

# TERMS OF SERVICE

This Agreement is between **Michelle Aspinall trading as Inside Interiors ABN 64 264 546 857 (the Designer)** and the Client.

IT IS AGREED AS FOLLOWS:

## 1. ACCEPTANCE

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This Agreement includes any schedules, annexures and attachments relating to this Agreement that are provided with this Agreement, or separately, including the **Design Proposal**, which also form part of this Agreement. By proceeding with payment for the Services, the Client will be deemed to have read, understood and accepted to be bound by the terms and conditions contained in this Agreement, and that this version is the sole requirement for this Agreement to be binding on the parties. The Client acknowledges and agrees that if they do not accept these terms and conditions, they must not proceed with the Services.

## 2. DEFINITIONS

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In this Agreement, unless expressed or implied to the contrary:

**Additional Consultation** means any consultation other than the Initial Consultation provided by the Designer on the request of the Client for the Fees provided in the **Design Proposal** or advised at the time of booking.

**Additional Services** means any Services provided to the Client that were not originally contemplated or indicated in the original **Design Proposal** and/or which were added to the Scope of Works during the course of the Project for which additional Fees are payable if provided in the **Design Proposal**.

**Ancillary Services** means the services outlined in the **Design Proposal**, which can. Be engaged as stand-alone services, or as part of the Project.

**Approved Purpose** means the purpose of the Client receiving the benefit of the Services provided under this Agreement.

**Business** means the interior design and styling business of **Michelle Aspinall trading as Inside Interiors ABN 64 264 546 857** from time to time and includes any business carried on under any brand name associated with the Designer or by any subsidiary or any associated entity of the Designer.

**Business Hours** means 09:30 am and 04:30pm from Monday to Friday, provided it is not a public holiday in Tasmania, Australia.

**Client** includes any person or organisation (or representative of any person or organisation) who is the named recipient of the **Design Proposal**.

**Client Content** means any content owned or held by the Client, which is relevant to the Services.

**Client System** means any computer or other technology system owned or operated by the Client, which is relevant to the Services.

**Code of Conduct** means the code of conduct in the Designer's Terms and Conditions accessible at [www.insideinteriors.com.au](http://www.insideinteriors.com.au).

**Communication Policy** means:

- (a) for all Services except E-Services, preferably telephone, email, SMS message, Facebook or Instagram messenger or Website during Business Hours only, unless there is an urgent matter or emergency in which case Inside Interiors will respond as soon as practicable; and
- (b) for E-Services, by email during Business Hours only.

**Completion** means the completion of all or any relevant phase or stage of the Services as contemplated by this Agreement (including the **Design Proposal**).

**Consultations** means the consultations referred to in clause 4.2 of this Agreement and as provided on the Website or outlined in the **Design Proposal**.

**Consultation Fees** means the Fees payable for Consultations as indicated or provided under this Agreement and any additional Fees for time spent by the Designer in providing any Consultation in excess of the applicable prescribed and/or paid time periods, as invoiced.

**Decluttering Services** means the clearing, sorting and cleaning services and advice for room and personal items and belongings organisation as outlined in **Clause 4.3**.

**Deposit** means, as applicable, the deposit amount (if any) for the Project determined under or stipulated in the **Design Proposal**, or any deposit required for any services to be provided by third parties in connection with the Project and/or the Works or for any ordering and purchases of goods under this Agreement.

**Design Materials** means all materials that exist at the beginning of the Services, in whatever form, including but not limited to documents, specifications, reports, products, information, data, drawings, renders, mood boards, graphics, images, video or sound recordings, and all materials that are created or written, and provided in connection with, or otherwise brought into existence by or on behalf of the Designer during the provision of the Services, including the Design Work.

**Design Proposal** means the document provided to the Client outlining the details of the Project, as may be varied by the parties.

**Design Work** means all design work including concepts, drawings and documents with respect to or provided as part of the Services, as referred to in **clause 3.2**.

**Digital Services** means all design and styling Services that may be delivered electronically, which may account for all or part of the Project, defined in **clause 4.3** of this Agreement and as outlined in the **Design Proposal** or indicated on the Website.

**Direction** includes agreement, approval, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request and requirement.

**Fee or Fees** means the amount or amounts paid or payable by the Client for or with respect to the Services, as provided under this Agreement including the **Design Proposal** and set out in any invoices subsequently issued, which may be fixed and/or based on Hourly Rates.

**Hourly Rate** means the applicable \$100 hourly rate for time-billed Services pursuant to the relevant work undertaken and, if applicable, the person carrying out the work, as specified in the **Design Proposal**.

**Initial Consultation** means the initial consultation (if any) between the Client and the Designer for up to ninety (90) minutes with a maximum of two (2) consults per week thereafter for such fee as specified in the **Design Proposal**.

**Product Quote** means any quote for goods under **clause** Error! Reference source not found..

**Project** means the project which relates to the Client and the Services as outlined in the **Design Proposal**.

**Project Co-ordinating Services** means the co-ordinating services that the Designer may provide for the Project in the **Design Proposal** or otherwise agreed with the Client which may include co-ordinating and arranging the order and/or purchase of items such as fixtures, fittings, finishes, lighting and flooring; visiting suppliers to select and/or pick up products or samples with the Client or on the Client's behalf; performing Project Site visits to monitor design intent and progress and to assist with resolving issues as they arise; holding or attending meetings at the Project Site with builders, contractors and tradespersons to resolve design issues or for other purposes, as required; and managing administration (emails, phone calls and travel) and meetings with the Client as required, to the extent the Designer is permitted by law.

**Project Site** means the property at the address given in the **Design Proposal** as the location for the Project.

**Project Timeline** means the estimated timeline and milestones for completing the Project, if any.

**Scope of Works** means the scope of Services performed or to be performed by the Designer under this Agreement as described and set out in the **Design Proposal**.

