

**RM SURVEYS SERVICES PTY LTD**  
**TERMS OF TRADE**

## **1 FORMATION OF CONTRACT**

A Contract will be formed when:

- 1.1 RM Surveys issues a Proposal to the Client and the Client:
  - (a) signs and returns the Proposal; or
  - (b) submits a Purchase Order to RM Surveys in terms which are consistent with the Proposal;  
or
  - (c) otherwise indicates in writing or verbally that the Proposal is accepted; and
- 1.2 RM Surveys issues a Sales Order.

## **2 PROJECT TEAM**

- 2.1 The choice of staff assigned to deliver the Scope of Works is in the absolute discretion of RM Surveys.
- 2.2 The staff assigned may be employees or contractors and may change from time to time based on operational requirements of RM Survey's business, staff leave, and availability and skill sets required to deliver the Scope of Works accurately and on time.

## **3 HOURS OF WORK**

- 3.1 RM Surveys will carry out the work between 6.00am and 6.00pm Monday to Friday excluding public holidays.
- 3.2 Where required, RM Surveys will seek client approval to work outside of those hours.
- 3.3 Where a Variation requires RM Surveys to work outside those hours, it will be dealt with under clause 6.

## **4 CLIENT OBLIGATIONS**

### **4.1 Access to Site**

- (a) The Client shall provide RM Surveys with access to the Site where required.
- (b) The Client warrants that it has:
  - (i) legal authority to grant RM Surveys with access to the Site; and
  - (ii) obtained all council and governmental approvals for RM Surveys to enter onto the Site to facilitate its delivery of the Scope of Work.
- (c) The Client acknowledges that RM Surveys has set its Fee based on full and unhindered access to the site. If access problems cause any delays to delivery of the Scope of Work, RM Surveys may initiate a Variation.

### **4.2 Access to Work Location**

- (a) The Client shall ensure that RM Surveys has unimpeded access to the Work Location.
- (b) RM Surveys is not liable for any claims based on delays caused by inability to effectively access the Work Location.

### **4.3 Traffic Management**

- (a) If:
  - (i) the Site is situated on a public road or public access area; or
  - (ii) the Site is situated adjacent to a public road or public access area where work may be carried out by RM Surveys on or near to that public road or public access area,the Client shall, at the Client's own cost, provide RM Surveys with traffic management operators and services based on a plan which has been approved by RM Surveys.
- (b) The Client shall be responsible for publishing any advertisements or notices which are required by reason of the traffic management services required under clause 4.3(a) above.
- (c) The Client may request that RM Surveys provide the necessary traffic management operators and services which shall constitute a Variation to the Contract and the cost of supplying the traffic management operators and services shall be borne solely by the

Client.

#### 4.4 **Safe Work Site**

- (a) The Client warrants to RM Surveys that:
  - (i) there are no hazards on the Site or near to the Site where RM Surveys is required to operate;
  - (ii) the Site complies with all occupational health and safety laws and requirements.
- (b) The Client Acknowledges that RM Surveys has set its Fee based on the Client warranties in clause 4.4(a)(i) and 4.4(a)(ii) and that if breach of either of those warranties causes any delays to delivery of the Scope of Work, RM Surveys may initiate a Variation.

#### 4.5 **Client Supplies**

The Client is responsible for supplying task lighting, scaffolding, stairs and like equipment at the Work Location. If the Client requires RM Surveys to supply any of these items, RM Surveys may initiate a Variation to the Scope of Works.

#### 4.6 **Instructions**

The Client shall provide any information or instructions which RM Surveys requires in order to deliver the Scope of Works upon request.

#### 4.7 **Breach Of Client's Obligations**

- (a) If the Client breaches any of its obligations under clause 4.1 to clause 4.6 above, RM Surveys may suspend the Work until such time as the Client rectifies the default and the completion date for delivery of the Scope of Work shall be extended by a period being the greater of
  - (i) the period of delay caused by the Client's default; and
  - (ii) 5 business days.

