

Electrical Estimating Solutions – Terms & Conditions of Trade

1. **Definitions**
 - 1.1 "Consultant" means Foster & Friends Group Pty Ltd T/A Electrical Estimating Solutions, its successors and assigns or any person acting on behalf of and with the authority of Foster & Friends Group Pty Ltd T/A Electrical Estimating Solutions.
 - 1.2 "Client" means the person or any person acting on behalf of and with the authority of the Client requesting the Consultant to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
 - (a) if there is more than one Client, it is a reference to each Client jointly and severally;
 - (b) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (c) includes the Client's executors, administrators, successors and permitted assigns.
 - 1.3 "Incidental Items" means any goods, documents, designs, drawings or materials supplied, consumed or used in the course of the Consultant in the course of its conducting, or supplying to the Client, any Services.
 - 1.4 "Services" mean all Services supplied by the Consultant to the Client at the Client's request from time to time.
 - 1.5 "Price" means the price payable (plus any GST where applicable) for the Services as agreed between the Consultant and the Client in accordance with clause 5 of this contract.
 - 1.6 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).
2. **Acceptance**
 - 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for, or accepts services provided by the Consultant.
 - 2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or contract between the Client and the Consultant.
 - 2.3 Electronic signature shall be deemed to be accepted by either party providing that the parties have complied with Section 10 of the Electronic Transactions Act 2011 or any other applicable provisions of that Act or any Regulations referred to in that Act.
 - 2.4 Whilst the Consultant shall exercise due care and diligence, the Client accepts that the Consultant, its directors, employees and consultants, believe that the information provided to the Client is true and that any calculations, estimates, conclusions or recommendations contained in any document are reasonably held or made as at the time of compilation. However, no warranty is made as the accuracy or reliability of any calculations, estimates, conclusions or recommendations (which may change with notice) or other information contained in or to the maximum extent permitted by law, the Consultant disclaims all liability and responsibility for any direct or indirect loss or damage which may be suffered by any recipient through relying on anything contained therein or omitted therefrom.
 - 2.5 Where applicable, any detailed scope of the Services provided may be detailed in an estimate or accompanying letter.
3. **Errors and Omissions**
 - 3.1 The Client acknowledges and accepts that the Consultant shall, without prejudice, accept no liability in respect of any alleged or actual errors and/or omissions:
 - (a) resulting from an inadvertent mistake made by the Consultant in the formation and/or administration of this contract; and/or
 - (b) contained in or omitted from any literature (hard copy and/or electronic) supplied by the Consultant in relation to the Services.
 - 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or willful misconduct of the Consultant, the Client shall not be entitled to treat this contract as repudiated nor render it invalid.
4. **Change in Control**
 - 4.1 The Client shall give the Consultant not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number) to the Consultant. The Client shall be liable for any loss incurred by the Consultant as a result of the Client's failure to comply with this clause.
5. **Price and Payment**
 - 5.1 At the Consultant's sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by the Consultant to the Client; or
 - (b) the Price as at the date of delivery of the Services according to the Consultant's current price list;
 - (c) the Consultant's estimated Price (subject to clause 5.2) which will be valid for the period stated in the estimate or otherwise for a period of thirty (30) days; and
 - (d) the Consultant's estimated Price, with the final price being ascertained upon completion of the Services. Variances in the estimated Price of more than ten percent (10%) will be subject to the Client's approval before proceeding with the Services.
 - 5.2 The Consultant reserves the right to change the Price:
 - (a) if a variation to the Consultant's estimate is requested; and
 - (b) if a variation to the Services or scope (including, but not limited to, any variation as a result of additional Services required due to unforeseen circumstances such as poor weather conditions, limitations to accessing the site, safety considerations including discovery of contaminants or hazardous materials etc.) is requested; and
 - (c) in the event the Client engages the Consultant in the cost of labour or materials (including, but not limited to, change in third party supplier pricing, increases in foreign exchange fluctuations etc.) which are beyond the Consultant's control.
