

These Terms and Conditions are an agreement made between East Coast Collective ABN 20257599727 ("ECC") and the person or persons named in Contract Agreement ("Client"). The Agreement is made and comes into effect on the date it is accepted by the Client.

1. DESIGN CONSULTING SERVICES

- 1.1. The quality, quantity and description of the Services are as stated in the Design Consulting Agreement.
- 1.2. ECC shall perform and complete the Services in accordance with the Design Consulting Agreement.
- 1.3. If ECC performed any services for the Client prior to the operative date of the Design Consulting Agreement, those services shall be incorporated in the Services and are governed by the terms of the Consulting Agreement.

2. PAYMENT FOR SERVICES

- 2.1. The Client shall pay ECC the Fee in consideration of the performance of the Services in accordance with the Consulting Agreement.
- 2.2. ECC shall be entitled to payment for the disbursements set out in the Schedule 1 at cost and such other disbursements as are approved by the Client (such approval not to be unreasonably withheld or delayed).
- 2.3. ECC shall claim payment of the Fee and/or disbursements by rendering invoices to the Client. Each invoice shall be given in writing and shall:
 - 2.3.1. *set out the amount of the Fee claimed;*
 - 2.3.2. *separately identify each disbursement claimed; and*
 - 2.3.3. *separately identify any other claim for payment under the Consulting Agreement.*
- 2.4. The Client shall pay the full amount of all invoices within seven (7) Business Days of receipt.
- 2.5. If any payment by the Client to ECC is overdue, then the Client must pay interest at a rate of 3.5% per month (or part thereof), until the overdue amount is paid in full. Interest is payable on demand. Any payments made by the Client will first be applied to any outstanding interest.
- 2.6. The Client indemnifies ECC for breaches of clause 2.4 above.
- 2.7. If any money is owed by the Client to ECC under the Consulting Agreement, ECC may withhold performance of any Services (including the supply of Documents and/or Goods) until arrangements for payment have been agreed by ECC with the Client.

3. TIME FOR PERFORMANCE OF THE SERVICES

- 3.1. ECC will use commercially reasonable endeavours to perform the Services within the time(s) specified in the Interior Design Agreement (if any).
- 3.2. If not time(s) for performance are specified in the Consulting Agreement, ECC will perform the Services within a reasonable time.

4. RISK AND TITLE

- 4.1. Risk of damage to any Goods under the Consulting agreement passes to the Client upon order of those Goods.
- 4.2. If any Goods are withheld by ECC pursuant to clause 2.7 above, risk in the Goods passes to the Client when the Client would have been able to take delivery of the Goods had ECC not withheld the Goods.
- 4.3. Title to the Services passes to the Client upon payment for those Services.

5. CLIENT RESPONSIBILITIES AND ACKNOWLEDGEMENT

- 5.1. Without limiting the provisions of the Scope of Services, the Client's responsibilities and obligations under the Consulting Agreement include:
 - 5.1.1. Providing material and written approvals and/or instructions in accordance with the Consulting Agreement;
 - 5.1.2. coordination of any decision making with parties other than ECC;
 - 5.1.3. provision of the builder's working drawings, and schedule of works in a form suitable for use by ECC; and
 - 5.1.4. providing information from third parties required for ECC to perform the Services.

5.2. The Client acknowledges and agrees that:

- 5.2.1. it shall be responsible for performing all its obligations under the Consulting Agreement in a reasonable and timely manner and that ECC's ability to perform the Services in accordance with the Consulting Agreement is contingent upon the Client's prompt performance of its obligations under the Consulting Agreement; and
- 5.2.2. any delays in the Client's performance of its obligations, or variations to the Services caused by the Client, may delay performance of the Services and that any such delay caused by the Client shall not constitute a breach of any of ECC's obligations under the Consulting Agreement.

