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## Estimate Assist – Terms & Conditions of Trade

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### 1. Definitions

- 1.1 “Estimator” means The Trustee for Blue Dog Family Trust T/A Estimate Assist, its successors and assigns or any person acting on behalf of and with the authority of The Trustee for Blue Dog Family Trust T/A Estimate Assist.
- 1.2 “Client” means the person/s requesting the Estimator to provide the Services as specified in any invoice, document or order, and if there more than one person requesting the Services is a reference to each person jointly and severally.
- 1.3 “Services” means all Services (including the supply of documents, designs, drawings by electronic means (“Incidental Items”) supplied by the Estimator to the Client at the Client’s request from time to time.
- 1.4 “Fee” means the price payable for the Services (plus any GST where applicable) as agreed between the Estimator and the Client in accordance with clause 3 of this contract.

### 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 Estimator.
- 2.2 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions (Queensland) Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.

### 3. Fee and Payment

- 3.1 The Fee shall be as indicated on invoices provided by the Estimator to the Client in respect of the Services supplied and shall be based on the following fixed Fee:
  - (a) zero point three percent (0.30%) of the total value of the project, including Builders Margin for New Homes up to the value of One Million Five Hundred Thousand Dollars (\$1,500,000.00); or
  - (b) zero point three five percent (0.35%) of the total value of the project, including Builders Margin for Extensions, Renovations or Commercial up to the value of One Million Three Hundred Thousand Dollars (\$1,300,000.00)
  - (c) A New Home estimate over the value of One Million Five Hundred Thousand Dollars (\$1,500,000.00) will be capped and a fixed price fee negotiated.
  - (d) An Extension, Renovation or Commercial estimate over the value of One Million Three Hundred Thousand Dollars (\$1,300,000.00) will be capped and a fixed price fee negotiated.
  - (e) If in the event the Fee is less than the calculated amount from 3.1 (a) or 3.1 (b), the minimum charge will be Nine Hundred and Sixty Dollars (\$960.00) plus GST for the Service.
  - (f) A deposit of Five Hundred Dollars (\$500.00) including GST is due upon engagement of the Estimator, per job.
- 3.2 Time for payment for the Services shall be of the essence and will be stated on the invoice, quotation, or any other order forms. If no time is stated, then payment will be due seven (7) days following the date of the invoice.
- 3.3 The Client shall not be entitled to set off against, or deduct from the Fee, any sums owed or claimed to be owed to the Client by the Estimator nor to withhold payment of any invoice because part of that invoice is in dispute.
- 3.4 Unless otherwise stated the Fee does not include GST. In addition to the Fee the Client must pay to the Estimator an amount equal to any GST the Estimator must pay for any supply by the Estimator under this or any other agreement for providing the Estimator’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 Fee. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Fee except where they are expressly included in the Fee.

### 4. Provision of the Services

- 4.1 At the Estimator’s sole discretion delivery of the Services shall take place when:
  - (a) the Services are supplied to the Client at the Estimator’s address; or
  - (b) the Services are supplied to the Client at the Client’s nominated address.
- 4.2 Delivery of the Services to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 4.3 Any time specified by the Estimator for delivery of the Services is an estimate only (and is dependent on the size of the project and workloads of the Estimator at the time) and the Estimator will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However, 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 Estimator is unable to supply the Services as agreed solely due to any action or inaction of the Client then the Estimator shall be entitled to charge a reasonable fee for re-supplying the Services at a later time and date.

### 5. Estimator’s Obligation

- 5.1 The Estimator 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. Furthermore, the Client acknowledges and accepts that the Estimator is not a qualified Quantity Surveyor and as such is not providing the Services of a Quantity Surveyor.
- 5.2 The Client acknowledges and accepts that:
  - (a) the Estimator 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.

### 6. Risk and Limitation of Liability

- 6.1 Irrespective of whether the Estimator 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.
- 6.2 The Estimator does not warrant or represent that the information supplied by the Estimator is adequate or free of inaccuracies except to the extent that such inadequacies 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.

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- 6.3 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.
- 6.4 No liability shall be accepted by the Estimator on account of failure of the Service 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, lack of detail on the plans provided, local authority fees, fees for other experts or trades people, compliance to/with energy efficiency ratings, insurance costs, unusual site conditions, inclement weather, work stoppages, liquidated damages that may arise from any delay to the construction of the project.