**Services** means the interior design and styling specified for the Project in the **Design Proposal** (as may be varied by the parties) which may lighting, colours and paint, fabrics and textiles, finishes, furnishings and accessories, environmentally sustainable solutions, room design, styling, storage, and bathroom, kitchen and study renovation services and may provide fly through animation videos and landscape garden design as requested.

**Standalone Services** means the standalone styling services and standalone colour consultancy services, which are charged at \$375 for four (4) hours each.

**Travel Fees** means the Fees (if any) payable for travel required for, or in connection with, the Project as agreed, and which may be invoiced separately.

**Website** means [www.insideinteriors.com.au](http://www.insideinteriors.com.au).

**Work or Works** means any installation, building, construction or other specialist works that have flowed from or relate to the Design Work as referred to in **clause 3.2** or are incidental to the Project.

### 3. THE SERVICES

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#### 3.1 Provision of Services

- (a) The Designer will deliver the Services in accordance with the design process and Scope of Works set out in the **Design Proposal**, which may in addition to delivery in person include delivery via telephone, email and digital platforms.
- (b) Subject to this Agreement, the Designer will endeavour to provide the Services in accordance with the Designer's Code of Conduct.
- (c) The Designer will provide the Services pursuant to the Designer's Business and will do all things reasonably required to ensure that the Services are performed with due care, skill and diligence, in a professional and ethical manner, within the scope of their expertise, and to the Client's reasonable satisfaction.
- (d) The Client agrees where they vary the original Scope of Works as set out in the **Design Proposal** and the Designer is engaged for Additional Services and/or Additional Consultations, additional Fees may apply, and the Client may be invoiced separately for these Fees.
- (e) The Designer will do their best to complete the Services in accordance with the Project Timeline however, the Client acknowledges that Project deadlines and the Project Timeline and hence Completion may be subject to the vagaries of the marketplace and the performance of third parties and any variation in the Scope of Works.
- (f) This Agreement and the provision of the Services are subject to all applicable public health and related Australian State and Federal Government regulatory and legislative provisions and all mandatory orders, directions and restrictions (including those in relation to COVID-19 or any comparable pandemic) in force and effect in the State or Territory in which the Services are being provided at the relevant time.

#### 3.2 Third Party Contractors and Suppliers

- (a) The Client acknowledges and agrees that all representations, recommendations and referrals made by the Designer are made in good faith, but that the Designer makes no warranties as to the suitability or reliability of any third-party suppliers and contractors or gives any guarantees as to the outcome or results of the Services.
- (b) The Client acknowledges that the Designer is not responsible for the compliance, safety, supervision, daily direction, control, quality, or outcome of the work of any third-party supplier or contractor the Client engages to complete the Works, regardless of whether the Designer has referred, recommended or engaged the supplier or contractor on behalf of the Client.
- (c) The Client acknowledges and agrees that where the Designer engages any third-party supplier or contractor on the Client's behalf, the Client is responsible for payment of all

amounts including all Deposits (if applicable), costs and payments for all services provided by the third-party supplier or contractor and shall be liable to pay all invoices issued by the third-party supplier or contractor.

- (d) The Client agrees that where Works are required for, or in connection with, the Services, they must enter into a contract/s independent to this Agreement and acknowledges that the Designer is not responsible nor can be held liable for any damages or loss incurred by the Client arising out of or associated with any such contract.
- (e) The Client acknowledges that warranties on all goods and services provided by third parties are determined by the supplier of the goods or services or in accordance with the applicable standard statutory warranties.

### **3.3 Client Obligations**

Without limitation to the Client's other obligations under this Agreement, the Client agrees to:

- (a) comply with all applicable laws and regulations, including obtaining the relevant insurance, permits, licences and any approvals required for the provision of the Services and any Works;
- (b) ensure it has the necessary computer hardware, software, and internet required for the provision of any Digital Services. Inside Interiors accepts no liability with regards to transmission, delay, or inability to access the digital Services with the Client's equipment, digital mediums, or telecommunications operators;
- (c) provide all necessary instructions and information for the development of the Project brief, including details of the Client's budget and timeframe for the completion of the Project, accurate measurements, dimensions, floor plans, photos, videos and/or any other information as required or requested by the Designer;
- (d) respect the Designer's Communication Policy, co-operate and work reasonably with the Designer, and provide clear and reasonable Direction, instruction and guidance within a reasonable time;
- (e) review and approve the Design Materials, check plans and schedules and respond to communication in a timely manner or within any time periods reasonably required by the Designer; and
- (f) provide access to the Client System and the Client's Project Site as reasonably required by the Designer to provide the Services, including the construction period.

### **3.4 Delays, Variations and Faults**

- (a) The Client acknowledges and agrees that they are fully responsible for all errors, defects and faults (and rectification thereof) after approving and signing off the Design Materials and that the Designer shall be held harmless for relying on the accuracy of all information including measurements provided by or on behalf of the Client in preparing the Design Materials, and for their change of mind or incorrect choices with respect to any aspect of the Services or Design Work.
- (b) The Client acknowledges and agrees that upon acceptance of the construction documents, the Designer accepts no liability for any changes or substitutions made to the documents, by the Client or any third party, and Additional Fees will apply where the Designer is required to rectify any alterations to the original documents which have invalidated the overall design efficacy.
- (c) Within forty-eight (48) hours of it becoming evident to the Designer that anything beyond their control may result in delays to the Project and/or Completion, including any act or omission of the Client, consultants, other contractors or agents, a force majeure event or the supply of erroneous information by the Client, the Designer agrees to notify the Client of the extent of the likely delay and the costs and expenses associated with that delay.