### **5 CLIENT INITIATED VARIATIONS**

#### 5.1 **Request For Variation**

- (a) If the Client requires a change to the Scope of Works which RM Surveys considers is a Variation Request, then the balance of this clause will apply.
- (b) Within 5 days of receipt of a Variation Request RM Surveys shall in writing:
  - (i) Issues a Sales Order for the Variation Request; or
  - (ii) subject to clause 5.1(c), reject the Variation Request in which case the Contract (as amended by prior accepted variations) shall remain on foot.
- (c) Any failure by RM Surveys to issue a Sales Order in accordance with clause 5.1(b)(i) shall be deemed a rejection of the Variation Request without the need for writing.
- (d) The Client is deemed to agree with the terms of a Sales Order issued under this clause unless they withdraw the Variation Request in writing within 3 business days of receipt of the Sales Order.

#### 5.2 **Suspension of Work**

If, in RM Surveys' opinion, a Variation Request will materially change its works program, RM Surveys may suspend the work until the Variation Request is resolved and the date for delivery of the Scope of Works shall be extended by a period being the greater of:

- (a) the period of delay caused by the Client's variation; and
- (b) 5 business days.

#### 5.3 **Payment Of Costs of Variation**

- (a) If the Client's Variation Request results in an increase to the Fee, RM Surveys may demand the upfront payment of the amount of the Fee increase.
- (b) If the Client fails to pay the amount of the Fee increase, RM Surveys may suspend work on the Variation to which the Fee increase relates until the Client has paid the Fee increase and the completion date for the Scope of Works and/or the Variation to which the Fee

increase relates (at RM Surveys' option) shall be extended by a period being the greater of:

- (i) the period of delay caused by the Client's failure to pay the Fee increase; and
- (ii) 5 business days.

## **6 RM SURVEYS INITIATED VARIATION**

6.1 Where the client breaches any of clauses 4.1, 4.2, 4.3, 4.4, 4.5 or 4.6, RM Surveys may issue a Sales Order setting out:

- (a) The extension of time for delivery of the Scope of Works caused by the breach; and
- (b) Any addition to the Fee caused as a result of the breach.

6.2 If the client:

- (a) Does not issue a Dispute Notice under clause 14 within 5 days, the terms of the Sales Order will be deemed a Variation to the Contract;
- (b) Issues a Dispute Notice under clause 14 the time for delivery of the Scope of Works shall be extended by the amount of time it takes to resolve the dispute.

## **7 ADDITIONAL EXPENSES**

7.1 The Client shall pay the cost of any additional expenses RM Surveys incurs in the delivery of any service under a Contract including, without limitation, air fares, excess baggage, kilometrage, meals, car hire, accommodation, and other disbursements.

## **8 PAYMENT**

8.1 The Client shall pay the Fee in accordance with the terms of payment in the Proposal or any Sales Order issued under clause 5.1 or 6.1 and where the Proposal or Sales Order contains no terms of payment, within 30 days of the date of any invoice issued in respect of the Contract.

8.2 Subject to clause 8.3, the Client shall not retain any amount of the Fee as a retention payment.

8.3 If a Proposal specifies that there is to be a retention payment then the Proposal will have effect according to its terms but:

- (a) If no period of time for retention is specified, then the time shall be 6 months from completion of the Scope of Works; and
- (b) If no percentage of Fee is specified for retention, the percentage shall be 5%.

8.4 the Client may not set the Fee off against any amount which the Client claims RM Surveys owes to it.

8.5 The Client shall pay interest at 12% per annum calculated daily and compounded monthly on any amounts due under this Contract not paid in accordance with its terms.

8.6 If this Contract comes to an end prior to delivery of the Scope of Works for any reason, the Client shall pay that portion of the Fee which RM Surveys considers is equivalent to the portion of the Scope of Works then completed, whether delivered or not, plus RM Surveys costs of demobilizing any equipment and personnel from the Site.

8.7 The Client agrees to pay all costs and expenses (including but not limited to legal fees on a full indemnity basis and dishonor fees) incurred by RM Surveys in connection with the recovery of overdue amounts and enforcing any security provided under this Contract.

8.8 If RM Surveys exercises its rights under clause 12.2(h) to suspend work for breach of this Contract and demobilizes its personnel and/or equipment, the Client shall pay the costs of demobilization forthwith on demand. If work subsequently resumes, the Client shall pay the costs of remobilization of staff and equipment in advance.

8.9 RM Surveys may charge an administration fee of \$100 each time the Client requests that an issued invoice be re-issued to an addressee or in respect of a project different from the addressee and/or the project named in the Proposal or a Sales Order.

