



ABN 67 611 584 966

Services Agreement Terms & Conditions

Design & Drafting.

1. DEFINITIONS

In this Agreement, unless the contrary intention appears:

- 1.1 **Additional Charges** means a charge in accordance with Toby Drew Homes' standard fees, or where applicable third party fee schedules, for additional work not set out in the Scope of Services document.
- 1.2 **Agreement** means this Services Agreement and includes a Scope of Services document and any other annexure.
- 1.3 **Charges** mean the fees payable by you to us for the Services set out in a Scope of Services document.
- 1.4 **Client** means you, as named in the Parties section of this Agreement.
- 1.5 **Commencement Date** means the date specified in a Scope of Services document.
- 1.6 **Confidential Information** means the confidential information of a Party, which relates to the subject matter of this Agreement and includes:
 - 1.6.1 confidential information relating to the design and operation of the Deliverables and to the Project Services;
 - 1.6.2 confidential information relating to you and your clientele;
 - 1.6.3 information relating to our personnel, business strategies, policies, procedures, documentation, methods and clientele; and
 - 1.6.4 information relating to the terms of this Agreement.
- 1.7 **Construction Services** means building construction services provided by Toby Drew Homes and which are subject to separate contract.
- 1.8 **Deliverables** means the outcomes to be achieved under a Scope of Services document.
- 1.9 **Design Services** means the design services described in a Scope of Services document and supplied pursuant to this Agreement.
- 1.10 **Disbursements** means third party disbursements incurred on your behalf by Toby Drew Homes including, but not limited to, disbursements relating to soil reports, surveying and contour plans, and engineering for special beam requirements.
- 1.11 **Dwelling** means the dwelling to be constructed at the Location.
- 1.12 **Expected Completion Date** means the date the Design Services are expected to be completed by, as set out in the Scope of Services document.
- 1.13 **Insolvency Event** means bankruptcy, administration, compromise, arrangement, amalgamation, reconstruction, winding up, dissolution and assignment for or compromise with creditors, and 'Insolvent' will be construed accordingly.

1.14 **Intellectual Property Rights** means:

- 1.14.1 patents, copyright, registered and unregistered design rights, registered and unregistered trade marks, rights in know-how and confidential information and all other intellectual property rights (without limitation);
- 1.14.2 all similar or analogous rights existing under the laws of any country; and
- 1.14.3 all rights to apply for or register such rights created by or in relation to the Deliverables and Services or arising out of the performance of the Design Services and Deliverables.

1.15 **Location** means DWELLING ADDRESS LOCATION

1.16 **Party** means either Toby Drew Homes Pty Ltd or the Client.

1.17 **Plans** means design plans for the Dwelling, as provided, owned or provided under licence by Toby Drew Homes.

1.18 **Scope of Services** means a document incorporated into this Agreement under Schedule 1 and which sets out the specific services to be supplied to you by Toby Drew Homes.

1.19 **Start Date** means the date that this Agreement is executed by the Parties.

2. SCOPE OF THIS AGREEMENT

2.1 This Agreement is used where we supply you with the Design Services in return for the Charges.

2.2 We provide the Design Services to you on the terms and conditions set out in this Agreement, or otherwise varied by a Scope of Services document.

2.3 After we receive a request from you for the Services, you agree to complete and be bound by a Scope of Services document in respect of those services.

2.4 If there is any inconsistency between this Agreement and a Scope of Services document, the terms of this Agreement will prevail, unless the Scope of Services document specifies otherwise.

2.5 All variations in scope of work required by you will incur the Additional Charges.

3. TERM

This Agreement shall commence on the Start Date and shall continue until such time that it is terminated in accordance with clause 12 of this Agreement.

4. ENGAGEMENT OF TOBY DREW HOMES

4.1 Toby Drew Homes will provide the Design Services upon the terms and conditions set out in this Agreement and the applicable Scope of Services document.

- 4.2. Toby Drew Homes will use our reasonable efforts to commence the Design Services on the Commencement Date and to complete the Services by the Expected Completion Date. However, you acknowledge that these timeframes are estimated dates only.
- 4.3. Subject to otherwise complying with our obligations under this Agreement, we will exercise our independent discretion as to the most appropriate and effective manner of providing the Design Services and of satisfying your expectations of those services.
- 4.4. Toby Drew Homes may sub-contract the performance of some or all of our obligations under this Agreement.