- (d) The Client may request a variation to the Services. If the Client proposes a variation to the current Scope of Works or is deemed to have effected a variation under this Agreement, the Designer shall advise the Client whether the proposed variation can be reasonably implemented and the anticipated effect the proposed variation can be reasonably implemented and the anticipated effect the proposed variation will have on the Project, including Fee and Project Timeline. Where the proposed variation is agreed by the parties or is otherwise effected as the case may be, the Client agrees to accept and agree to any associated changes in costs and expenses (including Fees), changes to the Project Timeline and/or delays in any Works.
- (e) If the Designer is not reasonably able to provide any variation to the Services requested by the Client, the Designer will advise the Client of the reasons and shall continue to provide the Services without such variation.
- (f) The Designer will notify the Client of any variation to the Services required by the Designer, including details of and reasons for the variation, however, the variation shall be subject to the Client's agreement.

### 3.5 Completion

- (a) Within forty-eight (48) hours (or such other time period agreed by the parties) of receiving notification from the Designer that the Services are complete, the Client shall inspect the Project Site and inform the Designer of any issues or items outstanding.
- (b) Where the Designer provides the Client with any final choices required to be made for Completion, the Client shall be required to confirm their decisions within such time period specified in the **Design Proposal** or stipulated by the Designer. The Client acknowledges and agrees that any delays in Completion due to the Client may result in increased Fees and that the Designer may issue an invoice and provide the final documentation, with any modifications required by the Client to be made to any documents, including the Design Materials, or to the Services, following payment of such invoice.
- (c) The Client acknowledges that where any issues in connection with or ancillary to the Services are the result of third-party Works such issues shall be the responsibility of the relevant third-party contractor, and Completion may therefore occur before these issues are rectified.

## 4. THE DESIGN WORK

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### 4.1 Design Materials

- (a) The Client acknowledges and agrees that in accordance with the design process set out in the **Design Proposal** they are entitled to the number of revisions stipulated in the **Design Proposal** of the Design Work including concept drawings, and that any further revisions or changes required to be made to the Design Work will result in additional Fees if so provided in the **Design Proposal**.
- (b) The Client acknowledges and agrees that the Design Materials, including all sketches, illustrations and drawings created or provided by the Designer, are for proof-of-concept purposes only and as such are conceptual in nature, intended to set forth design intent and are not to be used for engineering, structural or construction purposes.
- (c) All technical drawings with accurate check measures, dimensions and size designations are subject to verification and specifications provided by licenced architects, draftspersons, licensed surveyors, engineers, carpenters, joiners, builders and/or other qualified tradespersons and registered building or design specialists. The Designer makes no guarantees or warranties in relation to any technical drawings, that any finished product will

- be identical to the Design Materials or in relation to any Works or finished construction project.
- (d) The Client acknowledges that the Design Materials will not include any design for any structural, heating, air-conditioning, plumbing, electrical, ventilation or other mechanical systems or any other specialist work that may be included in any Project for which a specialist registration or licence is required, and that additional design documentation and services may therefore be required from specialist registered or licenced builders, engineers and tradespersons for Works requiring such specialist work.
  - (e) The Designer may outsource and facilitate all or part of any architectural or drafting services required in connection with the Project on behalf of the Client to accompany the Designer's interior design plans and schedules if specified in the **Design Proposal**. Although the Designer will take any designs or plans for Works prepared by third parties including architects or draftspersons into consideration when preparing the Design Work and providing the Services, the Client is responsible for the final plans prepared by all third parties, including checking them prior to signing off, and for ensuring the Design Work is compatible with any such designs and plans and any Works.
  - (f) The Client acknowledges that they, and not the Designer, are responsible for obtaining any assessment or approval of issued plans, residential building approvals, waste management plans, survey reports, council reports, planning controls, council approvals, DA or CDC applications and any planning instruments, and/or lodging of application documentation required in connection with any Works, from licensed certifiers or appropriate experts, unless otherwise provided in the **Design Proposal**.
  - (g) The Designer will provide such cabinetry and joinery services (if any) specified in the **Design Proposal**. If cabinetry and joinery services are provided, they are limited to conceptual and aesthetic advice on furniture materials, finishes, colours and/or fabrics and concept design and providing specifications to and liaising with the cabinet maker or joiner, and do not include technical drawings, manufacturing, installing, refurbishing, restoring or repairing cabinets or joinery or any other specialist skills or trades outside of the scope of the Designer's expertise or for which a specialist licence or registration is required.
  - (h) Unless otherwise provided in the **Design Proposal** the Client is responsible for obtaining all design and technical drawings that are required for any cabinetry and joinery from a cabinet maker, joiner or other licensed expert (as applicable), and for ensuring that all cabinetry, joinery and other installations are installed by a licensed installer and that all appliances, fixtures, fittings, finishes and specifications are checked by a licensed joiner after all applicable room sizes at the Project Site are confirmed and the Design Work approved and signed off.
  - (i) The Client acknowledges and agrees that upon their acceptance of any cabinetry and joinery production drawings, there will be no further changes and the cabinet maker, joiner or other licensed expert (as applicable) and the Designer shall not accept any liability for any adaptations or changes subsequently required or made by the Client.

## 4.2 Consultations

- (a) The Designer may provide an initial Consultation, colour consultations, online Consultations and in person Consultations at the Project Site.
- (b) The Consultation will consist of such a time and for such Fee advised by the Designer at the time of booking, or in the Design Proposal, which may be subject upfront payment or additional Fees if the maximum time is exceeded.
- (c) The Client acknowledges and agrees in the context of a consultation all information provided by is provided in good faith from sources believed to be accurate and current, however the Designer does not make any representations or warranties that the information provided is comprehensive. Your reliance on our Services or the information provided is solely at your own risk, and we make no guarantees as to the suitability, outcome or results, it is your

responsibility to ensure you have made all the necessary enquiries and evaluations relevant to your particular circumstances, and any choice of products or services, or third-party recommendations or referrals.