## **9 SECURITY AND CHARGE**

### **9.1 Charge**

- (a) As security for any amounts due to RM Surveys from time to time, the Client charges all of its right title and interest whether legal or equitable in any and all real property whether presently owed or after acquired to RM Surveys.
- (b) The Client agrees to do all things reasonably required by RM Surveys to perfect its security over any real property.
- (c) Subject to clause 9.1(d), the Client consents unconditionally to RM Surveys lodging an absolute caveat or caveats noting its interest in any real property held by the Client.
- (d) RM Surveys shall not be at liberty to register a caveat under this clause unless:
  - (i) The Fee set out in the Proposal is equal to or greater than \$30,000; or
  - (ii) The total amount which the Client owes to RM Surveys under this Contract reaches \$30,000 or more.

## **10 EMPLOYMENT OF RM SURVEYS PERSONNEL**

- 10.1 The Client acknowledges that RM Surveys invests substantial time and money in the recruitment and training of all of its employees to ensure that it delivers upon its client engagements to a high standard and that solicitation by the Client of its employees causes substantial loss to RM Surveys.
- 10.2 The Client shall not employ any employee of RM Surveys (“Prohibited Employee”) who is a material part of the engagement team for delivery of the Scope of Works for a period of 12 months after payment of the Fee and any other amounts owing under this Contract in full.
- 10.3 If the Client employs a Prohibited Employee, then it must pay to RM Surveys an amount equivalent to 50% of the Prohibited Employee’s Gross Remuneration at the time the Prohibited Employee’s employment comes to an end as a genuine pre-estimate of liquidated damages to reflect the loss of the Prohibited Employee’s productivity, the lost expense in training the Prohibited Employee and the expense of recruiting and training a replacement.
- 10.4 The amount in clause 10.3 is recoverable as a debt due and owing in any court of competent jurisdiction.

## **11 COPYRIGHT**

- 11.1 The Client acknowledges that RM Surveys owns the copyright in any Data.
- 11.2 RM Surveys hereby specifically reserves its right, title and interest in all Data, and the Client is specifically prohibited from distributing it in whole or in part to third parties, either for fee (whether in cash or in kind) or for free.
- 11.3 Provided that RM Surveys have:
- (a) completed the particular stage or stages of the Scope of Works for which RM Surveys has been commissioned; and
  - (b) been paid the Fee in full,
- RM Surveys grants the client a royalty free perpetual licence to use the Data for the project or part of the project to which the Data relates on and from the date upon which the last of the conditions in clause 11.3(a) and 11.3(b) is satisfied.

## **12 DEFAULT**

- 12.1 If the Client fails to rectify any breach of this Contract for 14 days after RM Surveys issues notice to do so; or
- 12.2 the Client:
- (a) being a natural person, has any execution levied against its assets, makes any arrangement with its creditors, or becomes bankrupt;
  - (b) being a corporation, has any execution levied against its assets, makes any arrangement with its creditors, has a liquidator, administrator or receiver appointed to it or has an application made against it for its winding up;

- (c) cannot pay its debts as and when they fall due;
  - (d) tells RM Surveys that it cannot pay its debts as and when they fall due or that it is insolvent;
  - (e) provides an instruction or direction to RM Surveys in respect of the Scope of Works which RM Surveys acting in good faith considers unethical or unlawful and does not withdraw that instruction or direction in writing within two business days of written notice to do so,
- RM Surveys may without prejudice to any of its other rights under this Contract or at law:
- (f) Terminate the Contract;
  - (g) Treat all of its obligations to perform this Contract as having been discharged;
  - (h) Suspend work under the Contract;
  - (i) Invoice the Client for any unbilled work in progress;
  - (j) Retain any security in any form provided by the client and sell it and apply the proceeds to the costs of sale, interest and the Fee and any expenses under this Contract and remit the balance to the Client;
  - (k) In writing appoint a registered liquidator to be a receiver or receiver and manager of the property charged under clause 9.2 or any part thereof and any receiver or receiver and manager so appointed shall be the agent of the Client and the Client shall be solely responsible for the remuneration and all acts and omissions of the receiver who without the need for the Client's consent shall have all of the powers of a receiver under the Corporations Act 2001; and/or
  - (l) Exercise any other right or remedy available to it under the PPSA including without limitation the enforcement of the Security Interest.

## **13 WARRANTIES**

### **13.1 Warranty Prior to Laying Marks**

- (a) RM Surveys warrants that all Marks which it places will be placed as required by the Scope of Works and that its work will otherwise comply with all rules, regulations or written or unwritten laws of the place in which services are supplied.