 - 5.3 Amendments are to be submitted to the Consultant within forty-eight (48) hours prior to completion of the Services to allow for costs to be calculated.
 - 5.4 Variations will be charged for on the basis of the Consultant's estimate, and will be detailed in writing, and shown as variations on the Consultant's invoice. The Client shall be required to respond to any variation submitted by the Consultant within ten (10) working days. Failure to respond to the Consultant to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
 - 5.5 Time for payment for the Services being of the essence, the Price will be payable by the Client on the dates determined by the Consultant, which may be:
 - (a) on delivery of the Services;
 - (b) the date by which instalments/progress payments in accordance with the Consultant's payment schedule;
 - (c) the date specified on any invoice or other form as being the date for payment; or
 - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Consultant.
 - 5.6 Payment may be made by cheque, bank cheque, electronic-invoice banking, credit card (a surcharge may apply per transaction), or by any other method as agreed between the Client and the Consultant.
 - 5.7 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Consultant nor to withhold payment of any invoice because part of that invoice is in dispute.
 - 5.8 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to the Consultant an amount equal to any GST the Consultant must pay for, or any supply by the Client, or any other person, or provide to the Consultant's Services. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
6. **Provision of the Services**
 - 6.1 At the Consultant's sole discretion delivery of the Services shall take place when the Services are supplied to the Client at the Client's nominated address.
 - 6.2 Delivery of the Services to the Client by the Consultant is deemed to be delivery to the Client for the purposes of this contract.
 - 6.3 At the Consultant's sole discretion, the cost of delivery is included in the Price.
 - 6.4 The Consultant may deliver the Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
 - 6.5 The Client agrees to provide the Consultants with a minimum of seven (7) days' notice prior to the required completion date of the project, to allow the Consultant to provide the Services. The Consultant will accept no liability should the Client fail to adhere to this clause.
 - 6.6 Any time specified by the Consultant for delivery of the Services is:
 - (a) an estimate only (and is dependent on the size of the project and workloads of the Consultant at the time); and
 - (b) the Consultant will not be liable for any loss or damage incurred by the Client as a result of delivery being late (including, but not limited to delays caused by situations beyond the Consultant's control etc.)
 - 6.7 Further to clause 6.6, both parties agree that they shall make every endeavour to enable the Services to be supplied at the time and place as was arranged between both parties. In the event that the Consultant is unable to supply the Services as agreed solely due to any action or inaction of the Client then the Consultant shall be entitled to charge a reasonable fee for re-supplying the Services at a later time and date.
7. **Consultant's Obligation**
 - 7.1 The Consultant warrants that they have the necessary skills, competence, and experience to undertake and complete the Services and shall at all times apply such skills, competence and experience in performance of the Services.
 - 7.2 The Client acknowledges and accepts that:
 - (a) the Consultant will provide a comprehensive estimate from the plans the Client has provided; and
 - (b) the detail of the estimate is dependent upon the quality of the plans.
8. **Risk and Limitation of Liability**
 - 8.1 Irrespective of whether the Consultant retains ownership of any Incidental Items all risk for such items shall pass to the Client as soon as such items are delivered to the Client.
 - 8.2 The Client acknowledges that it is the Client's responsibility to check the estimate provided by the Consultant. The Consultant:
 - (a) does not warrant or represent that the information supplied by the Consultant is adequate or free of inaccuracies except to the extent that such inaccuracies or inaccuracies contained in the information arise as a consequence of any wrongful act, error or omission of the Client or its agents, and employees;
 - (b) shall be entitled to rely on the accuracy of any plans, reports, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, the Consultant accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, reports, sample test results, specifications or other information.
