

## Standard Terms of Business

This document sets out Blue Giraffe Studio's Standard Terms of Business.

It outlines the respective responsibilities, rights and obligations and puts our relationship on a well-defined and solid commercial path.

### 1. Introduction

- 1.1 These Terms apply to the delivery of the Services by us to you and document our respective responsibilities, rights and obligations pursuant to the Engagement Letter.
- 1.2 If there is any inconsistency between these Terms and the Engagement Letter, the Engagement Letter shall prevail to the extent of the inconsistency.
- 1.3 Our Services exclude the provision of legal and / or construction advice.
- 1.4 Any work already performed in connection with the Services before the date of this Agreement shall be governed by these Terms.
- 1.5 You can accept this Agreement by signing the copy of the Engagement Letter where noted and returning it to us, or by continuing to instruct us in relation to the Services.
- 1.6 This Agreement contains the entire understanding between you and us in relation to the delivery of the Services and supersedes any previous agreements, understandings or arrangements (whether written or oral) in respect of the Services. Any change to this Agreement will not be effective unless it is in writing and approved by an authorised representative of both you and us.

### 2. Your Responsibilities

- 2.1 You shall promptly provide us or any Assisting Party with;
  - (a) all relevant information; and
  - (b) access to the site,as are reasonably required for the proper and timely provision of the Services.  
  
You shall bring to our attention any changes to the information originally provided to us prior to us providing our advice or Deliverable to you.
- 2.2 In relation to any information or equipment provided by you or on your behalf, you warrant that you have given all necessary notifications and obtained all necessary consents and licenses to disclose that information to us or for us to use the equipment. You warrant that our use of any information or equipment provided by you or on your behalf in connection with the Services shall not infringe the property rights, Intellectual Property Rights or privacy rights of any third party.
- 2.3 You are responsible for;
  - (a) the management, conduct and operation of your business, interests and affairs;
  - (b) compliance with your regulatory obligations;
  - (c) deciding how you use, choosing to what extent you wish to rely upon, and / or the implementation of advice or recommendations in the Deliverable; and
  - (d) the delivery, achievement or realisation of any benefits directly or indirectly related to the Services.

### 3. Our Services

- 3.1 Unless otherwise specified in the Engagement Letter, any timetable for the provision of the Services is indicative only.
- 3.2 Unless otherwise specified in the Engagement Letter, the Services have not been undertaken in accordance with any auditing, review or assurance standards.
- 3.3 The use of the terms “audit” and “review” in the Engagement Letter or any Deliverable is not intended to convey that our Services will be, or have been, conducted in accordance with any auditing, review or assurance standards unless otherwise specified in the Engagement Letter.
- 3.4 Information provided by you or on your behalf to, or which is otherwise known by, our partners or staff who are not engaged in the provision of the Services shall not be deemed to have been made available to us or any Assisting Party in the provision of the Services.
- 3.5 We shall rely upon the truth, accuracy and completeness of any information provided or made available to us in connection with the Services without independently verifying it.
- 3.6 Any advice, recommendation, information or Deliverable provided by us to you is for your sole use and benefit. Unless required by law to do so, you shall not provide or make it available to any third party or use our name, logo or trademarks in any marketing, promotional material or other publication, without our prior written consent.
- 3.7 If we provide any document to you and changes are made to that document by you, we are not responsible for any loss caused by the changes unless we have approved them.
- 3.8 Unless otherwise agreed with you in writing, we shall not update or revise our advice or Deliverable as a result of new information, legislative change or any other event occurring after the Effective Date.
- 3.9 We may destroy our files, including information and documents provided by you, at any time seven (7) years after the date of our final bill to you in relation to the Services, unless we are aware of any legal proceedings that may be commenced in relation to which the file or any documents in it may be required or unless otherwise required by law. You should advise us in writing if you would like to make other arrangements.

### 4. Our Fees

- 4.1 You agree to pay our Fees and Expenses on or before the Due Date.
- 4.2 If our Fees are based on the time spent by us and charged at hourly rates, we shall notify you of any change to our hourly rates which affects this Agreement.
- 4.3 Any Expenses incurred shall be charged to you in addition to our Fees.
- 4.4 We shall determine any GST payable on our supply of the Services to you. You shall pay us an additional amount on account of any GST for which we are liable as a result of the supply of the Services to you unless the amount payable by you is stated to be inclusive of GST (if applicable).
- 4.5 Where we have been engaged by more than one person or entity, each engaging person or entity is jointly and severally liable for the payment of our Fees and Expenses.
- 4.6 If we comply with any Information Request, you shall;
- be charged fees based on the time spent by us complying with the Information Request calculated at the then applicable hourly rates;
  - be charged any Expenses incurred by us in complying with the Information Request; and
  - promptly cooperate with us, including providing any necessary consent, to the extent it is necessary for us to comply with the Information Request.