### **13.2 No Warranty After Laying Marks**

- (a) The Client acknowledges that RM Surveys gives no representation or warranty about the accuracy of placement of Marks if they are disturbed after placement and that it is the Client's responsibility to ensure that all Marks which RM Surveys places are undisturbed from the time of placement.
- (b) The Client warrants to RM Surveys that that the Client has relied on its own research and investigations to form the Client's own beliefs on the quality of the services and that the services are fit for the purpose to which the Client proposes to put them.
- (c) The Client acknowledges that RM Surveys' liability under this Contract is limited to:
  - (i) An obligation to supply the services in the Scope of Works (plus any Variations) again;
  - (ii) Payment to the Client of an amount equal to the total Fee paid under this Contract at the time any warranty is called upon; or
  - (iii) Payment of the costs of the Client acquiring the same services from another provider.

### **13.3 Right to Rectify**

The Client covenants that if there is a defect in any of the work carried out by RM Surveys under this Contract, it may not claim the cost of rectification of the defect from RM Surveys unless it has first given RM Surveys a reasonable opportunity to rectify it.

### **13.4 Limitation Of Liability**

RM Surveys' liability for consequential loss howsoever occasioned and arising out of the supply of any services under this Contract is expressly excluded.

## **14 DISPUTES**

In the event of a dispute between the parties, either party may serve a Dispute Notice on the other detailing matters of dispute and requiring that senior representatives of each party

meet and attempt to settle the dispute within five (5) working days. If the dispute is not settled by the senior representatives within ten (10) working days of the service of the Dispute Notice, either party may refer the dispute to mediation by a single mediator, the costs of which shall be shared equally by the parties. If the parties cannot agree upon the identity of the mediator, the dispute shall be referred for mediation to a mediator nominated by the Institute of Mediators and Arbitrators.

## **15 MISCELLANEOUS**

### **15.1 Client as Trustee**

(a) If the Client is trustee of a trust the Client:

(i) Warrants that:

- A It has full power and authority to enter into this Contract;
- B The assets of the trust shall be available to meet its obligations to RM Surveys under this Contract; and
- C It will produce a stamped (where stamping is required) executed copy of deed constituting the trust of which it is trustee forthwith upon request by RM Surveys

(ii) Has made this contract in its personal capacity and in its capacity as trustee of that trust.

### **15.2 GST**

- (a) The parties acknowledge that the supply made by RM Surveys to the Client will be subject to GST which will be added to invoices rendered.
- (b) The Client must pay to RM Surveys an additional amount equal to the amount of the consideration multiplied by the applicable GST rate.

### **15.3 Force Majeure**

The obligations of RM Surveys to perform any Contract will be suspended for the duration of any delay arising from circumstances outside the reasonable control of RM Surveys, including but not limited to, war, accident, fire, storm, flood, earthquake, labour dispute, pandemic, plant or equipment breakdowns, unavailability of materials.

### **15.4 Attorney**

The Client hereby appoints each director of RM Surveys as its attorney to do any act or thing which the Client is required to do under this Contract.

### **15.5 Inconsistency**

- (a) Where any term of RM Survey's Proposal or Schedule of Rates for a Scope of Works is inconsistent with these Terms, the Proposal will prevail to the extent only of the inconsistency.
- (b) Where any part of any terms or conditions of the Client sought to be imposed on the commercial relationship between the Client and RM Surveys is inconsistent with the Proposal, or these Terms, then the Proposal or Terms shall prevail.

### **15.6 Severability**

If any provision of these Terms is declared void, or if effective, would render either these Terms or any provision in these Terms, void or unenforceable then that provision shall have no force or effect whatsoever and shall be ineffective and severed from these Terms to the extent necessary to avoid that consequence without affecting the validity and enforceability of this Agreement.

### **15.7 Entire Agreement**

The Contract containing these Terms is the entire Agreement between the Client and RM Surveys in respect of its subject matter. No terms or variations to these Terms sought to

be imposed upon RM Surveys by the Client will bind RM Surveys unless RM Surveys specifically agrees in writing.

#### 15.8 **Amendment**

The terms and conditions set out in this Contract may only be waived in writing signed by both parties

#### 15.9 **Waiver**

The terms and conditions set out in a Contract may only be waived in writing signed by both parties and the waiver so created will only have effect in respect of the specific instance and to the degree specified.

