

Terms and conditions

Definitions and interpretation

DEFINITIONS

In this agreement:

Building means the property or building specified in the Details

Business Day means a day that is not a Saturday, Sunday or a public holiday or bank holiday in the state or territory in which the Building is located

Claim means any claim (whether in the form of an allegation, demand, suit, action or other proceeding of any kind) under or in connection with this agreement or its subject matter, whether arising under contract (including under any warranty or indemnity), in equity, in restitution, negligence or any other tort, strict liability, under statute or otherwise at all

Commencement Date means the date specified in the Details

Costs includes costs, charges, fees, expenses and disbursements, including those incurred in connection with advisers

Details means the section of this agreement headed "Details"

Fee means the fees specified in the Details

GST means the Good and Services Tax imposed under the GST Act

GST Act means the A New Tax System (Goods and Services Tax) Act 1999

Insolvency Event means the Contractor becomes insolvent, commits an act of bankruptcy, a receiver or receiver and manager or administrator is appointed, a mortgagee goes into possession of the Contractor's assets or business, an application is made to appoint a liquidator or to have the company wound up, or the Contractor enters into a scheme of arrangement with its creditors

Law includes the provisions of any statute, rule, regulation, proclamation, ordinance or by-law, present or future, whether state, federal or otherwise

OHS Management Plan means an occupational health and safety risk assessment, management plan and safe work method statement for providing the Services at the Building

Services means the services specified in the Details

Term means the period specified in the Details, commencing on the Commencement Date

Sterling Property means For Pleasure Pty Ltd and its related bodies corporate, and

Transfer means assign, novate, sell or transfer rights and obligations, including through a change in the effective control of a party.

INTERPRETATION

In this agreement, unless the context indicates a contrary intention:

(a) a reference to:

- (i) the singular includes the plural and vice versa
- (ii) an individual or person includes a corporation, partnership, venture, association, authority, trust, state or government
- (iii) a party is to a party to this agreement and includes that party's executors, administrators, successors and permitted assignees
- (iv) a document including this agreement, is to that document as amended, novated, renewed, substituted or supplemented at any time
- (v) any legislation is to any amendment, re-enactment, substitution or consolidation of that legislation, and includes any subordinate legislation issued under that legislation
- (vi) dollars or \$ is to an amount in Australian currency
- (vii) time is to time in the capital city of the state or territory in which the Building is located
- (viii) a day is to a period commencing at midnight and ending 24 hours later
- (ix) a week is to a week commencing immediately after midnight on Sunday of each calendar week and conclude at midnight on the following Sunday (inclusive)
- (x) a month is to a calendar month

(b) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning

(c) any recitals, table of contents and headings in this document are for convenience only and do not affect interpretation

(d) related body corporate has the meaning given to that expression in the Corporations Act 2001

(e) including and similar expressions are not to be treated as words of limitation

(f) supplier means a person making a supply

(g) an obligation not to do something includes an obligation not to cause and not to permit it to be done

(h) where consent or approval is required under this agreement the requirement will mean the prior written consent or approval

(i) any action to be taken by any party in performing any obligations under this agreement must be taken at that party's own cost, and

(j) this agreement is not to be construed against a party because that party was responsible for the drafting of this agreement.

1 Appointment and term

1.1 APPOINTMENT AND TERM

The Principal appoints the Contractor as an independent contractor from the Commencement Date:

(a) to perform the Services at or on the Building

(b) for the Term

(c) on the terms and conditions of this agreement.

The Contractor accepts this appointment.

2.2 HOLD OVER

If the Contractor continues to provide the Services after the Term ends and before the Contractor signs a new agreement, the Contractor does so on a monthly agreement, subject to:

(a) the terms and conditions contained in this agreement that are applicable to a monthly agreement, and

(b) either party's right to terminate the monthly agreement with one month's notice.

2. Performance and conduct of Services

2.1 STANDARD OF SERVICES

The Contractor must perform the Services:

- (a) in a diligent, proper and workman-like manner with proper skill, care and competence, and
- (b) in a way that will not impair or damage the Principal's goodwill or reputation or that of the Building.

2.2 VARIATION TO SERVICES

The Principal may direct the Contractor to vary the Services or perform additional services provided they are of a character and extent contemplated by, or capable of being performed under, this agreement. The Principal will determine a reasonable price for such variations and add or deduct that price from the Fee.