### 7. Title

- 7.1 The Estimator 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 Estimator all amounts owing for the Services; and
  - (b) the Client has met all other obligations due by the Client to the Estimator in respect of all contracts between the Estimator and the Client.
- 7.2 Receipt by the Estimator of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Estimator's ownership or rights in respect of the Incidental Items shall continue.

### 8. Personal Property Securities Act 2009 ("PPSA")

- 8.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 8.2 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 all Incidental Items and/or collateral (account) – being a monetary obligation of the Client to the Estimator for Services – that have previously been supplied and that will be supplied in the future by the Estimator to the Client.
- 8.3 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 Estimator may reasonably require to:
    - (i) register a financing statement or financing change 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 8.3(a)(i) or 8.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, the Estimator for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Incidental Items charged thereby;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of the Estimator;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Incidental Items and/or collateral (account) in favour of a third party without the prior written consent of the Estimator.
- 8.4 The Estimator 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.
- 8.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 8.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 8.7 Unless otherwise agreed to in writing by the Estimator, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 8.8 The Client must unconditionally ratify any actions taken by the Estimator under clauses 8.3 to 8.5.
- 8.9 Subject to any express provisions to the contrary (including those contained in this clause 8), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

### 9. Default and Consequences of Default

- 9.1 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 Estimator's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 9.2 If the Client owes the Estimator any money the Client shall indemnify the Estimator from and against all costs and disbursements incurred by the Estimator in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own Client basis, the Estimator's contract default fee, and bank dishonour fees).
- 9.3 Further to any other rights or remedies the Estimator may have under this contract, if a Client has made payment to the Estimator by credit card, 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 Estimator under this clause 9 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.
- 9.4 Without prejudice to the Estimator's other remedies at law, the Estimator shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Estimator shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Estimator becomes overdue, or in the Estimator'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 Estimator;
  - (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.

### 10. Cancellation

- 10.1 Without prejudice to any other remedies the Estimator 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 Estimator may suspend or terminate the supply of Services to the Client. The

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- Estimator will not be liable to the Client for any loss or damage the Client suffers because the Estimator has exercised its rights under this clause.
- 10.2 The Estimator 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 Estimator shall repay to the Client any money paid by the Client for the Services. The Estimator shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 10.3 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 Estimator as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 11. Privacy Act 1988**
- 11.1 The Client agrees for the Estimator 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 Estimator.
- 11.2 The Client agrees that the Estimator may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by 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 years.
- 11.3 The Client consents to the Estimator being given a consumer credit report to collect overdue payment on commercial credit.
- 11.4 The Client agrees that personal credit information provided may be used and retained by the Estimator 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) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
  - (d) enabling the collection of amounts outstanding in relation to the Services.
- 11.5 The Estimator 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.
- 11.6 The information given to the CRB may include:
- (a) personal information as outlined in 11.1 above;
  - (b) name of the credit provider and that the Estimator is a current credit provider to the Client;
  - (c) whether the credit provider is a licensee;
  - (d) type of consumer credit;
  - (e) details concerning 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 for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and the Estimator 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 Estimator, 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).
- 11.7 The Client shall have the right to request (by e-mail) from the Estimator:
- (a) a copy of the information about the Client retained by the Estimator and the right to request that the Estimator correct any incorrect information; and
  - (b) that the Estimator does not disclose any personal information about the Client for the purpose of direct marketing.
- 11.8 The Estimator 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 agreement or is required to be maintained and/or stored in accordance with the law.
- 11.9 The Client can make a privacy complaint by contacting the Estimator via e-mail. The Estimator will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of 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](http://www.oaic.gov.au).
- 12. General**
- 12.1 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.
- 12.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland, the state in which the Estimator has its principal place of business, and are subject to the jurisdiction of the courts in Queensland.
- 12.3 The Estimator shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit, economic loss or other loss, liquidated damages, business or goodwill) suffered by the Client arising out of a breach by the Estimator of these terms and conditions (alternatively the Estimator's liability shall be limited to damages which under no circumstances shall exceed the Fee of the Services).
- 12.4 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.
- 12.5 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.