#### 15.10 **Applicable Law**

Every Contract shall be governed by and construed in accordance with the laws of the State of Western Australia and the Commonwealth where applicable. All disputes in respect of a Contract shall be determined at first instance exclusively by the Courts of Western Australia.

### **16 INTERPRETATION AND DEFINITIONS**

16.1 The terms defined have the same meanings when used throughout this Agreement.

16.2 Unless the contrary intention appears:

- (a) a reference to this Agreement or any other document includes any variation or replacement of it;
- (b) a reference to a statute, code or other law includes regulations and consolidations, amendments, re-enactments, or replacements of any of them;
- (c) the singular includes the plural and vice versa;
- (d) a reference to any thing is a reference to the whole of it and each part of it;
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, transferors, substitutes (including persons taking by novation) and assigns;
- (f) an agreement, representation, or warranty on the part of or in favour of two (2) or more persons binds or is for the benefit of them jointly and severally;
- (g) a reference to time shall mean Western Standard Time;
- (h) words and phrases in clause 9 which appear in the PPSA have the meanings ascribed to them in that Act unless they are defined in this Contract

16.3 Headings are inserted for convenience and do not affect the interpretation of this Agreement.

16.4 The following words have the following meanings:

- |                                  |  |
|----------------------------------|--|
| <b>“Australian Consumer Law”</b> | means Schedule 2 of the <i>Competition and Consumer Act 2010 (Cth)</i> ;   |
| <b>“RM Surveys”</b>              | means RM Surveys Services Pty Ltd [ACN 155 416 952];   |
| <b>“Business Day”</b>            | means any day on which trading banks in Western Australia are open for business;   |
| <b>“Consulting Services”</b>     | means giving of advice or advice and implementation thereof in the areas of RM Surveys' expertise.   |
| <b>“Contract”</b>                | means a contract formed under clause 1 of these Terms for any of the purposes set out in that clause;  |
| <b>“Dispute Notice”</b>          | Means a written notice describing itself as such regardless of whether it is hard copy, email, digitally generated or otherwise created;   |
| <b>“Fee”</b>                     | means the price payable by the Client to RM Surveys under any Contract as varied under the terms of that Contract including any expenses charged under clause 5 and includes sums of money which are charged on a fixed fee basis, subject to a fee estimate and then charged, or charged for a variation or |

		according to a schedule of rates;
<b>“Client”</b>		means any Person to whom RM Surveys provides Goods and/or services;
<b>“Day”</b>		means the period of time commencing at midnight and ending 24 hours later;
<b>“Gross Remuneration”</b>		In relation to a Prohibited Employee, means the total remuneration package payable annually to that employee before tax;
<b>“Person”</b>		includes a firm, a body corporate, an unincorporated association, and an authority;
<b>“Proposal”</b>		Means a document under which RM Surveys offers to provide surveying services to a client;
<b>“Sales Order”</b>		Where issued under: <ul style="list-style-type: none"> <li>(a) Clause 1.2 means a document of that name setting out the essential terms of the Contract</li> <li>(b) Clause 5.1(b)(i) means a document of that name confirming the works to be carried out under a Variation Request, and setting any changes to the Fee and time for payment of the Fee;</li> <li>(c) Clause 6.1 means a document of that name setting out a period of additional time for RM Surveys to deliver the Scope of Works and any adjustment to the Fee.</li> </ul>
<b>“Scope Works”</b>	<b>of</b>	Means the services set out in a Proposal as changed from time to time by Variations;
<b>“Site”</b>		means the physical address where RM Surveys is to carry out work to deliver the Scope of Works;
<b>“Terms”</b>		means these terms and conditions of regulating the supply of services by RM Surveys.
<b>“Variation”</b>		Means a change to the Scope of Works in respect of what is to be done, or its timing;
<b>“Variation Request”</b>		Means a request for a Variation whether oral or in writing and in the case of writing regardless of whether the writing is in hard copy or digital and regardless of whether the request is expressed as a request for a Variation or a site instruction;
<b>“Work Location”</b>		Means each and every part of a Site to which RM Surveys requires access in order to deliver the Scope of Works;
<b>“Data”</b>		means any proposals, tenders, documents, drawings, calculations, designs, plans and data prepared by it in relation to the project, and in any works executed from them which RM Surveys prepares in relation to the Scope of Works