2.3 OBLIGATIONS OF CONTRACTOR

The Contractor must:

- (a) perform each single component of the Services at any intervals or cycles, and within any durations specified in the Details
- (b) provide enough competent, qualified and trained employees to efficiently perform the Services at those intervals, cycles or durations
- (c) interfere to the least extent possible with the Principal's access to and occupation of the Building and that of its tenants and their invitees
- (d) coordinate performance of the Services with the work of the Principal's employees or of any other contractors the Principal engages
- (e) comply with the Principal's access requirements and security measures for the Building
- (f) ensure that its employees always wear uniforms and carry photographic identification suitable to the Principal
- (g) not examine, copy, remove or otherwise interfere with anything on or in the Building except for the purpose of performing the Services
- (h) regularly remove rubbish and surplus material which results from the performing the Services
- (i) use suitable new goods where, in performing the Services, the Contractor is to supply goods
- (j) immediately comply with any direction of the Principal to remove from the Building, within any time the Principal directs, any of the Contractor's employees who, in the opinion of the Principal, is guilty of misconduct, is incompetent or negligent, and the Contractor must not thereafter deploy that person on the Building without the prior written consent of the Principal
- (k) adequately maintain all plant, equipment and materials necessary to perform the Services, and
- (l) must ensure that each of its employees does not engage in any conduct that is illegal, unethical, misleading, deceptive.

2.4 OBLIGATIONS OF PRINCIPAL

The Principal will:

- (a) provide the Contractor reasonable access to the Building to enable the Contractor to perform the Services, and
- (b) provide the Contractor with details of entrances and exits to and from the Building and of any security measures to observe in connection with the Building.

2.5 COMPLIANCE WITH LAWS

The Contractor must comply with all Laws or requirements of any authority or governmental agency applicable to provision of the Services, including but not limited to

- (a) procuring and maintaining appropriate registrations, licences or permits necessary in connection with providing the Services, and
- (b) registering and maintaining registration for GST

2.6 COMPLAINTS AND PROCEEDINGS

The Contractor must immediately notify the Principal of any:

- (a) complaint from any occupant of the Building regarding the Services, including copies of any correspondence and written details of any conversation as soon as practicable after the complaint is made, and
- (b) proceedings instituted against the Contractor.

2.7 REPORTING

The Contractor must report to the Principal under this agreement in the manner the Principal directs, including by electronic means.

2.8 DEFECTIVE WORK

If at any time the Services, or any goods the Contractor uses or supplies in connection with the Services, are not in accordance with this agreement or the reasonable requirements of the Principal, the Principal may direct the Contractor to replace, correct, remove or vary it at no cost to the Principal. Failing compliance with such a direction, the Principal may:

- (a) engage another contractor to carry out the work or supply the goods, the cost of which will be a debt due from the Contractor to the Principal payable on demand, or
- (b) the Principal may accept the defective work or goods and reduce the amount it pays the Contractor in accordance with the Principal's reasonable estimate of any loss or inconvenience the Principal has suffered.

2.9 WARRANTIES

The Contractor warrants that it has:

- (a) fully informed itself on all aspects of the work it is to perform
- (b) conducted its own investigations and due diligence in planning its manner and methodology for providing the Services, and
- (c) the expertise, staff and resources necessary to perform the Services.

3 Fees and invoicing

3.1 PAYMENT OF FEES

In consideration of the Contractor providing the Services, the Principal will pay the Fee to the Contractor.

3.2 CONTRACTOR TO SUBMIT TAX INVOICE AND STATEMENT

Within 7 days of completing the Services, the Contractor must give the Principal:

- (a) a tax invoice prepared in accordance with GST Law for all Services rendered in the preceding month for which the Contractor believes it is entitled to payment, and
- (b) a statement, in any form that the Principal requires, of the Services provided in the preceding month for which the Contractor is claiming payment, and any other information about the Services rendered that the Principal requires from time to time.

3.3 PAYMENT

If the Principal receives a tax invoice and statement from the Contractor in accordance with clause 4.2, within 30 Business Days of receipt of the Contractor's invoice and statement the Principal will either:

- (a) pay the whole of the Contractor's claim for payment, or
- if the Principal disputes the whole or part of the Contractor's claim for payment:
 - (i) pay the amount not in dispute, and
 - (ii) notify the Contractor of the reasons for disputing the whole or part of the Contractor's claim.