6. REVIEW AND APPROVAL OF DOCUMENTS BY THE CLIENT

- 6.1. The Client must, promptly (and in any event, within any time identified in the Consulting Agreement for such review), review any Document(s) provided by ECC and:
 - 6.1.1. *if the Document(s) comply with the requirements of the Consulting Agreement, approve the Document(s); or*
 - 6.1.2. *if the Document(s) do not comply with the Consulting Agreement, reject the Document(s) and provide details of the non-compliance.*
- 6.2. If the Client fails to respond to ECC within the latter of seven (7) days of receipt of the Document(s) and any time specified in the Consulting Agreement for its review, then the Document(s) are deemed to be approved and accepted by the Client.
- 6.3. If the Document(s) are rejected by the Client under clause 6.1.2 above:
 - 6.3.1. ECC shall be entitled to request written clarification of any concern, objection or correction, which must be promptly confirmed by the Client; and
 - 6.3.2. subject to receipt of confirmation by the Client as applicable under clause 6.1.2 above, amend the Document(s) as required to ensure compliance with the Consulting Agreement and resubmit to the Client, in which case clause 6.1.1 will reapply in respect of the amended Document(s).
- 6.4. Notwithstanding that a Document complies with the requirements of the Consulting Agreement, ECC may agree with the Client to amend the Document in which case clause 9 will apply.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1. The Client acknowledges that ECC remains the owner of all ECC's Background IP.
- 7.2. ECC acknowledges that the Client remains the owner of all Client's Background IP.
- 7.3. The Client acknowledges and agrees that all Developed IP is vested in ECC and is the ECC's property as and when created, and the Client hereby assigns all rights, title and interest in and to the Developed IP to ECC.
- 7.4. ECC grants to the Client a non-exclusive, non-transferable (except to third parties for the purposes of the Project), revocable licence to use ECC's Background IP and Developed IP for the sole purpose of the Project.
- 7.5. The Client must not disclose, reproduce or otherwise deal with the Developed IP or ECC's Background IP, or allow any other person to do the same, for any purpose other than the Project.
- 7.6. Any modifications, improvements or alterations by ECC to the Client's Background IP are owned by and vest in ECC, irrespective of whether the Client has or has not consented to the modifications, improvements or alterations.
- 7.7. The Client warrants that, unless otherwise provided in the Consulting Agreement, the Client's requirements, design, materials, documents and methods of working, each specified in the Consulting Agreement or provided or directed by the Client, shall not infringe any Intellectual Property Right.
- 7.8. ECC warrants that any other documents and methods of working, each provided by ECC, shall not infringe any Intellectual Property Right.
- 7.9. Each party shall indemnify the other against such respective infringements.

8. CONFIDENTIALITY

- 8.1. Each party shall keep all Confidential Information confidential, and shall not without the prior written consent of the other party:

8.1.1. make available, communicate or disclose the confidential information or any part of it to any person, firm or company other than those of its Personnel requiring the confidential information for the purpose of the Consulting Agreement or for the purpose of complying with applicable laws; or

8.1.2. use or allow its personnel to use any confidential information for any purpose other than in relation to the provision of obligations under the Consulting Agreement.

9. VARIATIONS

9.1. The Client may vary the Services to be performed by ECC by giving written notice to ECC.

9.2. ECC will vary the Services as instructed by the Client to the extent it is reasonable and possible to do so.

9.3. ECC shall be entitled to an increase in the Fee for additional works arising from a variation to the Services not caused by ECC, calculated in accordance with the Consulting Agreement.

9.4. ECC is entitled to an extension to any time(s) specified in the Design Contract for performance of the Services which is required by reason of a variation not caused by the Designer. The appropriate extension to be given is to be determined by the Designer (acting reasonably).

10. LIABILITY AND CONSEQUENTIAL LOSS

10.1. To the extent permitted by law, the liability of ECC to the Client arising out of or in connection with the Consulting Agreement is, to the extent permitted by law, limited in the aggregate to the amount of the Fee payable under the Consulting Agreement.

10.2. Notwithstanding any other provision of the Consulting Agreement, ECC will not be liable to the Client for any loss of revenue, loss of profit or anticipated profit, loss of production, loss of use of any plant or facility, business interruption of any nature, loss of business opportunity, loss of business reputation, loss of contract, value of shares, wasted overheads, payment of liquidated sums, penalties or damages under any agreement or any other indirect, remote, consequential, punitive, exemplary or special loss or damage, but does not include damage or losses arising from claims by third parties in respect of property damage, personal injury, nervous shock or death.

11. DEFAULT AND TERMINATION

11.1. The Consulting Agreement shall commence upon receipt by ECC of a copy of the Consulting Agreement signed by the Client and shall remain on foot until the completion of the Services or earlier termination of the Consulting Agreement.

11.2. Either party may immediately terminate the Consulting Agreement by written notice to the other if a party:

11.2.1. becomes insolvent, files a petition in bankruptcy, makes an assignment for the benefit of its creditors; or

11.2.2. is in default of any of its material responsibilities or obligations under this Consulting Agreement, and such default is not remedied within ten (10) days of receipt of written notice from the other party requiring it to do so.

11.3. If the Consulting Agreement is terminated for any reason, ECC shall be entitled to payment of:

11.3.1. *that part of the Fee for Services performed up to and including the through the date of termination; and*

11.3.2. *the cost of any Goods ordered prior to termination which cannot be cancelled.*

12. INDEPENDENT CONTRACTOR AND SUBCONTRACTING

12.1. The parties acknowledge and agree that ECC is an independent contractor, not an employee of the Client or any company affiliated with the Client and their contract with a builder. ECC shall provide the Services under the general direction of the Client, but ECC shall determine, in ECC's sole discretion, the manner and means by which the Services are to be performed.

