

TERMS OF ENGAGEMENT ("Terms")

Definitions

For the purposes of these Terms and the Engagement letter to which they are attached the following words are defined: -

"SHBD" - means SHBD Pty Ltd, trading as Solis Haus Building Design (ABN: 32 684 402 962).

"Code of Conduct" - means the NSW Designers Code of Professional Conduct, a copy of which is attached to these Terms.

"Authorities" - means the Council having jurisdiction over the Property and the Project the subject of this Engagement and all other statutory and other government, semi-government, or other authorities, instrumentalities, and bodies (for example Sydney Water) having like jurisdiction over the Property and the Project.

"Consultants" - means those persons or companies that are necessary to be retained in relation to the Project and to procure the approvals from the Authorities, and otherwise so as to complete the Project.

"Invoice" - means a statement by SHBD reporting to the Client as to the provision of the Services rendered and all moneys paid by the Client and the balance of account (if any) owing by the Client to SHBD to a particular time.

"Progress Claim" - means a document referring to Invoices issued by SHBD to the Client for the Services rendered and moneys paid by the Client and the balance of account (if any) owing by the Client to SHBD.

"Property" - means the land (and improvements thereon as the case requires) at the address stated in the Schedule in respect of which the Project the subject of this Engagement is to be undertaken by SHBD.

1. Initial Payment

An initial payment, as specified in the proposal, is required before commencement of any Services. This payment secures the project's start and is non-refundable unless otherwise agreed in writing.

2. Invoices and Progress Claims

- 2.1 Invoicing to the Client for work done will be at the discretion of SHBD but not less than every fourteen (14) days. The Client will pay the Fee and reimburse the disbursements specified in the invoice.
- 2.2 The Client will pay the amount of the Invoice referred to in a Progress Claim within seven (7) days of the date of the Invoice, or prior to lodgment of documents as required by Authorities. If any amount included in any Invoice is unpaid on the due date SHBD may charge interest on the unpaid amount calculated on a daily basis rate equal to the Reserve Bank of Australia cash rate plus 5%.
- 2.3 SHBD may render Fees and disbursements to the Client progressively throughout a stage provided the specified Fee for that stage is not exceeded (unless the specified Fee has been exceeded by reason of agreed variations or as otherwise provided by this Engagement).
- 2.4 If an Invoice and/or Progress Claim is one to which the Building and Construction Industry Security of Payment Act 1999 (NSW) can apply then SHBD may make any such Invoice and/or Progress Claim a "progress claim" under the provisions of the said Act.
- 2.5 All disbursements to be paid or incurred by SHBD Pty Ltd in performance of the Services are to be reimbursed by the Client to SHBD Pty Ltd.
- 2.6 Variations and other time charge rates are as per Clause 4.4 of the Terms.

3. Overdue Payments, Suspension and Termination

- 3.1 We are not required to start a subsequent stage before the prior stage is completed and all necessary approvals and consents of Authorities have been obtained and payment for that stage has been received in full unless we otherwise agree in writing to start the next stage notwithstanding nonpayment and/or approvals and consents of Authorities have not been obtained.
- 3.2 SHBD may suspend the provision of services by notifying the client in writing. During the suspension period, SHBD will have no obligation to carry out any services. Upon full payment of the outstanding invoice or progress claim, SHBD will resume services within two (2) business days (excluding public holidays and weekends). Issuing a notice of suspension does not limit SHBD's right to terminate the agreement. Similarly, payment of an outstanding invoice or progress claim does not cancel or limit the effect of a termination notice that has already been issued but not yet taken effect.
- 3.3 Without relieving the Client of the obligation to pay Invoices or Progress Claims, and, without limiting the other rights of SHBD here under, the Client shall pay interest at the rate equal to the daily basis rate of the Reserve Bank of Australia cash rate plus 5%, compounding on a daily basis on all Invoices or Progress Claims due and not paid.
- 3.4 If payment is not received within 14 days of the invoice due date, an administration fee of \$150 may be added. Additional administration fees of \$150 may be applied every subsequent 14 days of non-payment from the invoice due date, along with ongoing reminder notices, until payment is made in full. These fees are in addition to any interest charges that accrue under these terms.
- 3.5 At any time, SHBD reserves the right to initiate legal action or engage a debt recovery service at any time to recover outstanding amounts. Any costs incurred in pursuing recovery, including legal and collection fees, will be added to the amount owed. Administration fees and interest charges will continue to apply and will not be waived or released.

4. Variations to the Services

- 4.1 If the Services to be performed by SHBD are varied by an increase in the nature or scope of the Services for any reason including changes in the instructions of the Client, the requirements of the Authorities, or the Services become protracted due to causes beyond SHBDs' control, then SHBD shall be entitled to additional Fee at the rates referred to in the Schedule.
- 4.2 Fees outlined in our proposals or quotes are based on the specific scope of work described within those documents. Should the scope of work change, SHBD reserves the right to adjust fees accordingly, with any variations subject to renegotiation.
- 4.3 Should any such additional Fee or change in Fees or Scope become or be likely to become chargeable, SHBD will notify the Client in writing.
- 4.4 Additional fees and charges are on a time charge basis as per proposal and/or quote.