3.4 SET OFF

If the Principal:

- (a) determines that an error is made in the calculation of any entitlements of the Contractor to be paid money under this agreement, or
 - (b) determines that the Principal has re-imbursed the Contractor for an expense for which the Contractor was not entitled to be reimbursed, or
 - (c) that the Contractor otherwise owes the Principal any money,
- the Principal may set off that amount against any payments to the Contractor.

3.5 NO RISE AND FALL

Neither the Fee nor any rates set out or referred to in this agreement are subject to rise and fall. The Contractor bears any additions or increases in charges, taxes, or costs associated with the provision of the Services or any changes in Law.

4 Occupational health and safety

4.1 CONTRACTOR'S OHS OBLIGATIONS

The Contractor must:

- (a) prepare and provide to the Principal an OHS Management Plan
- (b) comply with, and ensure that its employees comply with, the OHS Management Plan and all occupational health and safety Laws while providing the Services
- (c) annually audit compliance with the OHS Management Plan
- (d) implement and comply with all safety and security requirements of the Principal for the Building
- (e) provide the Services in a safe manner including:
 - (i) erecting and maintaining, as existing conditions and the progress of the Services may require, all safeguards necessary for safety and protection (including barriers, fences and railings), and
 - (ii) posting danger signs and other warnings against hazards and notifying the Principal and other users of any dangerous or hazardous conditions arising out of the Services
 - (iii) have appropriate first aid facilities available on the Building at all times and a member of its staff qualified and experienced in occupational health and safety and familiar with occupational health and safety Laws
 - (iv) regularly carry out a risk assessment and review all hazards or risks that arise
 - (v) attend any safety induction program the Principal conducts or implements for the Building
 - (vi) ensure that signs, clearly visible from outside the Building and on which the name and contact telephone numbers (including an after-hours emergency telephone number) of the Contractor are stated, are placed on the Building
 - (vii) take all measures necessary to protect people and property on or adjacent to the Building
 - (viii) promptly make good any damage that the Contractor or its employees or agents make to the Building and pay any compensation which any Law requires the Contractor to pay
 - (ix) ensure that all plant and equipment used in performing the Services is maintained in a safe working order
 - (x) report any serious health or safety incidents to the Principal as soon as they occur, and
 - (xi) include details of any occupational health and safety issues that arise in all reports to the Principal.

4.2 FAILURE TO COMPLY

If the Contractor fails to comply with an obligation under this clause 4, the Principal may perform or have performed the obligation on the Contractor's behalf and the costs and expenses the Principal incurs are recoverable from the Contractor as a debt due to the Principal.

5 Insurance

5.1 INSURANCE POLICIES

From the Commencement Date and at all times during the Term and any holding over period, the Contractor must:

- (a) take out and maintain with reputable insurers in respect of the provision of the Services:
 - (i) public liability insurance for at least \$30,000,000 naming the Principal and Sterling Property as insured parties, and
 - (ii) workers compensation insurance as required by Law
- (b) report to the Principal and the insurer in writing, all claims and events which may or could lead to the cancellation of or a refusal of cover under any policy for any insurance, and
- (c) provide the Principal evidence, if the Principal requests and without delay, of the insurances and their currency.

5.2 CHANGES TO INSURANCE

The Principal may reasonably require the Contractor to increase the minimum insurance limits and require different or additional kinds of insurance as part of clause 5.

6 Liability

6.1 INDEMNITY

The Contractor indemnifies and will keep indemnified the Principal and the Principal's officers, employees, agents (including Sterling Property), related bodies corporate and contractors from and against all losses, liabilities and Costs that the Principal and the Principal's officers, employees, agents (including Sterling Property), related bodies corporate and contractors suffers or incurs in connection with any Claim arising directly or indirectly as a result of or in connection with:

- (a) any breach by the Contractor or any of the Contractor's employees of this agreement
- (b) the Contractor's taxes and liabilities, including but not limited to:
 - (i) the Contractor's liabilities to its employees for payments including salaries, wages, commissions, superannuation, workers compensation and entitlements, and
 - (ii) payroll tax, income tax and fringe benefits tax

- (c) any Claim by third parties including customers, clients or tenants of the Principal or the Building in any way relating to provision of the Services
- (d) any negligent or wilful act or omission of the Contractor, the Contractor's officers, employees, related bodies corporate and agents or others for whom the Contractor is legally responsible
- (e) any damage or harm to person or property caused or contributed to by the Contractor, the Contractor's officers, employees, related bodies corporate and agents or others for whom the Contractor is legally responsible.