5. CLIENT OBLIGATIONS

- 5.1. You must:
 - 5.1.1. within a timely manner and without delay, respond to all requests and direction made by Toby Drew Homes
 - 5.1.2. at all times, comply with our payment terms in respect of your payment of the Charges.

6. ACCEPTANCE

Any instructions received from you for the supply of the Design Services will constitute acceptance of the terms and conditions set out in this Agreement.

7. CHARGES

- 7.1. You agree to pay the Charges within the payment terms specified in a Scope of Services document.
- 7.2. We may invoice you and you agree to pay all disbursements, as invoiced by Toby Drew Homes.
- 7.3. We may invoice you and agree to pay all Additional Charges as a consequence of any work to be carried out by us, which is in addition to the work contained in the Scope of Services document. The remaining 50% will be payable once the structural drawings and engineering services commence.
- 7.4. You will be required to pay to us an up-front 50% deposit for work to be carried out under the Scope of Services document.
- 7.5. If payment is not effected within 14 days of the due date, Toby Drew Homes may, at its absolute discretion, charge interest on the overdue amount at an interest rate equal to 10%. Such charges will be calculated on a monthly basis beginning on the day following the due date of payment. Toby Drew Homes may, at its absolute discretion, charge other reasonable costs in relation to recovering overdue payments.
- 7.6. If you dispute the whole, or any portion of, the amount claimed in an invoice submitted by us, you agree to pay the portion of the amount stated in the invoice, which is not in dispute and will notify us in writing (within seven (7) days of receipt of the invoice) of the reasons for disputing the remainder of the invoice. If it is resolved that some or all of the amount in dispute should have been paid at the time it was first invoiced, then

you agree to pay the amount finally resolved, together with interest, on that amount in accordance with the terms of payment set out in this Agreement.

- 7.7. The Charges are inclusive of GST.
- 7.8. You agree to pay the Charges in accordance with any payment methods stated on any invoice that Toby Drew Homes may issue you with from time to time.

8. WARRANTIES

- 8.1. Toby Drew Homes warrants to you, to the best of its knowledge that no artistic work or other works, used or created by Toby Drew Homes in the provision of the Design Services, will infringe any third party intellectual property rights.
- 8.2. To the extent permitted by any relevant legislation, we do not make any warranty in relation to the quality or suitability with respect to the Design Services.
- 8.3. Toby Drew Homes will use its best efforts, techniques and accepted standards in performing the Services.
- 8.4. You warrant that any drawings, sketches, diagrams or plans that you provide to us, in order for us to perform the Design Services, belongs to you (or is under licence by you) and that you will not be infringing any third party intellectual property rights as a consequence of such material being reproduced, in part or in full..

9. LIABILITY OF TOBY DREW HOMES

- 9.1. The parties expressly exclude all terms, representations and warranties that may be implied by law in connection with this Agreement or the provision of Services except to the extent those terms, representations or warranties may not be lawfully excluded.
- 9.2. If any legislation implies in this Agreement any term or warranty and also prohibits provisions in a contract, excluding or modifying the application of or exercise of, or liability under, that term or warranty, is deemed to be included in this Agreement.
- 9.3. Toby Drew Homes expressly excludes liability for:
- 9.3.1. indirect, special, incidental, or consequential loss or damage which may arise in respect of this Agreement, or the provision of Services, their use, or in respect of other equipment or property; and
- 9.3.2. loss of profit, business, revenue, goodwill or anticipated savings.
- 9.4. If any legislation or law implies into this Agreement any term or warranty and also prohibits provisions in a contract excluding the application of or exercise of that term or warranty then, to the maximum extent permitted by law, the liability of Toby Drew Homes for a breach of such a term or warranty will be limited, at option, to any one or more of the following:
- 9.4.1. the supplying of the Design Services again; or
- 9.4.2. the payment of the cost of having the Design Services supplied again.
- 9.5. To the maximum extent permitted by law, if for any reason Toby Drew Homes is directly or indirectly liable to you in respect of any Design Services, the maximum

aggregate liability of Toby Drew Homes in respect of all claims made by you will be the Charges in respect of those services.

10. INTELLECTUAL PROPERTY

10.1. Ownership of Intellectual Property

Toby Drew Homes will own all of the Intellectual Property Rights created in the course of it providing the Design Services to you.