5. Exclusions

- 5.1 All Fees for the Services assume a continuous design and documentation process (as described in the Engagement) and do not contemplate any variations to that process, especially where the Client has agreed (where applicable) to a particular stage or design solution during a stage. Further, it does not include a protracted Authority approval process which may include the resolution or attempted resolution of unacceptable or unreasonable Authority conditions (and any related legal issues). Where the Services are delayed or disrupted the Client shall pay SHBD an additional reasonable fee for the delay or disruption arising based upon the hourly rates in clause 4.3 of the Terms.
- 5.2 The Services do not include the following unless expressly provided for in the Engagement: -
- (a) Statement of Environmental Effects or Environmental Impact Statements.
 - (b) Building Contract administration services.
 - (c) Certification of any type or letters of advice on issues of construction matters
 - (d) Provision of aerial surveys and photographs of the Property.
 - (e) Provision of Consultant's services (including reports to Authorities).
 - (f) Provision of any legal, conveyancing or subcontract tender or construction documentation.
 - (g) Provision of a Clerk of Works to the Project.
 - (h) Payment of any applicable fees to Authorities, sub-consultants of SHBD or secondary consultants engaged by the Client.
 - (i) Courier expenses.
 - (j) Extension of time reviews or any analysis that may be necessary as a result of disputes or litigation and investigations and reports arising out of things that come to light in the progress of the building works.
 - (k) Provision of post building contract (post tender) Services.
 - (l) Inspections and services during the defect liability period or similar building contract period.
 - (m) Local community documents consultation seminars and reports thereon.
 - (n) Copy documents beyond those agreed to be provided in the Engagement Letter in accordance with the following fees schedule: AO copy: \$9.00, B1 copy \$7.50, A1 copy: \$6.00, A2 copy: \$4.50, A3 copy: \$2.80, A4 copy: \$1.80.
 - (o) Electronic versions of drawings, plans and other documents created and/or co-ordinated by SHBD pursuant to the Engagement.
 - (p) Models, perspectives, or any other supplementary information required by Authorities or for Project marketing and promotion purposes.

6. Client Authority and Liability

The Client warrants that the Client and the person who accepts the Engagement has full authority and power to accept SHBDs offer and enter into the Engagement and acknowledges that SHBD has relied upon this representation.

Where the Client comprises more than one person (or company) the liability of such persons shall be joint and several.

7. Agency & Consultants

SHBD shall liaise with the Client and obtain the Clients consent to the retention of the Consultants. Where Consultants are to be retained by SHBD, SHBD shall retain them in the name of the Client and is authorised to do so provided SHBD has given to the Client prior written notice of the name, discipline and need for such Consultant and sought consent thereto beforehand. The Client shall indemnify SHBD in respect of the fees, costs and expenses of such Consultants. Such prior notice and consent shall not be required to be given or received if urgent circumstances arise whereby SHBD is authorised to retain the relevant Consultants on behalf of the Client.

8. Copyright

- 8.1 All copyright in and ownership of all drawings and other documents prepared by SHBD remain the sole property of SHBD. SHBD reserve the right to call back any drawings and other documents that have been issued if any fees have not been paid. This will not remove the obligation of payment by the Client. The Client, subject to not being in default of the Engagement, shall have one licence only to use the drawings and other documents created by SHBD for the Project and for no other purposes. Such licence shall forthwith come to an end if the Engagement is terminated by SHBD for breach by the Client.

8.2 SHBD retains the right to utilise, adapt, and incorporate design concepts, ideas, and methodologies developed in the course of the Client's project ("Design Elements") in other projects. While SHBD endeavours to provide bespoke and unique designs tailored to each Client, the reuse of Design Elements does not constitute a breach of exclusivity or confidentiality.

8.3 SHBD retains the right to reproduce, display, publish, and otherwise use any drawings, models, renderings, photographs, or project documentation ("Deliverables") created under this Agreement for the purposes of marketing and promotion, including but not limited to websites, social media, printed publications, and award submissions. Unless otherwise agreed in writing, SHBD will keep the Client's personal name, project address, and other identifying details confidential and will not disclose them in any marketing or promotional materials. If the Client wishes to limit or prevent the promotional use of specific Deliverables, or requires anonymisation of certain identifying details, such instructions must be provided in writing prior. SHBD will take reasonable steps to such request.

9. Goods and Services Tax ("GST")

9.1 For the purposes of this clause, GST means any tax on goods and/or services including any value added tax, broad based consumption tax, or other similar tax current as at the date of the Engagement Letter or to be introduced thereafter and applying to the Engagement. Unless otherwise stated, all sums of money payable or consideration to be provided hereunder are exclusive of GST and GST shall be added to all such moneys payable to SHBD by the Client at the applicable rate of tax.

