer to hourly rates in the covering Fee Arrangement Letter.

5.3. Interval for Fee Invoices

Fee invoices shall be submitted on a monthly basis to the client with payment terms of fourteen (14) calendar days from the invoice date.

5.4. Adjustment of Fees

- 5.4.1. Where Percentage fees apply, adjustments will be made in accordance with clause 5.1 of this agreement.
- 5.4.2. Where Lump Sum Fees apply, the total lump sum is allocated to the specific architectural / design services as outlined in the covering Fee Arrangement Letter.

- 5.4.3. If Lump Sum Fees apply and the project scope or any of the architect's/designer's services under this agreement are changed, the resulting work is subject to the hourly rates stated in the covering Fee Arrangement Letter or as otherwise agreed in writing.
- 5.4.4. Minett Studio Architecture Pty Ltd reserves the right to claim additional fees should the project program be prolonged or delayed due to any cause beyond the architect's / designer's control.

5.5. Overdue accounts

Where accounts are not paid in full by the due date interest may be applied to the amount outstanding at the rate of 18.5% per annum which equates to a daily rate of 0.051% which is applied in compound.

- 5.5.1. Architect/Designer will issue a notice of suspension of works via email with hard copy to follow in post effective two business days after date of issue on overdue accounts in accordance with payment terms identified in clause 5.3
- 5.5.2. Minett Studio Architecture Pty Ltd shall, without prejudice to any other remedies available to it, be entitled to charge interest on the amount outstanding calculated from the date payment is due until the date payment is made on the account outstanding.
- 5.5.3. In the event where the client fails to pay the whole amount due within thirty (30) days of being requested to do so by Minett Studio Architecture Pty Ltd in writing, then Minett Studio Architecture Pty Ltd shall be at liberty to instruct a collection agency and/or solicitors to recover the monies outstanding and the client shall be liable for any costs, charges, commissions and expenses reasonably and properly payable by Minett Studio Architecture Pty Ltd to such collection agency and/or solicitors relating to the recovery of such sum.
- 5.5.4. Any monies recoverable by Minett Studio Architecture Pty Ltd from the client pursuant to sub-clauses 5.5.2 and 5.5.3 shall be added to the amount otherwise due and shall be recoverable as a liquidated debt.

5.6. Disbursements

Generally disbursements will be invoiced in the month subsequent to their being incurred.

5.7. Variations to Scope of Services

The architect/designer will advise the Client in writing of any circumstance that may change the scope of services which will necessitate additional fees. This will include any changes to the brief once the brief has been signed-off, or sign-off from any completed stage of service.

Client sign-off ensures briefing has been completed to enable work to proceed efficiently with minimal changes and alteration. Whilst the architect/designer will endeavour to accommodate all Client changes, the fees for each stage of services listed under clause 1 do not make allowances for amendments to the brief.

5.8. Consultants

The professional fees charged by the architect/designer do not include any professional fees or statutory charges charged by consultants. When consultants are engaged by Minett Studio Architecture Pty Ltd there will be a coordination fee of 10% added to the consultant fee.

6. Responsibilities and Entitlements of the Architect/Designer

The architect/designer shall:

- 6.1.1. Issue to the client a return brief document for sign-off of agreed scope of service prior to commencement of design works.
- 6.1.2. Provide the services described in this agreement and shall exercise the skill and professionalism of a reasonable, qualified, registered architect/designer in doing so.

- 6.1.3. Act as the client's agent for the project and as required under the selected building contract.
- 6.1.4. Assist any cost consultant engaged by the client in the preparation of all indications of the cost of the project.
- 6.1.5. Co-ordinate and integrate the work of all consultants engaged by the client and/or the architect/designer.
- 6.1.6. Maintain professional indemnity insurance.
- 6.1.7. Maintain registration with the relevant State or Territory Architects Registration Board.
- 6.1.8. Provide the client with a programme describing the estimated timeframe for the delivery of architectural/interior design services.
- 6.1.9. Not assign or transfer this agreement without the prior written consent of the client.
- 6.1.10. Maintain accurate records and keep the client informed of progress by way of meetings, reports and other means at all stages.
- 6.1.11. Be entitled to charge fees including GST for architectural/design services and submit regular invoices for progressive payment of the fees.
- 6.1.12. Inform the client promptly when an instruction from the client changes the scope of services or brief and requires additional services; issued in as a variation order request for sign-off.
- 6.1.13. Provide the client with an estimate of fees for the additional services which may be required.
- 6.1.14. Be entitled to charge interest on overdue accounts.
- 6.1.15. Be entitled to suspend provision of services where full payment for any account is outstanding beyond the agreed payment terms.
- 6.1.16. Retain copyright and all other intellectual property rights in all services, design concepts, pdf drawings and pdf documents and all other works ("the design") provided to the client under this agreement.
- 6.1.17. Grant the client a revocable licence to use "the design" for the purposes of building at the relevant site. The following terms apply to this licence:
 - (a) the licence applies only to the site for which the design was prepared;
 - (b) the licence is not transferrable, without the prior written consent of the architect/designer; and
 - (c) the licence may be revoked by the architect/designer if any payment due to the architect/designer by the client under the terms of this agreement has not been paid in full.