10.2. Licence of Intellectual Property

Toby Drew Homes agrees to grant the Client a royalty-free and perpetual licence to use the Plans for the specific purpose of Toby Drew Homes constructing the Dwelling at the Location.

10.3. Scope of Licence

The scope of the licence provided by Toby Drew Homes under clause 10.2 above does not extend to use of the Plans by any third party, including any third party builder.

10.4. Termination of Licence

In the event that the Client engages a third party builder to construct the Dwelling at the Location, rather than Toby Drew Homes perform the Constructions Services, then the licence granted to the Client under clause 10.2 above is immediately and automatically terminated.

10.5. Breach of Intellectual Property Rights

In the event that the Client does either of the following, then Toby Drew Homes will pursue all of its rights at law for a breach of its Intellectual Property Rights under this Agreement:

10.5.1. You provide a copy of the Plans to any third party, for financial gain or otherwise;

10.5.2. You reproduce, or permit any reproduction of, a substantial part of the Plans without the prior written consent from Toby Drew Homes; and/or

10.5.3. You engage any third party builder to construct the Dwelling at the Location.

11. DEFAULT

If a Party:

(a) defaults in its obligations under this Agreement which is, or has, become essential; or

(b) fails to comply with any of the warranties, guarantees, conditions and agreements of a material nature and on the part of the party to be observed and performed under this Agreement,

in addition to any other rights which may be conferred upon it at law the non-defaulting Party may:

- (a) give the defaulting Party 14 days written notice to rectify the default. If the defaulting Party does not rectify the default within the 14 days from the date the notice was sent by the non-defaulting Party, then the non-defaulting Party may elect to terminate this Agreement; and
- (b) upon termination the non-defaulting Party may sue the defaulting Party for damages for breach of this Agreement.

12. TERMINATION

- 12.1. This Agreement will automatically terminate upon Toby Drew Homes satisfactorily providing the Design Services in full.
- 12.2. Either party may terminate this Agreement by providing thirty (30) days written notice to the other party. In the event of such termination, the Client shall promptly pay all amounts owed to Toby Drew Homes up to and including the effective date of termination, including any future non-cancellable commitments after the termination date.
- 12.3. Without limiting the generality of any other clause in this Agreement, either party may terminate this Agreement immediately by notice in writing if:
 - 12.3.1. a party breaches any material term of this Agreement which is not capable of remedy;
 - 12.3.2. party breaches any clause of this Agreement and such breach is not remedied within 30 days of written notice to the other party; or
 - 12.3.3. a party becomes, threatens or is in jeopardy of suffering an Insolvency Event.

13. GENERAL PROVISIONS

13.1. Alterations

This Agreement may be altered only in writing signed by each party.

13.2. Invalid or unenforceable provisions

If a provision of this Agreement is invalid or unenforceable in a jurisdiction:

- 13.2.1. it is read down or severed in that jurisdiction to the extent of the invalidity or unenforceability; and
- 13.2.2. it does not affect the validity or enforceability of:
 - 13.2.2.1. that provision in another jurisdiction; or
 - 13.2.2.2. the remaining provisions.

13.3. Survival

Any indemnity or any obligation of confidence under this Agreement is independent and survives termination of this Agreement. Any other term by its nature intended to survive termination of this Agreement survives termination of this Agreement.

13.4. Counterparts

This Agreement may be executed in counterparts. All executed counterparts constitute one document.

13.5. No merger

The rights and obligations of the parties under this Agreement do not merge on completion of any transaction contemplated by this Agreement.

13.6. Entire Agreement

This Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

13.7. Further action

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this agreement and any transaction contemplated by it.

13.8. Waiver

13.8.1. The failure of a party at any time to require performance of any obligation under this Agreement is not a waiver of that party's right:

13.8.1.1. to claim damages for breach of that obligation; and

13.8.1.2. at any other time to require performance of that or any other obligation under this Agreement, unless written notice to that effect is given to the other party.

13.8.2. A waiver of any provision of or right under this Agreement:

13.8.2.1. must be in writing signed by the party entitled to the benefit of that provision or right; and

13.8.2.2. is effective only to the extent set out in any written waiver.

14. GOVERNING LAW

The laws of Queensland govern this Agreement.