12.2. The Consulting Agreement does not create a partnership or joint venture and neither party is authorized to act as an agent or bind the other party except as expressly stated in the Design Agreement.

12.3. ECC shall be permitted to engage and/or use a third party designer or other service provider as independent contractors in connection with the Services. Notwithstanding the above, ECC shall remain fully responsible for such design agents' compliance with the various terms and conditions of the Consulting Agreement.

13. **GOODS**

- 13.1. To the maximum extent permitted by law, ECC gives no warranties whatsoever in relation to any Goods.
- 13.2. The parties acknowledge and agree that ECC may by agreement purchase Goods on behalf of the Client for the purposes of the Services. In the event ECC does so:
- 13.2.1. *the Client must pay the full amount of the Goods upfront prior for ECC to order the Goods; and*
- 13.2.2. *ECC accepts no liability in respect of those Goods (including for payment of cancellation fees in the event that the order is cancelled upon request of the Client) other than as expressly provided in the Consulting Agreement.*

14. **GENERAL**

- 14.1. Waiver
- 14.1.1. *A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.*
- 14.1.2. *The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.*
- 14.1.3. *A waiver by a party is not effective unless it is in writing, signed by that party.*
- 14.1.4. *The waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.*
- 14.2. Amendment - no amendment or variation of the Consulting Agreement is valid or binding on ECC, unless made in writing and signed by the Client and ECC.
- 14.3. Notices - All notices to be given hereunder shall be transmitted in writing either by registered mail or electronic mail with return confirmation of receipt and shall be sent to the addresses identified in the Consulting Agreement, unless notification of change of address is given in writing. Notice shall be effective upon receipt.
- 14.4. No Assignment - Neither party may assign, wither in writing or orally, or encumber its rights or obligations under the Consulting Agreement or permit the same to be transferred, assigned or encumbered by operation of law or otherwise, without the prior written consent of the other party.
- 14.5. Force Majeure – ECC shall not be deemed in breach of the Consulting Agreement if ECC is unable to complete the Services or any portion thereof by reason of fire, earthquake, labour dispute, act of god or public enemy, death, illness or incapacity of ECC or any local, state, federal, national or international law, governmental order or regulation or event.

15. **DEFINITIONS AND INTERPRETATION**

15.1. Definitions –

- *"Business Days"* means a day except Saturdays, Sundays and public holidays in the State of New South Wales.
- *"Client"* means the party named as such in the Design Consulting Agreement.
- *"Client's Background IP"* means the Client's Intellectual Property Rights that are in existence at the date of the Design Consulting Agreement or come into existence after the date of the Design Consulting Agreement, otherwise than in connection with the Design Consulting Agreement.
- *"ECC"* means the party named as such in the Design Consulting Agreement, East Coast Collective.
- *"ECC's Background IP"* means the East Coast Collective's Intellectual Property Rights that are in existence at the date of the Design Consulting Agreement or come into existence after the date of the Design Consulting Agreement, otherwise than in connection with the Design Consulting Agreement.
- *"Developed IP"* means all Intellectual Property Rights (present or future) created, discovered or coming into existence in connection with the Design Consulting Agreement including all Intellectual Property Rights developed by ECC in performing the Services but excluding any modifications, improvements or alterations to the ECC's Background IP developed by ECC in performing the Services.

- “*Documents*” means any design documents to be supplied by ECC as part of the Services.
- “*Fee*” means the remuneration payable by the Client to ECC as outlined in the Design Consulting Agreement and as adjusted from time to time in accordance with the Design Consulting Agreement.
- “*Goods*” means any goods specified in the Documents or the Design Consulting Agreement, including those to be supplied as part of the Services, but excludes the Documents.
- “*Intellectual Property Rights*” means all industrial and intellectual property rights whether protectable by statute, at common law or in equity, including all copyright and other similar rights that may subsist or may hereafter subsist in works or any subject matter, rights in relation to inventions (including all patents and patent applications), trade secrets and know-how, rights in relation to designs (whether or not registrable), rights in relation to registered or unregistered trademarks, circuit layout designs and rights in relation to circuit layouts.
- “*Design Consulting Agreement*” means the written agreement between the Client and ECC for performance of the Services.
- “*Services*” means:
 - the work, services and activities to be performed by ECC stated in the Scope of Services (including, to the extent applicable, supply of the Goods); and
 - all other work, services and activities that ECC may be required to perform under the Design Consulting Agreement