7. Responsibilities and Entitlements of the Client

The client shall:

- 7.1.1. Appoint the architect/designer to act as its agent for the project as required.
- 7.1.2. Provide the architect/designer with a realistic budget for the anticipated Cost of Works and the Total Project Budget in consideration of the Scope of Works together with all relevant information required by the architect to complete the services described in this agreement.
- 7.1.3. Client sign-off of return brief and fee proposal for agreed scope of Architects'/Designers' service prior to commencement of design works.
- 7.1.4. Shall accept responsibility for cost advice in the event that a suitably qualified cost consultant is not engaged to provide these services.
- 7.1.5. Recognise that their requirements may alter as the design develops through the design process.
- 7.1.6. Work co-operatively with the architect to ensure efficient and satisfactory progress through all stages of the development of the design and any other services provided by the architect/designer.

- 7.1.7. Pay the architect/designer the fees due including GST for the services and reimbursable expenses provided in accordance with the terms stated in this agreement.
- 7.1.8. Pay the architect/designer additional fees on the basis of the time charge rates set out in this agreement (or as otherwise agreed), in the event that any additional services are required after the execution of this agreement. Additional services may include, but are not limited to, changes and/or revisions to any documents forming part of the design which have previously been approved by the client.
- 7.1.9. Engage consultants required by the project after consultation with the architect/designer and shall pay all fees and expenses associated with their engagement.
- 7.1.10. Be entitled to use the design only on the site for which it was intended and as defined in the project brief.
- 7.1.11. Not use the design for any other purpose without the prior written consent of the architect/designer.
- 7.1.12. Allow the architect/designer reasonable access to photograph the project at all stages of the commission.
- 7.1.13. Allow the architect/designer to publicise the project for marketing purposes unless otherwise agreed, including the erection of Minett Studio Design site signboards for the duration of the contract.
- 7.1.14. Shall not allow anyone to make any form of reference to the architect in any publicity or marketing material in relation to the project without prior permission from the architect/ designer in writing.

8. General Conditions

Notwithstanding anything contained elsewhere in this agreement the architect/designer and the client hereby expressly agree that:

- 8.1.1. All copyright and all other intellectual property rights in the design (as defined in clause 6.1.16) shall be retained by the architect/designer at all times. The client's only rights in respect of the design are the limited licence rights granted under clause 6;
- 8.1.2. The contractor/builder is responsible for the supervision of the works during the construction stage and that the builder/contractor is required (under the provisions of the relevant Building Act) to warrant the work, upon completion, to be fit for purpose.
- 8.1.3. The architect/designer does not supervise the construction of the works or provide supervision services as part of this agreement. During the construction stage the architect/designer will inspect the works for general compliance and the intent of the contract documents.
- 8.1.4. Where natural materials have been selected for a project, they may change in appearance or dimension following exposure to climatic conditions and this is normal behaviour for such materials.
- 8.1.5. The architect/designer does not guarantee the appearance, dimensions, consistency of colour and/or texture of any natural materials selected following approval of samples of the particular natural materials by the client.
- 8.1.6. Upon completion, every building will require ongoing maintenance of its fabric, systems, finishes and equipment. The building owner is responsible for the ongoing and regular maintenance of a building.

9. Dispute Resolution & Termination

- 9.1.1. If a dispute or difference arises out of or in relation to this agreement the parties must continue to perform their obligations under the agreement.
- 9.1.2. When a dispute or difference arises between the parties out of or in relation to this agreement either party may deliver a written dispute notice to the other

party requiring the parties to meet within five working days of the date of the dispute notice to make a bona fide attempt to resolve the dispute or difference.

- 9.1.3. If the dispute or difference as described on the notice is not resolved by the parties either party shall then be entitled to take the matter to mediation, expert determination or arbitration, subject always to any current legislation relating to the resolution of disputes in the state or territory where the commission is being undertaken. Where mediation, expert determination and/or arbitration is selected the method of dispute resolution shall be conducted in accordance with the rules of the Institute of Mediators and Arbitrators of Australia and the mediator, expert and /or arbitrator shall be selected in accordance with those rules.
- 9.1.4. Upon termination of this agreement the architect/designer is entitled to payment by the client of all amounts due as determined by the architect in accordance with the terms of this agreement at the date of termination.
- 9.1.5. Upon termination of this agreement and payment of all outstanding fees by the client to the architect/designer, the client is entitled to one copy of all relevant drawings, specifications and other documents prepared by the architect/designer in completion of the services up to the date of termination. Unless otherwise agreed, copies of drawings shall be provided in hard copy format.

