

TERMS AND CONDITIONS OF ENGAGEMENT

- Background**
- A. Measured is a Supplier of Services which include but are not limited to estimating, tender management, budgeting & forecasting, project advice and consulting.
- B. The Client wishes to engage Measured to provide Services.
- It is agreed as follows:**
- 1. Acceptance**
- (a) Subject to the parties executing an engagement agreement, this Agreement applies to all transactions between Measured and the Client relating to the provision of the Services.
- (b) The terms of this Agreement take precedence over any terms of trade contained in any document of the Client.
- (c) The Client will be deemed to have accepted these terms and conditions by:
- signing a job order form, quotation or proposal;
 - placing an Order via the Website;
 - placing an Order with Measured by telephone after receiving a copy of these terms and conditions;
 - contacting Measured and advising of acceptance; and
 - engaging Measured by any other means after receiving a copy of these terms and conditions.
- 2. Quotes**
- (a) Measured may provide the Client with a fee proposal detailing the scope of services to be provided ("Quote"). Any Quote issued by Measured is valid for sixty (60) days from the date of issue.
- (b) Following provision of a Quote to the Client, Measured is not obliged to commence work until the Quote has been accepted by the Client.
- (c) Measured reserves the right to amend any Quote before the work has commenced. As a condition of acceptance of a Quote, Measured may require the Client to pay a deposit as a part payment of the fees detailed in the Quote.
- (d) Measured has no obligation to provide any Services not included in the scope of services set out in the Quote.
- (e) The Client acknowledges that any additional Services or considerations which the Client may request (either before or after the date of the Quote), and which are outside of the scope of services described in the Quote, shall constitute a variation pursuant to clause 4.
- 3. Orders**
- (a) Unless otherwise agreed by Measured, every job Order by the Client for the provision of Services must be submitted:
- by email to the email address shown in a Quote; or
 - otherwise as reasonable directed by Measured, from time to time.
- (b) Measured may in its absolute discretion refuse to provide Services pursuant to an Order where:
- credit limits cannot be agreed upon or have been exceeded; or
 - payment for Services previously provided to the Client or any related corporation of the Client or to any other party who is, in the reasonable opinion of Measured, associated with the Client under the same or another supply contract, has not been received by Measured.
- (c) Where a job Order is cancelled, the Client indemnifies Measured against any expense or Losses incurred by Measured as a result of the cancellation.
- 4. Variations**
- The Client may request that the scope of Services to be provided to the Client be varied by providing a request in writing to Measured:
- any request for a variation must be agreed to in writing by Measured in order to have effect;
 - if the Client wishes to vary its requirements after a Quote has been prepared by Measured or after the placement of a job Order, Measured reserves the right to vary the cost of the Services to include any Additional Charge in respect of any extra costs incurred or additional work carried out due to the variation, in accordance with its then current charge rates; and
 - Measured has an automatic extension of time for the provision of the Services equal to the delay caused by the variation.
- 5. Additional Charges**
- The imposition of Additional Charges may occur as a result of:
- costs or delays incurred by Measured as a result of reliance on inadequate or incorrect information or material provided by the Client;
 - information or material supplied later than required by Measured in order for it to provide the Services within the specified time frame (if any); or
 - cancellation by the Client of an Order where cancellation results in costs or Loss to Measured.
- 6. Invoicing and payment**
- (a) Unless specified otherwise, all prices and amounts are shown in Quotes or invoices as exclusive of GST.
- (b) Where no Quote has been provided by Measured, the invoice amount for any work completed for the Client shall be calculated on a time-spent basis at the usual hourly rates of the relevant practitioner.
- (c) Measured may in its absolute discretion issue a tax invoice to the Client in any one or more of the following ways:
- prior to commencing the provision of the Services, for a deposit; or
 - upon completion of the Services or any time thereafter for the amount of the job Order, less any deposit paid.
- (d) The Client must pay any tax invoice issued by Measured by bank transfer or as otherwise agreed within the time frame set out in the tax invoice.
- (e) If any invoice is due but unpaid, Measured may withhold the provision of any further Services until overdue amounts are paid in full.
- (f) Measured may in its complete discretion apply any payment received from the Client to any amount owing by the Client to Measured.
- (g) The Client is not entitled to retain any money owing to Measured notwithstanding any default or alleged default by Measured of this Agreement. Nothing in this paragraph affects the Client's rights pursuant to a guarantee under the Australian Consumer Law.
- (h) The Client agrees to pay Measured on demand interest at the rate of 20% per annum on all overdue amounts owed by the Client to Measured, calculated daily, commencing from the payment due date shown in the tax invoice.
- (i) All costs and expenses associated with collecting overdue amounts, including (but not limited to) legal fees and internal costs and expenses of Measured, are to be paid by the Client as a debt due and payable under this Agreement.