### 4.3 Digital Services

- (a) Where the Designer provides Digital Services, the Client agrees:
  - (i) to be responsible for ensuring that they have the necessary computer hardware, software and internet required for the provision of the Services. The Designer accepts no liability with regards to transmission, delay or inability to access the Services with the Client's equipment, digital mediums or telecommunications operators;
  - (ii) to provide access to the Client System as reasonably required by the Designer to provide the Services;
  - (iii) to be responsible for providing all accurate and complete information and materials required by the Designer to provide the Services which may include but is not limited to images and photographs of the rooms and spaces for which they require Services; details, including photographs and dimensions of any furniture, artwork, decorative items or other goods they wish to be incorporated in the Design Materials for any rooms or spaces; a current scaled floorplan of the Project Site with accurate measurements and dimensions; and any other information required or requested by the Designer for the provision of the Services.
- (b) The Client acknowledges that the Designer has not attended the Project Site or any rooms or spaces within the Project Site for which the Services are being provided, and that the Designer is providing the Services in good faith based solely on the information provided by the Client. The Client further acknowledges and agrees that they are fully responsible for all errors, defects and faults (and rectification thereof) after approving and signing off the Design Materials and that the Designer shall be held harmless for relying on the accuracy of all information including measurements provided by or on behalf of the Client in preparing the Design Materials, and for their change of mind or incorrect choices with respect to any aspect of the Services or Design Materials.
- (c) The Designer will not be liable for any incorrect or incomplete information provided by or on behalf of the Client including with regards to floorplans or any restrictive access that may hinder the specifications for or sizing of any furniture, artwork, decorative items or other goods and any failure by the Client to consider or advise dimensions of doorways and stairways.
- (d) Any digital samples of products, finishes, fittings, fixtures and/or materials product images or colours provided by the Designer are a guide and indicative only and that they may not be a true or complete representation of the product.
- (e) Upon the Completion of the E-Services, the Client may purchase other Services or Additional Services from the Designer, subject to additional Fees. The Client agrees that this Agreement will apply to any further Services or Additional Services.

### 4.4 Decluttering Services

- (a) Where applicable to the Decluttering Services, the Client authorises the Designer to install permanent fittings or fixings or installations at the Project Site.
- (b) Unless it is stated in the **Design Proposal** or the Designer agrees otherwise, the Designer does not provide a removal service. All items or belongings to be removed from the Project Site are the responsibility of the Client. The Client must obtain third-party assistance to remove large or heavy items.
- (c) The Designer provides advice and encouragement in the decluttering and organisation

process; however, the Client remains ultimately responsible for determining which items and belongings are retained and which are discarded. The Client acknowledges and agrees that it is ultimately the Client's decision to retain or discard items and belongings, and the Designer accepts no responsibility for the actions the Client takes on the basis of advice or encouragement provided by the Designer at the time of consultation, during the organising or decluttering process, or at any subsequent or future date following any engagement or Consultation.

- (d) The Client acknowledges, understands and agrees that the Designer is not a valuer of art, antiques or any other items of special value or rarity, and Clients are advised to seek their own valuations of any items.

## 5. PRODUCT ORDERING & SOURCING

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### 5.1 Specifications and Shopping Lists

- (a) The Designer may provide samples of products, finishes and materials where possible however, due to the intrinsic or other variation of some products, these samples are indicative only and may not be a true or complete representation of them.
- (b) The Client acknowledges and agrees that:
  - (i) any product images or colours on any schedules or vision boards provided by the Designer are a guide and indicative only and that they may not be a true or complete representation of the specified product;
  - (ii) changes in natural and other materials used in the Project, such as wood, lacquer, glass, fabric or leather may change in appearance or dimension over time and/or following exposure to use or climatic conditions, and therefore there may be variations in tones or slight differences in their colour and/or appearance in the completed Project or any Works;
  - (iii) The Designer makes no warranties as to the suitability of any colours or products the Designer proposes or recommends as part of the Services and that it is in the Client's discretion whether to proceed with the purchase or use of any colour or product; and
  - (iv) The Designer is not liable if the Client does not wish to proceed with the use of any colour or product or determines after using it in any location that it is unsuitable for any reason whatsoever.
- (c) The Designer may provide the Client with a shopping list with a selection of goods (which may be comprised in one or more Product Quotes or provided separately) which may specify a selection of goods for purchase from specific suppliers. The Designer will take all reasonable steps to specify goods that the Designer believes are available at the time of provision of the shopping list but does not guarantee the availability of any goods in the shopping list. The Designer may suggest alternative goods (or suppliers) where goods in the shopping list are found to be unavailable or where the Client so requests subject to any applicable terms and conditions set out in the **Design Proposal** which may include payment of an additional Fee.
- (d) The Designer may include affiliate links in the shopping list and/or Product Quote provided by which may mean the Designer earns a commission if and when the Client clicks on or purchases goods or services via the affiliate links. The Client acknowledges and agrees that it remains their personal responsibility to investigate whether any affiliate offers are right for the Client and that they will not rely on any recommendation, reference or information provided by the Designer, and they must rely upon their own research in deciding whether to purchase any such goods or services.
- (e) The Client acknowledges and agrees the Designer is entitled to charge a procurement Fee or commissions on all outsourced services or items sourced by the Designer, on the cost of trade prices, on all purchases as specified in the shopping list or any Product Quote and any



- subsequent quotes, plus Fees for all postage, courier and other delivery, freight and storage whether included in the original shopping list or Product Quote or provided subsequently.
- (f) The Client acknowledges the Designer is not required to pass on, share or disclose any trade discounts to the Client and the Designer is entitled to do so at their sole discretion.
  - (g) The Designer does not represent or guarantee that the products will be free from allergens or defects. The Client agrees they are responsible for checking the labels of the products prior to use and consult a medical professional as to whether there may be any adverse reactions to the ingredients as stated on the product labels.