 - 8.3 No liability shall be accepted by the Consultant on account of failure of the Services provided to accurately estimate the cost of construction of the project. Any reports provided are an estimate only and will be affected by, including, without limitation, market fluctuations in employment costs, the actual structural dimensions recommended by the engineer, shortages of materials, fluctuation of currency exchange rates, change in third party supplier pricing, lack of detail on the plans provided, local authority fees, fees for other consultants, trades, material prices, unusual site conditions, inclement weather, work stoppages, liquidated damages that may arise from any delay to the construction of the project.
 - 8.4 The Client accepts and acknowledges that any third party acting or relying on the estimate, in part or in whole, does so entirely at their own risk.
9. **Title**
 - 9.1 The Consultant and the Client agree that where it is intended that the ownership of Incidental Items is to pass to the Client that such ownership shall not pass until:
 - (a) the Client has paid the Consultant all amounts owing for the Services; and
 - (b) the Client has met all other obligations due by the Client to the Consultant in respect of all contracts between the Consultant and the Client.
 - 9.2 Receipt by the Consultant of any form of payment other than cash shall not be deemed to be payment until the Consultant has received the cash and the Consultant has received and until then the Consultant's ownership or rights in respect of the Incidental Items shall continue.
 - 9.3 It is further agreed that, until ownership of the Incidental Items passes to the Client in accordance with clause 9.1:
 - (a) the Client is only a bailee of the Incidental Items and must return the Incidental Items to the Consultant immediately upon request by the Consultant;
 - (b) the Client holds the benefit of the Client's insurance of the Incidental Items on trust for the Consultant and must pay to the Consultant the proceeds of any insurance in the event of the loss or destruction of the Incidental Items;
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Incidental Items, if the Client sells, disposes or parts with possession of the Incidental Items then the Client must hold the proceeds of sale of the Incidental Items on trust for the Consultant and must pay to the Consultant the proceeds of sale on demand;
 - (d) the Client should not convert or process the Incidental Items or intermix them with other goods, but if the Client does so then the Client holds the resulting product on trust for the benefit of the Consultant and must dispose of or return the resulting product to the Consultant as the Consultant so directs;
 - (e) the Client shall not charge or grant an encumbrance over the Incidental Items nor grant nor otherwise give away any interest in the Incidental Items while they remain the property of the Consultant;
 - (f) the Client irrevocably authorises the Consultant to enter any premises where the Incidental Items are being held or stored for the purpose of recovering possession of the Incidental Items.
10. **Personal Property Securities Act 2009 ("PPSA")**
 - 10.1 In this clause financing statement, financing charge statement, security agreement, and security interest has the meaning given to it by the PPSA.
 - 10.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in:
 - (a) the Incidental Items previously supplied to the Consultant to the Client;
 - (b) all Incidental Items will be supplied in the future by the Consultant to the Client; and
 - (c) all the Client's present and after acquired property being a charge, including anything in respect of which the Client has at any time a sufficient right, interest or power to grant a security interest in the Client's property, to secure the payment of all monetary obligations of the Client to the Consultant for Services - that have previously been provided and that will be provided in the future by the Consultant to the Client.
 - 10.3 The Client undertakes to:
 - (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Consultant may reasonably require to;
 - (i) register a financing statement or financing charge statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 10.3(a)(i) or 10.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, the Consultant for all expenses incurred in registering a financing statement or financing charge statement on the Personal Property Securities Register established by the PPSA or releasing any Incidental Items charged thereto;
 - (c) not register a financing charge statement in respect of a security interest without the prior written consent of the Consultant;
 - (d) not register, or permit to be registered, a financing statement or a financing charge statement in respect of the Incidental Items in favour of a third party without the prior written consent of the Consultant.
 - 10.4 The Consultant and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
 - 10.5 The Client agrees to give notices under sections 95, 118, 121(4), 130, 132(3)(a) and 132(4) of the PPSA.
 - 10.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
 - 10.7 Under a written agreement to be in writing by the Consultant, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
 - 10.8 The Client must unconditionally ratify any actions taken by the Consultant under clauses 10.3 to 10.5.