9.2 The Client is responsible for any GST applicable to the Fee and any other moneys payable hereunder provided that SHBD shall comply with any legislative requirements relating to SHBD's dealings with the Client, (including the issue of tax invoices in the form required by law).

10. Scope and Limitation of Liability

10.1 The Client agrees that, subject to any limitations imposed by the laws of the Commonwealth or New South Wales preventing limitation of SHBD's liability in respect of civil claims, the maximum liability of SHBD to the Client arising out of the performance or nonperformance of the Services, whether under the law of contract, tort, arising pursuant to statute or otherwise, shall be no greater than the amount as is provided for in the Schedule.

10.2 SHBD shall be discharged from all liability arising under or in any way related to the provision of Services under this Engagement at the expiration of one year from the completion of the Services.

10.3 If the Services include feasibility studies and reports, the information contained in any report is for the Client only. The Client shall make its own enquiries analysis and calculation and form its own views in relation to the use or development of the property including the application of local government and statutory controls. It is assumed that the Client will rely on its own expertise in considering the information.

10.4 The Client must provide at its own expense all relevant information regarding the Property and all its requirements for the Project. The Client is responsible for the accuracy and completeness of anything provided and SHBD may rely on such information.

10.5 While SHBD takes all reasonable care in the preparation of drawings, models, reports, and other project documentation, the Client acknowledges that such materials may contain unintentional errors or omissions due to the complex and interpretive nature of design work. SHBD's liability for any such errors or omissions is limited to the rectification of the affected Deliverables, and SHBD shall not be responsible for any indirect or consequential loss arising from such errors or omissions.

10.6 SHBD will prepare and submit designs and documentation with due care and in accordance with applicable laws, codes, and standards. Notwithstanding this, SHBD makes no representation or warranty that any application for approval, permit, certification, or consent will be granted by the relevant authority. The granting or refusal of such approvals is at the sole discretion of the relevant authority and is outside the control of SHBD.

11. Alternative Dispute Resolution

If a dispute arises out of or relates to the Engagement, or the breach, termination, validity or subject matter thereof, or as to any related claim in restitution or at law, in equity or pursuant to statute, SHBD and the Client expressly agree to endeavour in good faith to settle the dispute by mediation administered by the Australian Commercial Disputes Centre (ACDC) and in the event that the mediation is unsuccessful to submit the dispute to arbitration.

Any such mediation or arbitration shall be subject to the following:

- (a) The mediation shall be conducted in accordance with the ACDC Mediation Guidelines for Commercial Mediation ("the Guidelines") which are operating at the time the dispute is referred to ACDC, which Guidelines shall be deemed incorporated into these Terms.
- (b) In the event that the dispute has not settled within twenty-eight (28) days after the appointment of the mediator, or such longer period as agreed in writing by SHBD and the Client then the dispute shall be submitted to arbitration in Sydney, administered by ACDC in accordance with the ACDC Rules for Arbitration ("the Rules") operating at the time the dispute is referred to arbitration, which Rules are hereby deemed incorporated into these Terms. The arbitrator shall not be the same person as the mediator.
- (c) This clause shall survive termination.
- (d) "ACDC" refers to the Australian Commercial Disputes Centre Sydney NSW.

12. Termination and Withdrawal

- 12.1 SHBD may terminate the Engagement at any time in its absolute discretion by giving not less than seven (7) days' prior written notice.
- 12.2 If the Client has failed to pay an Invoice or Progress Claim, then SHBD may give a written notice to the Client terminating the Engagement provided the period of notice so given is not less than seven (7) days.
- 12.3 SHBD may terminate the Engagement immediately if it believes on reasonable grounds that the provision of any of the Services would require it to act:
 - (a) in an unethical manner; or
 - (b) in contravention of SHBDs Act 2003, SHBDs Regulations, or the NSW Designers Code of Professional Conduct; or
 - (c) in breach of the law (whether arising pursuant to statute or otherwise).
- 12.4 The Client may terminate the Engagement at any time by giving not less than seven (7) days' prior written notice to SHBD.
- 12.5 A termination by either party shall not affect the accrued rights of any party to such time.
- 12.6 The fact that a notice of suspension has been given under the Engagement does not limit the rights of SHBD to give a notice of termination during that period of suspension, and, SHBD may during the period following the issue of a notice of termination also issue a notice of suspension.

13. Calculation of Time

If something is to be done by a certain time or within a certain period, then in the calculation of that time or that period the day from which the time or period is to be calculated (as the case may be) shall not be counted but the last day shall be counted. A day shall commence at midnight and shall end at midnight twenty-four (24) hours thereafter.

14. Guarantee

The Director of the Client who has signed for the Client who is named in the Schedule as the Guarantor has requested SHBD to undertake the Services for the Client and the Guarantor guarantees the due performance of the obligations of the Client arising out of or in any way related to this Engagement.