- 7. GST**
- The Client and Measured agree to comply with their obligations in relation to Goods and Services Tax (GST) under the A New Tax System (Goods and Services Tax) Act 1999 and any other applicable legislation governing GST.
- 8. Warranty**
- (a) The Client warrants to Measured that any documentation provided by the client is the latest and then current version of that document, such documentation may include, but is not limited to: services drawings, specifications, schedules, appendices, and any other relevant information required for accurate pricing and scope of work.
- 9. Title and risk**
- (a) Property and title in products and Services supplied to the Client under this Agreement does not pass to the Client until all money (including money owing in respect of other transactions between Measured and the Client) due and payable to Measured by the Client has been fully paid.
- (b) Where Services are supplied by Measured to the Client without payment in full, the Client:
- is a bailee of the products created by the Services until property in them passes to the Client; and
 - agrees that Measured may repossess the product of any services if payment is not made prior to the due date shown on the invoice from Measured.
- (c) Notwithstanding that title in the services may not have passed, the risk of loss or damages to the Services and/or insurance responsibility for theft, damage or otherwise in respect of the Services will pass to the Client upon dispatch of the Services to the Client.
- 10. Intellectual Property Rights**
- (a) Unless specifically agreed in writing between Measured and the Client, all Intellectual Property Rights in any products or original works created by Measured on behalf of the Client vest in and remain the property of Measured.
- (b) Subject to payment of all invoices due in respect of the Services, Measured grants to the Client a perpetual, non-exclusive licence to use the works created or produced by Measured in connection with the provision of Services under this Agreement for the purposes contemplated by the Order.
- (c) Any use of Measured Intellectual Property is used in adherence to the Measured brand guidelines and must not be adjusted or reworked unless approved in writing by Measured.
- 11. Agency and Assignment**
- (a) The Client agrees that Measured may at any time appoint or engage an agent or subcontractor to perform an obligation of Measured arising out of or pursuant to this Agreement.
- (b) Measured has the right to assign and transfer to any person all or any of its title, estate, interest, benefit, rights, duties and obligations arising in, under or from this Agreement. The Client may not assign, or purport to assign, any of its obligations or rights under this Agreement without the prior written consent of Measured.
- 12. Advertising and Promotions**
- (a) The Client may not use or utilise any logo, image or advertising material of Measured without first obtaining prior written consent of Measured, including but not limited to content contained on Measured website, Instagram account, Facebook page, blog, content or other social media.
- 13. Default**
- (a) Each of the following occurrences constitutes an event of default:
- either party breaches or is alleged to have breached this Agreement for any reason (including, but not limited to, defaulting on any payment due under this Agreement) and fails to remedy that breach within seven (7) days of being given notice to do so;
 - the Client becomes Insolvent or
 - the Client ceases or threatens to cease conduct of its business in the normal manner.
- (b) Where an event of default by the Client occurs, Measured may:
- terminate this Agreement;
 - terminate any one or all Orders and credit arrangements (if any) with the Client; or
 - in accordance with this Agreement, repossess and re-sell any products delivered to the Client, the payment for which has not been received; or
 - (where applicable) all money paid by the Client on account of products or otherwise; and/or
 - enforce Measured's PPSR interest.
- (c) In addition to any action permitted to be taken by Measured under clause 16(b), on the occurrence of an event of default all invoices will become immediately due and payable.
- 14. Exclusions and limitation of liability**
- (a) Measured's liability (if any) arising from any breach of a warranty or any guarantee or warranty under the Australian Consumer Laws is limited to amount paid to Measured in respect of that specific project.
- (b) Under no circumstances is Measured liable or responsible in any way to the Client or any other person for any Loss, damages, costs, expenses or other Claims (including consequential damages and Loss of profits or Loss of revenues) as a result, direct or indirect, of any defect, deficiency or discrepancy in the Services. This includes their form, content and timeliness of deliveries, failure of performance, error, omission, defect, without limitation.
- (c) Any advice, recommendation, information, assistance or service given by Measured in relation to Services not part of the scope of works for a project, is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given. It is provided without any warranty or accuracy, appropriateness or reliability. Measured does not accept any liability or responsibility for any Loss suffered as a result of the Client's reliance on such advice, recommendation, information, assistance or service. To the fullest extent permissible at law, Measured is not liable for any Claim or damages (including direct, indirect, punitive, incidental, special, consequential damages or, damages for Loss of use, data or profits, arising out of or in any way connected with the provision of or failure to provide Services) or otherwise arising out of the provision of the Services, whether based on this Agreement, negligence, strict liability or otherwise.