## 5.1 Quotes and Lead Times

- (a) The Designer may provide the Client with a selection of goods (which may be comprised in one or more Product Quotes or provided separately) which may specify goods for purchase from specific suppliers. The Designer will take all reasonable steps to specify goods that the Designer believes are available at the time of the quote, but cannot guarantee the availability of any goods. The Designer may suggest alternative goods (or suppliers) where goods in the Product Quote are found to be unavailable or where the Client so requests subject to any applicable terms and conditions set out in the **Design Proposal** which may include payment of an additional Fee.
- (b) Quotes for products are valid for the stipulated time and are based on quantities outlined. The Client acknowledges any change to products or delays in processing the order may affect pricing and products may need to be re-quoted.
- (c) All lead times are listed at the time of presenting the quotation and are as accurate as possible. Whilst the Designer endeavours to meet anticipated lead times the Designer will not be responsible for changes in lead times where delays occur due to circumstances outside their control or due to delays in placing orders or availability.
- (d) The Designer may include affiliate links in the Product Quote which may mean the Designer earns a commission on purchases goods or services via the affiliate links. The Client acknowledges and agrees that it remains their personal responsibility to investigate whether any affiliate offers are right for the Client and that they must rely upon their own research in deciding whether to purchase any such goods.

## 5.2 Orders and Purchases

- (a) The Client is responsible for placing all orders for purchases of goods listed in any shopping list provided by the Designer unless the Designer agrees to order or purchase some or all the goods on behalf of the Client under this Agreement.
- (b) The Designer may agree to place all or some orders for goods in connection with the Project, as may be set out in the shopping list and/or Product Quote provided by the Designer, with third-party suppliers on behalf of the Client, as provided in the **Design Proposal**.
- (c) All orders placed by the Designer will be confirmed by the receipt of the third-party supplier's invoice or by the Designer's invoice for payment which binds the Client to the terms of the order.
- (d) The Designer will not commit to the purchase of any goods from any third-party suppliers on behalf of the Client until the Client has paid to the Designer or third-party supplier, as applicable, the required upfront Deposit or full payment for the purchase and any delivery fees.
- (e) The Client agrees they are responsible for all Deposits (if applicable), costs and payments of all goods sourced from third-party suppliers and contractors by the Designer on their behalf, including invoices issued directly by the supplier.
- (f) The Client acknowledges that a failure to pay the Deposits or invoices for the purchase of goods may cause delay to the Project Timeline and Completion and/or have other consequences for which the Designer will not be liable.

- (g) The Client accepts all risk and responsibility for the goods upon placement of an order for the goods irrespective of whether the order has been placed by the Designer on their behalf and agrees that any orders that are not fulfilled are the responsibility of the supplier.
- (h) The Client acknowledges that warranties on all goods and services provided by third parties are determined by the supplier of the goods or services or in accordance with the standard statutory warranties applicable.
- (i) The Client is responsible for requesting any care instructions for goods ordered by the Designer on their behalf that have been omitted within twenty-four (24) hours of delivery of the goods and is liable for damage that is inconsistent with proper care instructions.
- (j) The Client acknowledges and agrees the Designer is not liable or responsible for any costs, expenses, loss or claims incurred by the Client as a result of, or in connection with, any third-party supplier becoming insolvent, bankrupt or going into liquidation, including any monies paid to them by the Client or by the Designer on behalf of the Client.
- (k) The Client acknowledges and agrees the Designer is entitled to charge a procurement Fee or commission on all outsourced services or items sourced by the Designer, on the cost of trade prices, on all purchases as specified in the shopping list or any Product Quote and any subsequent quotes, plus Fees for all postage, courier and other delivery, freight and storage whether included in the original shopping list or Product Quote or provided subsequently.
- (l) The Client acknowledges the Designer is not required to pass on, share or disclose any trade discounts to the Client and the Designer is entitled to do so at their sole discretion.
- (m) Where applicable to the Services, the Client authorises the Designer to install permanent fixings to hang artwork, mirrors and/or other items at the Project Site, which will remain after removal of the artwork, mirrors and/or items.

### 5.3 Cancellations of Orders, Repairs, Returns and Refunds

- (a) The Client agrees, subject to **clause 5.3(b)**, that all goods which have been ordered and delivered, including any custom furniture, cabinetry or joinery supplied by the Designer or any third-party supplier (if applicable), can only be returned, exchanged or refunded in accordance with the Designer's or third-party supplier's terms and conditions (and where applicable their discretion) which may include re-stocking fees, handling fees, loss of Deposit amounts or other losses, for which the Designer is not liable.
- (b) Any custom and made-to-order furniture, cabinetry or joinery or other goods, whether supplied by the Designer or any third-party supplier, which require on-site sighting of samples and sign off by the Client ahead of purchase are not eligible for cancellation or return.
- (c) In the case of faulty or damaged goods ordered by the Designer on behalf of the Client, the Client must notify the Designer or the supplier within twenty-four (24) hours via email with images where possible. If the Client requests the Designer's assistance in relation to such goods, the Designer will do all things reasonably required but the repair, replacement or refund of damaged goods is at the sole discretion of the supplier and any terms of warranty and the Designer cannot be held liable in these circumstances.
- (d) Services provided by the Designer in response to any request by the Client for assistance with the return of any goods, including for repair, replacement or refund, or cancellations of any orders for goods, may be subject to payment of additional Fees as provided in the **Design Proposal**.

### 5.4 Delivery

- (a) The Client agrees the Designer is entitled to charge Fees for any Services provided by the Designer with respect to delivery of purchased goods, and to pass on any freight charges, delivery costs, and duties or taxes on imported goods.