## 5. Handling Information

- 5.1 In the course of delivering the Services, either party may disclose Confidential Information to the other and the recipient of such information shall keep it confidential except as provided for in these Terms.
- 5.2 A party is not required to keep Confidential Information confidential;
- (a) where disclosure is expressly permitted under this Agreement;
  - (b) to the extent either party is bound to comply with any law, or;
  - (c) where confidential information has entered the public domain other than as result of a breach of this Agreement.
- 5.3 We can disclose your Confidential Information;
- (a) to any Assisting Party;
  - (b) to our insurers, legal or other professional advisers, financiers or auditors; or
  - (c) for internal or external quality assurance and risk management purposes.
- 5.4 Our privacy policy is available on request. You agree that we may collect, hold, use and disclose Personal Information as set out in our privacy policy.
- 5.5 You agree that information relating to you or that you provide to us, including Confidential Information and Personal Information, may be transferred or disclosed to, or stored and accessed by, an Assisting Party or other third party service provider located within Australia or outside Australia.
- 5.6 We may for Business Purposes refer to, use, develop or share within Blue Giraffe Studio Confidential Information and Personal Information which may include;
- (a) your name, contact details and logo;
  - (b) a description of the Services; and
  - (c) knowledge, experience and skills of general application gained through the provision of the Services.
- 5.7 You agree and warrant that you have provided all necessary notifications for, and obtained all necessary consents to, the disclosure and use of any Personal Information or Confidential Information by us as contemplated by this clause 5 and our privacy policy.

## 6. Work Papers and Intellectual Property Rights

- 6.1 We own our Work Papers and the Intellectual Property Rights in the Deliverable.
- 6.2 We grant to you a non-exclusive, non-transferable, royalty free licence to use our Intellectual Property Rights in the Deliverable for any use or purpose set out in the Engagement Letter or as otherwise agreed by us in writing.
- 6.3 This Agreement does not affect the ownership of your Intellectual Property Rights or Confidential Information.

## 7. Working with You and Other Parties

- 7.1 We may deliver services to a Competing Party. If we determine that the provision of services to a Competing Party gives rise to a specific and direct conflict of interest, we shall put in place appropriate ethical dividers.
- 7.2 We may engage Assisting Parties to assist in the provision of the Services.

7.3 Where we engage an Assisting Party;

- (a) we shall require them to comply with our obligations under this Agreement to the extent reasonably necessary to provide us with the agreed assistance;
- (b) we may share Confidential Information or Personal Information with them; and
- (c) you shall provide the same access to those Assisting Parties as is required to be provided to us under clause 2.1.

## 8. Liability

- 8.1 You agree, subject to Clause 8.3 that, to the extent permitted by law, our liability for any Loss, including without limitation liability for any negligent act or omission by us, shall be limited to an amount equal to one (1) times the reasonable charge for the Services.
- 8.2 To the extent permitted by law, we exclude all liability to you for any indirect or consequential loss including without limitation loss of profits or revenue, business interruption or loss of data. For the purposes of clarity, this clause does not exclude liability for direct losses arising from any negligent act or omission by us which may include loss of profits or revenue, business interruption or loss of data. Such losses are governed by the operation of clause 8.1.
- 8.3 If we are liable for a breach of any consumer guarantee applied by the ACL to the provision of the Services (except where the Services are of a kind ordinarily acquired for personal, domestic or household use or consumption), our liability shall be limited, as provided under section 64A of the ACL, to supply of the Services again or payment of the cost of having the Services supplied again. This clause does not exclude, restrict or modify any right of remedy you may be entitled to under the ACL.
- 8.4 Our total aggregate liability in relation to the provision of the Services is limited in accordance with this clause 8.
- 8.5 You agree not to bring any Claim (including in negligence) against any of our employees personally in connection with the Services. You agree that each of our employees may rely on this clause as if they were a party to this Agreement.