10. Special Conditions

Unless approved in writing by the architect/designer to the contrary, the client has no right to use the name of "Minett Studio Architecture", "Minett Studio", "Minett Studio Design", "Minett Studio Interiors", "Minett Studio Design Group" or any derivatives thereof (the "Brands") in association with any building project. If the architect/designer does provide its approval, then such approval will be limited to the specific Brands specified in writing by the architect/designer and will be conditional upon the client (a) fulfilling its obligations under this agreement; (b) complying with the conditions of use set out below; and (c) complying with any other conditions which the architect/designer places upon the use of the Brands.

If the architect/designer provides consent to the use of the Brands, then such use is conditional upon:

- 10.1.1. The client submitting all marketing material upon which the Brands are to be used, to the architect/designer for approval, before any such use of the Brands in the marketing material is made. The architect/designer will not unreasonably withhold its approvals to any such use. The architect/designer will also use best endeavours to respond to any request for approval within 14 days. For the purposes of the forgoing, marketing material may include, but not be limited to, real estate advertising for the sale of the property, signage, publishing in architectural and / interior design magazines / books / internet sources, and any other related materials;
- 10.1.2. The client not advertising in any search engine advertising on keywords "containing the Brands";
- 10.1.3. The client paying the architect/designer its applicable fee for the use of the Brands;
- 10.1.4. The client complying with any usage guidelines for the Brands which the architect/designer provides to the client from time to time; and
- 10.1.5. The client complying with any request by the architect/designer (which may be made for any reason whatsoever) to cease all use of the Brands within 7 days of the request being made. At the end of the conclusion of the forgoing 7 day period, the client must destroy any and all marketing material containing the Brands. If the client is in breach of this Agreement, then the forgoing 7 day period may be shortened by the architect/designer to 2 days.

The conditions of use of the Brands are in addition to, and not in substitution for, the architect/designer's moral rights which subsist in the Brands and the design (as the term "moral rights" is defined under the *Copyright Act 1968 (Cth)*). The client must, at the insistence of the architect/designer, provide attribution to the architect/designer's work in

respect of the relevant site and related design. The form of attribution will be as reasonably specified by the architect/designer from time to time.

The architect/designer may photograph, video or record by any and all means the project during construction and upon completion for the architect/designer's own use and for exhibitions, awards or publication in journals. The architect/designer must obtain the client's written permission before issuing any document or information about the project to the media. Permission must not be unreasonably withheld, but the client may withhold permission on the basis of preserving privacy.

The client shall ensure that any matters of confidentiality and restriction are made clear in writing to the architect/designer.

The client acknowledges that data transfer by electronic means by the architect/designer is more useable than data transferred by other means but that it involves some risk. The client consents to the architect/designer issuing data in electronic form to Specialist Consultants and the project builder.

11. Sub Consultancy

Where invited and agreed to undertake a sub consultancy by a Principal Consultant in a competitive tender, and should that tender be successful, Minett Studio Architecture Pty Ltd reserves the right to maintain its sub-consultancy and proceed with the project once mobilised. Minett Studio Architecture Pty Ltd retains all intellectual property rights in all submitted works.

12. Scope of liability

To the maximum extent permitted by law:

- 12.1.1.** Subject to (b), (c) and (d) below, all warranties implied by statute or otherwise are excluded to the extent permitted and the architect/designer's total liability to the client under this agreement (including without limitation the performance or non-performance of the architect/designer's services), whether under the law of contract, in tort, in equity, under statute or otherwise, is limited to the amount **of the architect/designer's fees and charges**;
- 12.1.2.** The architect/designer has no liability to the client:
- (i) in respect of the acts, omission or defaults of other contractors or consultants engaged by the client;
 - (ii) to the extent any loss, damage or claim was caused or contributed to by the client or its employees, agents, consultants or contractors; or
 - (iii) in respect of any indirect, consequential or special losses (including without limitation loss of profit, holding or financial costs, loss of business opportunity and payment of liquidated sums or damages under any other agreement);
- 12.1.3.** The architect/designer has no liability in respect of the architect/designer's services after the expiration of one year from the completion of the architect/design services and the client (and any persons claiming through or under the client) shall not be entitled to commence any action or claim whatsoever against the architect/designer in respect of the architect/designer's services after that date; and
- 12.1.4.** If any of this clause is void as a result of section 64 of the Australian Consumer Law, or parallel state and territory legislation, then the architect/designer's liability for a breach of a condition or warranty is limited to the:
- (iv) supplying of the relevant architect/designer's services again; or
 - (v) payment of the cost of having the architect/designer's services supplied again.