 - 10.9 Subject to any express provisions to the contrary (including those contained in this clause 10) the Consultant's terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
11. **Security and Charge**
 - 11.1 In consideration of the Consultant agreeing to supply Services, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
 - 11.2 The Client indemnifies the Consultant and against all the Consultant's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Consultant's rights under this clause.
 - 11.3 The Client irrevocably appoints the Consultant and each director of the Consultant as the Client's true and lawful attorneys to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Client's behalf.
12. **Defects, Warranties and the Competition and Consumer Act 2010 (CCA)**
 - 12.1 The Client must inspect the Consultant's Services on completion of the Services and must within forty-eight (48) hours notify the Consultant in writing of any evident defect in the Services or Incidental Items provided (including the Consultant's workmanship) or of any other failure by the Consultant to comply with the description of, or quote for, the Services which the Consultant was to supply. The Client must notify any other alleged defect in the Consultant's Services or Incidental Items as soon as it is reasonably possible after any such defect becomes evident. Upon such notification the Client must allow the Consultant to review the Services or Incidental Items that were provided.
 - 12.2 The Consultant warrants that the Consultant is a company incorporated under the laws of the CCA, certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).
 - 12.3 The Consultant acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
 - 12.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Consultant makes no warranties or other representations under these terms and conditions including, but not limited to, the quality or suitability of the Services. The Consultant's liability in respect of these warranties is limited to the fullest extent permitted by law.
 - 12.5 If the Client is a consumer within the meaning of the CCA, the Consultant's liability is limited to the extent permitted by section 64A of Schedule 2.
 - 12.6 If the Consultant is not a consumer within the meaning of the CCA, the Consultant's liability is limited to the extent permitted by section 64A of Schedule 2.
 - 12.7 If the Consultant is not a consumer within the meaning of the CCA, the Consultant's liability for any defective Services or Incidental Items is:
 - (a) limited to the value of any express warranty or warranty card provided to the Client by the Consultant at the Consultant's sole discretion;
 - (b) otherwise negligible absolutely.
 - 12.8 Notwithstanding clauses 12.1 to 12.7 but subject to the CCA, the Consultant shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
 - (a) the Client failing to properly maintain or store any Incidental Items;
 - (b) the Client using the Incidental Items for any purpose other than that for which they were designed;
 - (c) the Client continuing to use any Incidental Items after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) interference with the Services by the Client or any third party without the Consultant's prior approval;
 - (e) the Client failing to follow any instructions or guidelines provided by the Consultant; fire wear and tear, any accident, or act of God.
13. **Confidentiality and Intellectual Property**
 - 13.1 The Client agrees not to disclose to any third party without the prior written consent of the Consultant any information, data, designs, specifications, drawings, reports or other documents provided by the Consultant, and shall take reasonable precautions to maintain the secrecy and confidentiality of all such information.
 - 13.2 Where the Consultant has designed, drawn or developed Incidental Items for the Client, then the copyright in any Incidental Items shall remain the property of the Consultant. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Consultant.
 - 13.3 The Client warrants that all designs, specifications or instructions given to the Consultant will not cause the Consultant to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Consultant against any action taken by a third party against the Consultant in respect of any such infringement.
 - 13.4 The Client agrees that the Consultant may (at no cost) use for the purposes of marketing or entry into any competition, any Incidental Items which the Consultant has created for the Client.
14. **Default and Consequences of Default**
 - 14.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Consultant's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
 - 14.2 If the Client owes the Consultant any money the Client shall indemnify the Consultant from all costs and disbursements incurred by the Consultant in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Consultant's contract default fee, and bank dishonour fees).
 - 14.3 Further to any other rights or remedies the Consultant may have under this contract, if a Client has made payment to the Consultant, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Consultant under this clause 14 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this contract.