## 9. Termination of Agreement and suspension of Services

- 9.1 Either party may terminate this Agreement immediately in whole or in part by written notice to the other if;
- (a) the other commits a material breach of a provision of this Agreement and does not remedy such material breach within fourteen (14) days of the date on which it receives written notice identifying the breach and requesting that it be remedied;
  - (b) the other becomes insolvent; or
  - (c) the Services are suspended under clause 9.5 for more than twenty (21) days.
- 9.2 We may terminate this Agreement immediately by giving you written notice if, in our reasonable opinion, the continued provision of the Services by us would;
- (a) breach any applicable law, rule, regulation or professional standard;
  - (b) bring our reputation into disrepute;
  - (c) prejudice our ability to comply with applicable independence requirement; or
  - (d) expose individuals providing the Services to unreasonable physical or personal risk.
- 9.3 Where you have a right to terminate this Agreement and we have been engaged by more than one person or entity, termination will only be effective if all parties contracting with us have consented to the termination.
- 9.4 You agree to pay our Fees and Expenses incurred up to the date of termination of this Agreement.

9.5 We may suspend the provision of the Services;

- (a) in the event of a Dispute with you;
- (b) where our Fees are not paid by the Due Date; or
- (c) where, after a reasonable request, you do not provide or make available to us information or personnel necessary for us to perform the Services,

until the Dispute is resolved, the Fees are paid, or the personnel are made available or the information is provided.

## 10. Complaint Handling

10.1 If at any time you wish to discuss the Services or if you have a complaint about them, you are invited to contact our office. We will investigate any complaint promptly and do what we can to resolve the difficulties.

## 11. Dispute Resolution

11.1 Nothing in this clause 11 shall prevent either party from instituting court proceedings limited to the determination of an application for Urgent Relief.

11.2 If a Dispute between you and us arises, before commencing a proceeding in respect of a Dispute;

- (a) the person raising the Dispute shall provide the other party with a Dispute Document which both parties acknowledge and agree is not a notice of arbitration; and
- (b) the parties shall engage in confidential senior level negotiations within fourteen (14) days of provision of the Dispute Document with a view to resolving the Dispute; and
- (c) should such negotiations not be successful in resolving the Dispute within a further fourteen (14) days, you agree to participate in mediation as soon as is practicable.

11.3 To the extent permitted by law this clause 11 will apply notwithstanding any other legislative dispute resolution procedure.

## 12. Regulatory

12.1 In providing the Services, we shall comply with applicable legislation, rules and regulations that prohibit public and private corruption.

## 13. Governing Law and Jurisdiction

13.1 This Agreement is governed by the law in force in Queensland, Australia.

13.2 Without limiting the application of clause 11, each party unconditionally submits to the exclusive jurisdiction of the courts of Queensland, Australia, and courts competent to hear appeals from those courts.

## 14. Miscellaneous

14.1 This Agreement does not create a fiduciary relationship or relationship of employment, agency or partnership between the parties unless such a relationship is expressly created by law.

- 14.2 The obligations in clauses 1, 2.2, 2.3, 3.6, 3.7, 3.9, 4, 5, 6, 7, 8, 10, 11, 13, 14 are continuing obligations and those clauses and the Definitions in clause 15 survive this Agreement's rescission, termination, completion or expiry.
- 14.3 If any provision of this Agreement is, or becomes, unenforceable, illegal or invalid for any reason, the relevant provision is to be deemed to be modified to the extent necessary to remedy such unenforceability, illegality or invalidity or if this is not possible then such provision must be severed from this Agreement, without affecting the enforceability, legality or validity or any other provision of this Agreement.
- 14.4 If a party's performance of this Agreement is prevented or restricted by reason of Force Majeure, then that party is, for the period in which the Force Majeure operates and only to the extent they are prevented or restricted at that time, excused from their obligation to perform the Agreement, any obligation to avoid or remove the causes of non-performance and any obligation that required performance within a previously agreed time frame.
- 14.5 A power, remedy or right arising from any provision of this Agreement can only be waived, qualified, restricted, modified or amended specifically in writing by the party with that power, remedy or right.
- 14.6 A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.

## 15. Definitions

The following words and phrases used in these Terms have the meanings set out in this clause;

**ACL** means the Australian Consumer Law that is schedule 2 to the *Competition and Consumer Act 2010 (Cth)*.

**Agreement** means these Terms and the Engagement Letter, including any other annexure to the Engagement Letter.

**Assisting Party(ies)** means any party that is engaged to assist with the provision of the Services, other than the parties to the Engagement Letter.