- (b) The Designer may agree, where requested by the Client, to deliver or arrange for direct delivery to the Project Site for goods ordered by the Designer on behalf of the Client, in which case the terms and conditions for such delivery and/or storage shall be as provided in the **Design Proposal**.
- (c) The Client is responsible for advising access limitations at the time of placing the order for goods as deliveries that cannot take place due to access limitations are the responsibility of the Client. If delivery is not possible at all due to access limitations (including if a goods lift is too small or stair access is too tight), the Client acknowledges that the goods may be taken back to the supplier and the Client may incur a return-to-warehouse delivery charge and/or a restocking fee.
- (d) Unless requested or noted, delivery will be quoted assuming ground floor site location or accessibility via a suitable goods lift. It is the responsibility of the Client to ensure that all relevant details are provided for delivery quotations and that, if applicable, goods lifts are ready to take delivery at the agreed delivery time.
- (e) If the Client is either not ready to accept the goods, or delays the receipt of the goods as per the scheduled delivery and installation dates, the Client acknowledges there may be additional costs incurred such as a return-to-warehouse delivery charge and a re-delivery charge, with charges subject to the supplier's terms.

## 6 **PAYMENT**

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### 6.1 **Fees and Expenses**

- (a) The Client agrees to pay the Designer:
  - (i) all other Fees with respect to the Services including any Travel Fees, Consultation Fees and Fees for any Additional Services and/or Additional Consultations; and
  - (ii) all expenses and other amounts payable for goods, services and other items, as provided under this Agreement and invoiced under **clause 6.3**.
  - (iii) Where Fees (including any Deposit, the full Fees for the Project or the Fees for any phase or stage of the Project), are required to be paid upfront or in advance, the Designer shall be under no obligation to commence all or the applicable Services until the required payment is received by the Designer.
- (b) The Client agrees that where Services (b) are charged on a time basis the applicable Hourly Rate applies unless otherwise specified in the **Design Proposal** or advised prior to the delivery of the Services by the Designer.
  - (i) The Designer may, at their sole and absolute discretion, waive the Fee for the Initial Consultation subject to the engagement of the Services under this Agreement.
  - (ii) The Client acknowledges that any Project total Fees, or phase, stage and other amounts outlined in the **Design Proposal**, unless specified as a fixed cost, are estimates only and may differ from the final amounts invoiced to the Client and/or the amounts required to pay for the Services. If Additional Services and/or further time are required to complete the Services pursuant to the Scope of Works, the Designer will notify the Client and provide them with an update of the estimated Fees.
  - (iii) The Client will pay or reimburse the Designer for all out-of-pocket expenses incurred from carrying out the Services with prior consent sought for expenses exceeding two hundred dollars (\$200.00) (individually and/or in the aggregate as applicable).
  - (iv) Where for any reason, the Designer is required by the Client to travel such kilometres or more from their studio or such other distance stipulated in the

- Design Proposal** as the distance/s for incurring a Travel Fee, in addition to any other Fees payable the Travel Fee shall be paid or reimbursed by the Client.
- (v) If the Client requires the Designer to travel interstate from their studio for any reason the Client shall be charged such Fees as provided in the **Design Proposal** and all applicable flight fares, accommodation, car hire and other travel costs and expenses shall be paid or reimbursed by the Client.

## 6.2 Goods and Services Tax

- (a) Unless otherwise specified, all Fees including procurement Fees, trade commissions and any other ancillary expenses are exclusive of GST, and where GST is applicable it will be applied as indicated in the invoice.
- (b) If GST is payable in respect of any goods or services provided under or in relation to this Agreement, the Client must pay to the Designer an amount equal to the GST payable on the goods or services (GST Amount). The GST Amount is payable by the Client in addition to, and at the same time as, any consideration for the goods or services.

## 6.3 Invoices

- (a) Invoices shall be issued at the completion of each stage or other basis referred to in the **Design Proposal** or otherwise determined by the Designer and may constitute payment of Fees and other amounts in advance or arrears via email.
- (b) The Client agrees to pay all correctly rendered invoices issued by the Designer within seven (7) days of the date of the invoice (or by such other due date stipulated or provided for in the invoice) including GST where applicable, and all subsequent invoices, inclusive of all procurement Fees and trade commissions payable and expenses incurred at that stage or time by EFT direct deposit to the Designer's bank account and/or as otherwise set out in the invoice. Subject to **clause 6.3**, the Client must pay all invoices in full without set-off or deduction.
- (c) If the Client disputes any invoice issued under this **clause 6.3**, the Client must notify the Designer of the amount in dispute and the reason for the dispute by the invoice due date and pay any amounts not in dispute until the dispute is resolved.
- (d) Where any invoice is not paid by the due date, the Designer may cease or suspend the provision of all or any Services. The Designer reserves the right to refuse Completion or delivery of any Services until past due balances are paid. The Designer shall not be obliged to release the Design Materials unless and until the Designer has received full payment of the Fees for the Project and all other expenses and amounts payable under this Agreement. The Designer may retain the Design Materials at any time as security until payment of all amounts due and owing have been paid and all just claims against the Client are satisfied.
- (e) The Designer is entitled to charge interest calculated on a daily basis on all amounts outstanding from the invoice due date until the date payment is made at the rate equivalent to the Cash Rate Target of the Reserve Bank of Australia as at the date of the invoice, and after sixty (60) days to increase such interest rate by up to five percent (5%). The Designer is also entitled to charge administration Fees for the Designer's time in seeking payment of outstanding amounts and to take action for recovery of the debt and to claim costs.

## 6.4 Refunds

- (a) The Designer reserves the right to refuse or grant refunds for the Services in accordance with the Australian Consumer Law under the *Competition and Consumer Act 2010* (Cth). Any requests by the Client for refunds must be detailed in writing and will only be considered when options for remedies or replacements have been exhausted.

- (b) Fixed fee services, or services which require upfront payment are non-refundable, regardless of whether the Client proceeds with all or some of the Services, unless the Services are cancelled by the Designer, in which case the Client will be entitled to a refund for the Services which have not been delivered in accordance with the Scope of Works.