 - 14.4 With respect to the Consultant's other remedies at law the Consultant shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Consultant shall, whether or not due for payment, become immediately payable if:
 - (a) any money payable to the Consultant becomes overdue; or in the Consultant's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by the Consultant;
 - (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
15. **Cancellation**
 - 15.1 Without prejudice to any other remedies the Consultant may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Consultant may suspend or terminate the supply of Services to the Client. The Consultant will not be liable to the Client for any loss or damage the Client suffers because the Consultant has exercised its rights under this clause.
 - 15.2 The Consultant may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are commenced by giving written notice to the Client. On giving such notice the Consultant shall repay to the Client any money paid by the Client for the Services. The Consultant shall not be liable for any loss or damage whatsoever arising from such cancellation.
 - 15.3 In the event that the Client cancels delivery of the Services the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Consultant as a direct result of the cancellation (including, but not limited to, any loss of profits).
16. **Privacy Act 1988**
 - 16.1 The Client agrees for the Consultant to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B., occupation, previous credit applications, credit history) about the Client in relation to credit provided by the Consultant.
 - 16.2 The Client agrees that the Consultant may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
 - (a) to assess the creditworthiness of the Client and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
 - 16.3 The Client consents to the Consultant being given a consumer credit report to collect overdue payment on commercial credit.
 - 16.4 The Client agrees that personal credit information provided may be used and retained by the Consultant for the following purposes (and for other agreed purposes or required by):
 - (a) the provision of Services; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Services; and/or
 - (c) to assess the creditworthiness of the Client and/or to provide facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Services.
 - 16.5 The Consultant may give information about the Client to a CRB for the following purposes:
 - (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
 - 16.6 The information given to the CRB may include:
 - (a) personal information as outlined in 16.1 above;
 - (b) the name of the credit provider and that the Consultant is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) advice to contact the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice of any payment decision as to the complaint within thirty (30) days of receipt commenced or alternatively that the Client no longer has any overdue accounts and the Consultant has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of the Consultant, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
 - 16.7 The Client shall have the right to request (by e-mail) from the Consultant:
 - (a) a copy of the information held about the Client by the Consultant and the right to request that the Consultant correct any incorrect information; and
 - (b) that the Consultant does not disclose any personal information about the Client for the purpose of direct marketing.
 - 16.8 The Consultant will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this contract or is required to be maintained and/or stored in accordance with the law.
 - 16.9 The Client can make a privacy complaint by contacting the Consultant via e-mail. The Consultant will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to investigate the complaint and to resolve the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.
17. **Service Notices**
 - 17.1 Any written notice under this contract shall be deemed to have been given and received:
 - (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this contract;
 - (c) by sending it by registered post to the address of the other party as stated in this contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
 - 17.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
18. **Trusts**
 - 18.1 If the Client at any time upon or subsequent to entering into the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Consultant may have notice of the Trust, the Consultant covenants with the Consultant as follows:
 - (a) the Consultant shall provide the Consultant with the name of the Trust and the Trust deed which the Client now or subsequently may have against the Trust and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust to enter into the contract and the provisions of the Trust do not purport to exclude or take away the right of redemption of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - (c) the Client will not without consent in writing of the Consultant (the Consultant will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.
19. **General**
 - 19.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
 - 19.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Western Australia, the State in which the Consultant has its principal place of business, and are subject to the jurisdiction of the Perth Courts in Western Australia.
 - 19.3 Subject to clause 12, the Consultant shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising from the Consultant's breach of these terms and conditions (alternatively the Consultant's liability shall be limited to damages which under no circumstances shall exceed the Price of the Services).
 - 19.4 The Consultant may licence and/or assign all or any part of its rights and/or obligations under this contract to another person or persons at the Client's consent.
 - 19.5 The Client cannot licence or assign without the written approval of the Consultant.
 - 19.6 The Consultant may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Consultant's sub-contractors without the authority of the Consultant.
 - 19.7 The Client agrees that the Consultant may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for the Consultant to provide the Services.
 - 19.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
 - 19.9 Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them.

Please note that a larger printed version of these terms and conditions is available from the Consultant on request.

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