6.2 BENEFIT OF INDEMNITY

The Principal holds the benefit of the indemnities given by the Contractor to any person other than the Principal under clause 6.1 on trust for the benefit of that person.

7 Default and termination

7.1 EVENTS OF DEFAULT

An event of default occurs if any of the following events occur and the Contractor has failed to rectify after the Principal has provided notice to the Contractor in accordance with clause 7.2(b):

- (a) there is a defect in the Contractor's performance of the Services
- (b) an Insolvency Event occurs in relation to the Contractor, or
- (c) the Contractor breaches any provision of this agreement or refuses to comply with any provision of this agreement.

7.2 IMMEDIATE TERMINATION FOR DEFAULT

The Principal may terminate this agreement on immediate written notice to the Contractor if:

- (a) an event of default occurs, and
- (b) the Principal gives the Contractor a written notice which:
 - (i) specifies the event of default
 - (ii) tells the Contractor what the Principal wants the Contractor to do to remedy the event of default
 - (iii) gives the Contractor a reasonable time to remedy the default (which need not be more than 2 days), and
 - (iv) states that the Principal proposes to terminate this agreement if the event of default is not remedied within that time.

7.3 COST OF REMEDY

The Contractor must remedy all events of default at its own cost.

7.4 TERMINATION BY THE PRINCIPAL WITH NOTICE

The Principal may terminate this agreement at any time, without reason, by giving one month's written notice to the Contractor.

7.5 CONTRACTOR'S RIGHTS ON TERMINATION

If the appointment of the Contractor is terminated for any reason, the Contractor is entitled to be paid only a proportion of the Fee based on the Services performed up to the date of termination, taking into account any adjustments and deductions for loss or damage the Principal suffers or is reasonably likely to suffer as a consequence of any event of default or a breach of this agreement by the Contractor.

7.6 CONSEQUENCES OF TERMINATION

If this agreement is terminated for any reason:

Termination is without prejudice to the accrued rights of the parties at the time of termination. Despite termination of this agreement, the Contractor will act in good faith and do anything reasonably necessary to transition the provision of the Services or similar services to another party, and the Contractor must immediately give the Principal all books, records, drawings, plans, specifications and other documents relating to the Services in the possession, custody or control of the Contractor.

8 Suspension of the Services

8.1 SUSPENSION BY PRINCIPAL

If the Principal considers that the suspension of the whole or part of the Services is necessary:

- (a) because of an act or omission of the Contractor, a sub-contractor or an employee or agent of either
- (b) for the protection or safety of any person or property, or
- (c) to comply with an order of a court

the Principal may direct the Contractor to suspend the whole or part of the Services for such time as the Principal thinks fit.

8.2 RECOMMENCEMENT OF WORK

When the Principal becomes aware that the reason for any suspension no longer exists, the Principal will direct the Contractor to recommence work of all or relevant part of the Services, and the Contractor must recommence work accordingly.

8.3 COST OF SUSPENSION

Any cost the Contractor incurs by reason of a suspension under clause 8.1 is at the Contractor's expense.

9 Confidentiality

9.1 CONFIDENTIALITY

This agreement and all information exchanged between the parties under this agreement are confidential to the parties, their officers, employees, agents, advisers, auditors, financiers, underwriters and other consultants, and must not be disclosed to any person except:

for the purposes of this agreement or otherwise with the consent of the party who supplied the information if required by Law in connection with legal proceedings relating to this agreement where reasonably provided (on conditions similar to those contained in this clause) to an expert for the preparation of a report in relation to this agreement, or if the information is generally and publicly known otherwise than as a result of a breach of this clause or another confidentiality agreement between the person and a third party.

10 Transfer

10.1 TRANSFER BY THE PRINCIPAL

The Principal may Transfer its interest in this agreement at any time. If the Principal does, the Principal's notification of the Transfer will be sufficient evidence of the Transfer, and this agreement will continue to the benefit of the Principal's assignee or other legal successor to the Principal's interests in this agreement.