## **7 CONFIDENTIAL INFORMATION AND PRIVACY**

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### **7.1 Obligations with Respect to Confidential Information**

A recipient of confidential information:

- (a) may use confidential information of the discloser only for the purposes of this Agreement;
- (b) must keep confidential all confidential information of the discloser except:
  - (i) for disclosure permitted under this **clause 7**; and
  - (ii) to the extent (if any) the recipient is required by law to disclose such confidential information; and
- (c) must destroy or return all confidential information immediately upon request.

### **7.2 Privacy**

The Designer agrees to comply with the *Privacy Act 1988* (Cth), all other applicable privacy laws and such other data protection laws as may be in force from time to time which regulate the collection, storage, use and disclosure of information that can identify individuals or make them reasonably identifiable (Personal Information) in relation to all Personal Information of the Client collected by the Designer, to the extent that the Designer is legally obligated to comply with these laws.

## **8 INTELLECTUAL PROPERTY**

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### **8.1 Ownership**

- (a) The Client acknowledges the Designer owns all intellectual property rights in the Design Materials.
- (b) Upon the Designer receiving full payment of the Fees for the Project and all other expenses and amounts payable under this Agreement and the Designer releasing the Design Materials, the Designer grants the Client a royalty-free, revocable, worldwide, non-exclusive licence to use the Design Materials strictly for the Approved Purpose and Project, but without any rights to grant a sub-licence, assign the licence or re-sell, share or commercially exploit the Design Materials.
- (c) The Client will attribute the Designer as the correct author of the Design Materials.

### **8.2 Media Consent and Releases**

The Client hereby acknowledges and agrees:

- (a) to authorise access for the Designer to the Project Site during and upon Completion of the Project and for such reasonable period following Completion, to document the Design Work;
- (b) the Designer is authorised to publish photographs and reviews of the Design Work and use it in print, online and digital, publications, platforms and mediums for marketing and promotion, and the Client agrees to release and hold harmless the Designer from any reasonable expectation of privacy or confidentiality (regardless if names and specific locations have been withheld) or from liability for any claims in connection with the foregoing and understands there is no financial compensation of any type; and
- (c) the Designer is responsible for any costs related to the photography and agrees to credit any relevant third parties as required.

### 8.3 Reviews and Testimonials

- (a) The Client agrees that prior to publishing a review or any comments online regarding the Designer, the Business or Services they will consider the potential implications under the *Competition and Consumer Act 2010* (Cth) and the *Defamation Act 2005* (Tas) of making false and/or misleading statements and the potential for a claim for damages and other remedies where a person's reputation has been harmed by the publication of defamatory matter.
- (b) The Client agrees that they are prohibited from publishing a review on any public forum if this Agreement has been terminated for breach and that they will directly raise any disputes or feedback with the Designer and acknowledges that such disputes and/or feedback may be subject to the obligations of confidentiality under **clause 7.1**.

## 9 LIABILITY

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### 9.1 Liability of the Designer

To the maximum extent permitted by law;

- (a) the Designer, its officers, employees, affiliates, agents and subcontractors shall not be liable, whether in contract, tort, equity, under statute or otherwise for any:
  - (i) loss or damage arising from, or in connection with the Services or the Project not being completed within the Project Timeline unless the delay is caused by the negligent act or omission of the Designer;
  - (ii) loss or damage loss arising from, or in connection with the Client's failure to provide Client Content or approve the Design Materials within a reasonable time, or failure to use any of the Services or for any other claim related in any way to the Client's use of or reliance on the Services or the Design Materials, platforms and/or content or designs or drawings of the Designer, including, but not limited to any errors or omissions or any loss or damage of any kind incurred as a result of the use of any content posted, transmitted or otherwise made available via the Services or any consequences which result from or relate to any alterations made by or on behalf of the Client by any third party to the approved and signed off Design Materials; and
  - (iii) loss of profit, revenue, goodwill, chance, contract or opportunity, special or punitive damages, and any other indirect or consequential loss howsoever arising under or in connection with this Agreement; and
- (b) the total liability of the Designer whether in contract, tort, equity, under statute or otherwise under or in connection with, this Agreement is limited to an amount equal to the Fees received by the Designer under this Agreement, and in any event shall not exceed the available proceeds of the professional indemnity and/or public liability insurance coverage of the Designer at the relevant time.

### 9.2 Client Indemnity

The Client indemnifies and must keep indemnified the Designer against all claims and losses suffered by the Designer arising out of any breach of this Agreement by the Client, any act or omission of the Client, any breach of the law by the Client, and for any claims against the Designer by third parties arising out of or in relation to this Agreement and the Project, except to the extent the claim or loss is directly caused or contributed to by a reckless or negligent act or omission of the Designer.

### 9.3 Warranty and Guaranty

The Client represents and warrants that all information, instructions and representations they have provided for the purposes of this Agreement are true, correct, accurate, current and complete.

### 9.4 Australian Consumer Law

Nothing in this Agreement is intended to limit any Australian Consumer Law guarantees or warranties that may apply to the Services and that cannot be excluded. If any provision of this Agreement is void under the Australian Consumer Law, then the Designer's liability is limited (at the Designer's election) to:

- (a) supplying the relevant Services again; or
- (b) the payment of the cost of having the Services supplied again by the Designer.

## 10 CANCELLATIONS OF CONSULTATIONS AND TERMINATION

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### 10.1 Cancellations of Consultations

The Client agrees that no refunds are provided for cancelled or missed Consultations and that if they cancel any Consultation within twenty-four (24) hours of the scheduled appointment time, the full amount of the Fees paid or payable for such Consultation may be retained or invoiced (as applicable) by the Designer at their sole discretion.