- 15. Indemnity**
- (a) The Client indemnifies and keeps indemnified Measured, its servants and agents in respect of any Claim made or action commenced against Measured or, for which Measured is liable, in connection with any Loss arising from or incidental to the provision of Services, any Order or the subject matter of this Agreement.
- (b) Such indemnity includes, but is not limited to, any legal costs incurred by Measured in relation to meeting any Claim or any party/partly legal costs for which Measured is liable in connection with any such Claim or demand.
- (c) This provision remains in force after the termination of this Agreement.
- 16. Force majeure**
- (a) If circumstances beyond Measured's control prevent or hinder its provision of the Services, Measured is free from any obligation to provide the Services while those circumstances continue.
- (b) Measured may elect to terminate this Agreement or keep the Agreement on foot until such circumstances have ceased.
- 17. Director's Guarantee**
- In consideration of Measured agreeing to supply Services to the Client from time to time, the Guarantor guarantees to Measured the due and punctual payment of all monies payable by the Client to Measured under this Agreement and any Order and further agrees as follows:
- this guarantee is a continuing guarantee to Measured;
 - all dividends compositions and payments received by the Guarantor from the Client or from the Client's estate, whether in bankruptcy or otherwise, will be taken and applied by the Guarantor as payments without there being any deduction in respect of any Claim arising under this guarantee;
 - in order to give effect to this guarantee, the Guarantor declares that Measured is at liberty to act as though the Guarantor were the Client for the purposes of collecting payment of monies pursuant to this guarantee;
 - this guarantee is revocable at any time as to future transactions by sixty (60) days' notice to Measured in writing by the Guarantor;
 - if there is more than one Guarantor guaranteeing the obligations of the Client, the guarantee may be enforced against one or both Guarantors jointly or severally; and the Guarantor acknowledges having the opportunity to obtain independent legal advice prior to entering into the guarantee.
- 18. Dispute resolution**
- (a) If a dispute arises between the Client and Measured, the following procedure applies:
- a party may give another party a notice of the dispute identifying and providing details to the dispute (Dispute Notice);
 - following being served with a Dispute Notice, the parties must endeavour to resolve the dispute by negotiation;
 - unless otherwise agreed by the parties, if the dispute cannot be settled by negotiation between the parties within seven (7) days from issue of a Dispute Notice, the parties expressly agree to refer the dispute to mediation by such mediator as is agreed between the parties or in the absence of agreement, a mediator appointed by the Resolution Institute Ltd, or the successor in title of that organisation.
- (b) Notwithstanding the existence of a dispute (including the referral of the dispute to mediation), each party must continue to perform its obligations under this Agreement.
- (c) A party must not commence legal proceedings (except proceedings seeking interlocutory relief) in respect of a Dispute Notice unless the dispute remains unresolved twenty one (21) days after the issue of the Dispute Notice.
- (d) Nothing herein prejudices the right of a party to commence legal proceedings to enforce payment due under this Agreement.
- 19. Confidentiality and Privacy**
- (a) The Client agrees to hold all confidential information in strict confidence and not disclose it to any third parties. The Client agrees to take all reasonable measures to prevent disclosure or misuse of such confidential information in order to prevent it from falling into the public domain or the possession of persons other than those persons authorised to have such information.
- (b) Except as required by law, each party must treat as confidential all information relating to the other party, this Agreement and all Orders and must do all things necessary to maintain the confidentiality of such information and incidental for the proper performance of obligations of confidentiality under this Agreement.
- (c) Measured may disclose Personal Information to suppliers, agents and/or contractors who may need the information in order to provide Measured with supplies or services in order that Measured may better perform its functions and activities in connection with the provision of the Services.
- (d) Where information contains Personal Information each party agrees to:
- comply with the provisions of the Privacy Act;
 - use or collect the Personal Information for the sole purpose of supplying the Services; and
 - protect the Personal Information from misuse and unauthorised access or disclosure.
- (e) The parties agree that any breach of the obligations in this clause may cause the other party to incur damage and expense, which shall be recoverable against the breaching party.
- 20. Relationship Between Parties**
- (a) Nothing in this Agreement:
- constitutes any partnership, joint venture, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in this Agreement; or
 - except as expressly provided, makes a party an agent of another party for any purpose.
- (b) A party cannot in any way or for any purpose:
- bind another party; or
 - contract in the name of another party.
- 21. Further Assurances**
- Each party must promptly execute all Documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this Agreement.
- Credit Check**
- The Client authorises Measured to obtain a credit check regarding the Client. Measured may give personal and other information about the Client to third parties as may be required in response to credit inquiries and for the purposes of deciding whether to extend credit to the Client.
- Notices**
- (a) A notice or other communication including but not limited to any request, demand, consent or approval, connected with this Agreement has no effect unless it is legibly written in English.