10.2 TRANSFER BY THE CONTRACTOR

This agreement is personal to the Contractor. The Contractor must not Transfer its interest in this agreement.

10.3 SUB-LICENCE/SUB-CONTRACTING

The Contractor must not sub-licence or sub-contract or grant an interest to any person of any of the Contractor's rights, obligations, interest or liabilities under this agreement in any form.

11 GST

11.1 DEFINITIONS

Expressions in this clause which are not defined in this agreement but which are defined in the GST Act, have the same meaning as in the GST Act.

11.2 WARRANTY

The Contractor warrants that it is registered for GST and that it will remain registered for GST throughout the Term and any holding over period.

11.3 CONSIDERATION IS EXCLUSIVE OF GST

Unless otherwise expressly stated, all amounts, prices, values or other sums payable or to be provided under this agreement are exclusive of GST.

11.4 GST ON TAXABLE SUPPLY

If GST is payable on any supply made under this agreement:

- (a) the recipient of the taxable supply must pay to the supplier an amount equal to the GST payable on the taxable supply in addition to and at the same time as payment for the taxable supply is required to be made under this agreement
- (b) the supplier must give the recipient a tax invoice for the taxable supply.

12 Appointment of agent or representative

12.1 PRINCIPAL MAY APPOINT AGENT OR REPRESENTATIVE

The Principal may appoint agents or representatives to exercise all or any of its rights and perform all or any of its obligations under this agreement, including but not limited to the issue of instructions and directions regarding the Services, variations and assessment of claims for payment. The Contractor acknowledges that the Principal's agent as at the Commencement Date is Sterling Property.

13 General

13.1 ENTIRE AGREEMENT

In relation to its subject matter this agreement:

- (a) constitutes the entire agreement between the parties
- (b) supersedes any previous representations, understandings or agreements, and
- (c) applies retrospectively to any work the Contractor carries out relating to or in connection with the Services before execution of the agreement.

13.2 INDEPENDENT CONTRACTORS

The Principal and the Contractor are each independent contractors and are not and will not be considered as joint venturers, partners, representatives or agents of each other except to the extent that any relationship is expressed in writing to exist between them.

13.3 AMENDMENT

This agreement may only be amended, supplemented, replaced or novated by a document executed by all the parties.

13.4 COUNTERPARTS

This agreement may be executed in any number of counterparts and all those counterparts taken together constitute one and the same document.

13.5 WAIVER

Unless specifically stated to the contrary in this agreement, a party's:

- (a) failure to enforce or a delay in enforcing any rights under this agreement does not constitute a waiver of those rights
- (b) partial exercise of a right does not preclude any further exercise of that or any other right.

13.6 NOTICES

A notice by a party:

- (a) is taken to be given if it is made in writing and issued by the sender, and delivered by hand, post, facsimile or electronically
- (b) subject to clause (c) is taken as being received:
 - (i) if it is delivered by hand or courier - when actually delivered
 - if it is posted:
 - (ii) in Australia to an address in Australia, on the 3rd Business Day after posting
 - 1. in Australia to an address outside Australia, on the 7th Business Day after posting
 - 2. if it is sent electronically or by facsimile, when the device through which the notice is sent reports that the notice has been sent. The report must be in readable form and capable of being reproduced on paper
- (c) that is received or taken to be received under clause (b) on a day that is not a Business Day or after 5.00pm on a Business Day, is taken to be received on the next Business Day.

13.7 SEVERANCE

If any provision of this agreement is held to be prohibited, invalid or unenforceable in any jurisdiction:

- (a) that provision is ineffective to the extent of the prohibition, invalidity or unenforceability in that jurisdiction
- (b) the validity or enforceability of that provision is not affected in any other jurisdiction, and
- (c) the remaining provisions of this agreement are not affected.

13.8 JOINT AND SEVERAL

Where two or more parties have an obligation or liability under this agreement, the obligation or liability is joint and several.

13.9 GOVERNING LAW

This agreement is governed by the law in force in the state or territory in which the Building is located and the parties submit to the non-exclusive jurisdiction of the courts of or exercising

13.10 SPECIAL CONDITIONS

The special conditions, if any, set out in the Details form a part of this agreement.