**Business Purposes** means:

- (a) providing the Services or any other services to you or other clients of Blue Giraffe Studio;
- (b) communicating with you;
- (c) tendering, promotional, marketing and publicity purposes including photography;
- (d) to enhance and facilitate the delivery of services to clients;
- (e) quality assurance and risk management purposes;
- (f) to enable other clients to be aware of the nature of services we have performed; and
- (g) in connection with thought leadership projects.

**Claim** includes any claim or liability of any kind (including one which is prospective or contingent and one the amount of which is not ascertained) arising from or connected with the Services and costs (whether or not the subject of a court order).

**Competing Party** means any person or entity including without limitation an individual, partnership, company, body corporate, joint venture, trustee, state or federal government department or any regulatory or disciplinary body or tribunal;

- (a) who may be in competition with you or a related body corporate (as defined in the *Corporations Act 2011 (Cth)*); or
- (b) who may be involved as a bidder, vendor, financier, regulator, government stakeholder or other interested party in the same or related matter we have been retained to provide the Services to you.

**Concept Design** means one (1) design provided to You which seeks to respond to the central themes relating to functional zoning, architectural space, building form and envelope. The Concept Design will then be discussed with You to allow for any amendments prior to the Final Concept Design being issued.

**Confidential Information** means any information in any form whatsoever of a technical, business, corporate or financial nature disclosed by one party to the other;

- (a) that has been marked as confidential;
- (b) whose confidential nature has been made known by the disclosing party to the recipient; or
- (c) which due to its character or nature, a reasonable person in the circumstances would treat as confidential.

**Blue Giraffe Studio** means the Services provider.

**Deliverable(s)** means the advice or any or all engagement deliverables, whether in draft or final form, provided or required to be provided to you as part of the Services.

**Dispute** means any dispute, controversy or Claim arising out of, relating to or connected with this Agreement (including any question regarding its existence, validity or termination), or the Services.

**Dispute Document** means a confidential document marked "Confidential: Dispute Document" that sets out all of the issues that are, or may be, in dispute and offers to discuss them.

**Due Date** means the day which is 14 days from the date of issue of any invoice for the provision of the Services.

**Effective Date** means:

- (a) where the advice or Deliverable specifies that it is based on information provided or made available to us up to a specified date, then that date; or
- (b) the date of the advice or Deliverable.

**Engagement Letter** means the letter incorporating these Terms by reference which records the details of the engagement including the scope, timing and fees.

**Expenses** means any actual and reasonable out-of-pocket costs incurred by us in the delivery of the Services or in complying with an Information Request.

**Fees** means the amount payable to us for performing the Services as detailed in our Engagement Letter.

**Final Concept Design** means the plan submitted to you following the Concept Design.

**Force Majeure** means fire, storm, flood, earthquake, war, riot, civil disturbance, labour dispute, transportation embargo, law, order, or directive of any government in matters relating to this Agreement, or any other Act or condition beyond the reasonable control of a party.

**GST** means the goods and service tax as defined in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

**Information Request** means, other than where a request is made in respect of a claim or regulatory action against us, any request that we produce documents, provide information or give evidence in relation to the Services as required by any applicable law or by reason of any judicial, regulatory, professional or administrative process.

**Intellectual Property Rights** means all and any patents, patent applications, trademarks, service marks, trade names, registered designs, unregistered design rights, copyrights, know how, trade secrets, domain names, internet addresses, right in Confidential Information, and all and any other intellectual property rights, whether registered or unregistered, and including all applications and rights to apply for any of the same now or in the future.

**Loss** means any loss including any liability, cost, expense (including legal costs on a full indemnity basis), claim, proceeding, action, demand or damage suffered by you in connection with the Services.

**Personal Information** has the meaning given to that term in the *Privacy Act 1988 (Cth)*.

**Services** means the services to be provided by us under the Engagement Letter including but not limited to any Deliverable.

**Terms** means these Terms and Conditions of Business.

**Urgent Relief** means urgent injunctive, interlocutory or declaratory relief in respect of a Dispute or the enforcement of a payment due under the Agreement.

**Us or we (are derivatives)** means the Blue Giraffe Studio contracting party as identified in the Engagement Letter.

**Work Papers** means our internal working documents produced in the performance of the Services, which may contain copies of, extracts from or references to your Confidential Information or Personal Information.

**You (and derivatives)** means the person and / or entity to which the Engagement Letter is addressed.