- (b) The notice may be sent by pre-paid post to the address of the addressee or the addressee's email address set out in this Agreement, or an alternate address number or email as notified in writing by a party.
- (c) For the purposes of this clause, the email addresses for service of notices on the parties are:
- Measured: info@measuredprojects.com.au;
 - Client: the address shown in the Order.
- Amendment**
- This Agreement may only be amended if such amendment is in writing signed by each party.
- Severability**
- A clause or part of a clause in this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining clauses or parts of the clause continue in force.
- Governing Law and Jurisdiction**
- (a) This Agreement is governed by the laws of Victoria.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria at Melbourne.
- Warranties by Parties**
- Each of the parties to this Agreement warrants to the other that:
- they have full power, right and authority and liberty to enter into this Agreement and to perform all of their respective duties and obligations under this Agreement; and
 - the person executing this Agreement has full power and authority to enter and bind that party to this Agreement.
- Background**
- The parties acknowledge and agree that the statements in the 'Background' section of this Agreement are true and correct and form part of the terms of this Agreement.
- Entire Agreement**
- Subject to the parties executing a later Agreement for Services, this Agreement constitutes the sole and entire Agreement between the parties and a warranty, representation, guarantee or other term or condition of any nature not contained or recorded in this Agreement is of no force or effect.
- Definitions**
- Additional Charge** means:
- fees or charges for additional work performed at the Client's request or reasonably required as a result of the Client's request or conduct, calculated in accordance with Measured's then current prices; and
 - expenses incurred by Measured, at the Client's request or reasonably required as a result of the Client's conduct.
- Agreement** means these terms and conditions and includes the contents of any applicable Quote or Order.
- Australian Consumer Law** means the *Competition and Consumer Act 2010*.
- Business Day** means a day that is not a Saturday, Sunday or public holiday in Victoria.
- Claim** means any Claim, right of action or demand (or similar legal entitlement) including at law, in tort (including negligence), under statute, in equity, under contract or for any other legal remedy.
- Client** means the person or entity shown on a Quote or Order and includes the Client's agents and permitted assignees.
- Documents** includes information stored by electronic and other means.
- Intellectual Property Rights** means Intellectual Property Rights at any time protected by statute or common law, including copyright, trademarks, patents and registered designs.
- Insolvent** means:
- for a person, commits an act of bankruptcy, is declared bankrupt or Insolvent, or is otherwise unable to pay his or her debts as and when they fall due;
 - for a corporation, is in liquidation, provisional liquidation, under administration or Insolvent (each as defined in the Corporations Act 2001);
 - for a corporation, has entered a scheme of arrangement (other than for the purpose of restructuring); or
 - for a corporation, is taken, under the Corporations Act 2001, to have failed to comply with a statutory demand.
- Loss** includes, but is not limited to, costs (including party to party legal costs and Measured's legal costs), expenses, lost profits, award of damages, personal injury and property damage.
- Measured** means Pty Ltd ACN 664 961 871 (ABN 50664961871).
- Order** means an Order for Services placed by the Client to purchase Services from Measured as varied in writing from time to time by the parties.
- Purchase Order** means the Purchase Order form as nominated by Measured from time to time for the Client to place Orders with Measured.
- Personal Information** has the meaning given to that term in the Privacy Act.
- Privacy Act** means the *Privacy Act 1988 (Cth)*.
- Services** means any services to the Client supplied by Measured and includes the Services described in each Order.
- PPS Law** means:
- the Personal Property Security Act 2009 (Cth) (PPS Act) and any regulation made at any time under the PPS Act (each as amended from time to time); and
 - any amendment made at any time to any other legislation as a consequence of a PPS Law.
- Quote** means a written description of the Services to be provided, an estimate of Measured's charges for the performance of the required work and an estimate of the time frame for the performance of the work.
- Website** means the Website of Measured, being www.measuredprojects.com.au, or such other Website as nominated by Measured.
- Interpretation**
- In this Agreement, unless the context otherwise requires:
- a reference to writing includes email and other communication established through Measured's Website (if any);
 - the singular includes the plural and vice versa;
 - a reference to a clause or paragraph is a reference to a clause or paragraph of this Agreement;
 - a reference to a party includes that party's executors, administrators, successors and permitted assigns;
 - where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
 - all indemnities given under this Agreement are continuing in nature and survive the termination of this Agreement;
 - headings are for ease of reference only and do not affect the meaning or interpretation of this Agreement; and
 - if the date on which any act, matter or thing is to be done falls on a day which is not a Business Day, that act, matter or thing:
 - if it involves a payment other than a payment which is due on demand must be done on the preceding Business Day; and
 - in all other cases, must be done on the next Business Day.