### 10.2 Termination on Notice

- (a) Either party may terminate this Agreement at any time by giving thirty (30) days written notice of termination. Where the Project is thirty (30) days or less, only fourteen (14) days' notice will be required.
- (b) If the Client terminates this Agreement under **clause 10.2(a)**, unless otherwise provided in the **Design Proposal**:
  - (i) the Designer shall retain any Fees paid in advance all Fees payable under this Agreement for all Services provided and work carried out up to and including the date of termination (or in the case of Services provided and invoiced in stages and/or phases for all Services provided or to be provided under any already commenced phase, stage) and all additional Fees, expenses and amounts payable under the terms of this Agreement, and shall otherwise repay any balance; and
  - (ii) the Client shall pay any invoice for payment for Services provided and work carried out up to and including the date of termination (or in the case of Services provided and invoiced in stages and/or phases for all Services provided or to be provided under any already commenced phase, stage or package) and any additional Fees, expenses and amounts payable under the terms of this Agreement if any Fees paid in advance are insufficient to cover them, and/or other Fees have been paid.
- (c) If the Designer terminates this Agreement under **clause 10.2(a)**, unless otherwise provided in the **Design Proposal**:
  - (i) the Designer shall be entitled to retain from any Fees paid in advance all Fees payable under this Agreement for all Services provided and work carried out up to and including the date of termination and all additional Fees, expenses and amounts payable under the terms of this Agreement, and shall otherwise repay any balance; and
  - (ii) the Client shall pay any invoice for payment for Services provided and work carried out up to and including the date of termination and any additional Fees,

expenses and amounts payable under the terms of this Agreement if any Fees paid in advance are insufficient to cover them, and/or other Fees have been paid.

- (d) If the Project is paused for more than sixty (60) days due to the Client placing the Project on hold, lack of clear communication from the Client or where three (3) or more unsuccessful communication attempts with the Client have been made by the Designer, the Designer shall have the right in their sole discretion to suspend the Services or immediately terminate this Agreement by written notice of suspension or termination (as applicable) to the Client and in the event of termination the provisions of **clauses 5.1(a)(i)** and **5.1(a)(ii)** shall apply. Any suspension may be lifted by the Designer resuming the Services.

### 10.3 Termination on Default

- (a) Without prejudice to any other rights or remedies a party may have under this Agreement or at law, a party may terminate this Agreement with written notice effective immediately or at such later time stipulated in the notice if:
  - (i) the other party commits a material breach of this Agreement which is capable of rectification or remedy and does not rectify or remedy that breach within seven (7) days of being requested by written notice to do so;
  - (ii) the other party commits a material breach of this Agreement that is incapable of rectification or remedy;
  - (iii) the other party is charged or convicted of a serious criminal offence, or any offence connected with theft, fraud or deception; or
  - (iv) a party is in jeopardy of becoming subject to, or has become subject to, any form of insolvency administration or threatens to cease or ceases to carry on business.
- (b) If the Designer terminates the Agreement under this clause, the same rights and obligations with respect to Fees, expenses and other amounts as outlined in **clause 10.2(b)** shall apply. If the Client terminates the Agreement under this clause, the same rights and obligations with respect to Fees, expenses and other amounts as outlined in **clause 10.2(c)** shall apply.

### 10.4 Consequences of Termination

- (a) If this Agreement is terminated the Client and the Designer will each use their respective best endeavours to reach an agreement and settlement on the most appropriate and efficient way of concluding the remaining aspects of the Project.
- (b) The Designer will not be liable for any loss, costs and/or expenses incurred or sustained by the Client as a result of the termination of this Agreement for any reason.
- (c) The termination or conclusion of this Agreement does not affect or effect any release of any accrued rights, obligations or remedies of a party in relation to events, acts or omissions that occurred prior to the termination or conclusion of this Agreement including any claim that either party may have against the other party.
- (d) Upon termination of this Agreement for any reason and at any time:
  - (i) the Client must pay to all applicable third parties, all amounts payable to them, for, or in connection with, orders for goods, services or any Works provided up to the date of termination within thirty (30) days; and
  - (ii) each party must on request of the other party, immediately destroy or return to the other party all confidential information and intellectual property of the other party.



## 11 DISPUTE RESOLUTION

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Each party must use their reasonable endeavours to resolve all disputes through negotiation. If the dispute cannot be resolved through negotiation between the parties within twenty-one (21) days of the dispute arising, either party may commence mediation or other proceedings.

## 12 GENERAL

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### 12.1 Severability

If any provision or part of this Agreement is void or unenforceable for any reason, then that provision or part will be severed from this Agreement and the rest of this Agreement shall be read as far as possible as if the severed provision or part had never existed.

### 12.2 Entire Agreement and Variation

The parties agree that this Agreement is the entire agreement between the Designer and the Client in respect of this arrangement and supersedes any other communication or understandings (whether written or oral) between the Designer and the Client in that regard. Any changes to this Agreement must be agreed in writing between the Designer and the Client prior to the changes coming into effect.

### 12.3 Governing Law

This Agreement is governed by, and all disputes relating to or arising in connection with this Agreement or the subject matter of this Agreement, shall be resolved in accordance with, the laws of the State of Tasmania, Australia, and the parties irrevocably agree to submit to the non-exclusive jurisdiction of the courts of Tasmania and the courts of appeal from those courts.

### 12.4 Survivorship

**Clauses 1, 2, 7, 8, 9, 12.3, this clause 12.4 and clause 12.5** survive any expiration or termination of this Agreement and will have effect for the benefit of the parties.

### 12.5 Precedence

In the event of any inconsistency, ambiguity or conflict between the documents comprising this Agreement, the order of precedence set out below shall apply to the extent of that inconsistency, ambiguity or conflict:

- (a) the **Design Proposal**;
- (b) the clauses of this Agreement; and
- (c) any schedules, annexures and attachments relating to this Agreement that are provided with this Agreement, or separately.

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