

## Standard Terms and Conditions – Capital Allowance / Tax Depreciation or Quantity Surveying Services

### 1. This Agreement

This Agreement sets out the terms on which we will provide the Services to you. This Agreement comprises these terms, the Letter and in respect of a particular Services Request, that Services Request and the relevant Report. You accept that these terms apply to our engagement if you continue to instruct us or pay our Fees after you receive them (and any other terms purported to apply are of no effect).

### 2. Our Services

- 2.1 We will provide the Services to you with the degree of skill, care and diligence reasonably expected of a professional providing services of the same kind and in accordance with this Agreement.
- 2.2 We will use all reasonable efforts to complete the Services within any agreed time frame.
- 2.3 At our election, the Services may be performed by a Franchisee. We will be responsible for all acts and omissions of the Franchisees as if they were our acts or omissions. You agree that you will not bring any claim or proceeding in connection with the Services or this Agreement directly against any Franchisee, Quantity Surveyor or Valuer.
- 2.4 Unless otherwise agreed, we will be the sole point of contact for any issues in relation to this Agreement.

### 3. Your Obligations

- 3.1 You will provide us with your instructions via a Services Request.
- 3.2 You must provide us with all data, Information and access as is necessary or reasonably required for us to perform the Services. You acknowledge and agree that:
  - 3.2.1 we are entitled to and will rely on Information provided by you or your representatives and any instructions and approvals given by you or your representatives (and that we are released from any liability to the extent of any inaccuracy, inconsistency or omission in same); and
  - 3.2.2 although the Services may include advice, all decisions in connection with the implementation of that advice are solely your responsibility and are made by you based on your own judgement and knowledge of your circumstances.

### 4. Our Reports

- 4.1 Our Reports are prepared solely for you to use for the Permitted Purpose. We do not accept a duty of care to any other person and you agree to the Report specifically disclaiming legal responsibility to any other person that might read the Report. You are not authorised to use a Report for any purpose other than the Permitted Purpose without our prior written consent.
- 4.2 Should any other party seek a copy of the Report, our consent must first be obtained in writing (which may be given or not at our discretion and may be given with conditions). Even if consent has been given, you indemnify us against any Loss we may suffer or incur in respect of any claim or action by a third party that arises as a result of any use or distribution of a Report to that party, or its reliance thereon. Furthermore, if we incur liability to any third party as a result of any use or distribution of, or reliance on, a Report by that third party:

4.2.1 You will ensure that we can enforce the protections afforded to us under or out of this Agreement (and in particular clause 11) directly against that third party, or if that is not possible or does not occur for any reason, you will do everything necessary to place us in a position as if the protections had been directly enforceable or enforced against that third party also; and

4.2.2 Without limiting clause 4.2.1, you acknowledge and agree, and will do all things necessary to place us in a position so that, the limitation in clauses 11.1 and 11.2 apply so as to limit our liability to you and/or to that third party, severally and/or collectively, on an aggregate basis.

### 4.3 Our Reports:

4.3.1 Will contain certain assumptions, qualifications, limitations and disclaimers (**Notices**). These Notices form part of this Agreement. It is your responsibility to be aware of these Notices and ensure that the Reports are only used in the context of, and subject to, such Notices.

4.3.2 If they concern capital allowance / tax depreciation, are prepared in accordance with the provisions of the Income Tax Assessment Act 1997 (Cth) and applicable tax rulings in force at the date of the Report.

4.4 Our Reports cannot be relied upon as advice as to taxation, investment or financial strategy nor should the contents be viewed as legal or accounting advice.

### 5. Our Fees

- 5.1 You agree to pay us the Fees for the Services.
- 5.2 If the Agreement applies to Services to be provided from time to time on an ongoing basis, on each anniversary of the Commencement Date, the Fees will be automatically indexed and increased by CPI or 2.5% whichever is higher. Otherwise, we will give you at least 30 days' notice of any proposed changes to the Fees.
- 5.3 If the Services required for a particular Services Request are expected to involve complexity or disproportionate resources, we may request a higher fee or rates above those specified in the Schedule of Fees but such higher fee will be agreed with you prior to us proceeding with the Services Request.
- 5.4 Any quote will be valid for a period of 30 days from the date of issue. We reserve the right to amend the quotation after this period and/or reject an offer to purchase the services at the previously quoted price if outside of this time frame
- 5.5 Where we have provided you with a quote for the Fee for a Report and you instruct us to proceed with the Report or engage us to perform Services, you have accepted the quoted Fee for that Report (and these terms).
- 5.6 Unless stated otherwise, the Fees are expressed exclusive of GST. You agree to pay any GST imposed on us, now or in the future, in relation to this Agreement. Where GST is payable on any taxable supply made under this Agreement, you agree that the Fee payable for this supply will be increased by an amount equal to the GST payable by us in respect of that supply.

### 6. Invoicing

- 6.1 We will invoice you monthly in arrears for the Fees (unless agreed otherwise) and you will pay our invoice within 14 days of receiving it. If you dispute an invoice, you will still pay the undisputed amount and we will work together to resolve the dispute. Where amounts remain due and unpaid, we may charge you interest at an annual rate of 2% over the Bank Bill Swap Rate published in the Australian Financial Review on the date payment is due.
- 6.2 Without limiting any other rights we may have, we may suspend or terminate the Services, in whole or part, or withhold any Report not yet delivered if any amount due to us is overdue.
- 7. Unexpected delay**
- 7.1 We will not be responsible to you or anyone else (and you will not assert we are in breach or liable) for any failure in providing the Services or any Report to the extent such failure is caused by an Unexpected Delay. We will notify you if there is a delay that will affect the provision of the Services or any Report and the cause of the delay.
- 7.2 If we are required to perform additional services or incur additional costs because of an Unexpected Delay, you will pay additional Fees to the extent incurred due to your act or omission and in other cases, additional Fees may apply as are reasonable.
- 8. Confidentiality**
- 8.1 Each of us agrees to protect and keep confidential any Confidential Information that is given to us by the other. Except as set out in this Agreement, or where both of us agree otherwise in writing, we will only use or disclose your Confidential Information as necessary to provide the Services to you.
- 8.2 Where relevant, we may use, disclose and transfer your Information (even if Confidential Information) to our Franchisees and Representatives who will use and disclose it only to provide the Services to you. In addition, we may disclose your Information to our professional advisers, any regulating body or insurers on a confidential basis.
- 8.3 Subject to clause 8.4, either of us may disclose any Confidential Information to the extent that it is required to be disclosed by law, order of any court, tribunal, authority or regulatory body, rules of any stock exchange or any professional obligations or requirements.
- 8.4 A party disclosing Confidential Information under clause 8.3 must, where practical and to the extent permitted by law, notify the other of the requirement to disclose and only disclose the minimum Confidential Information required to comply with the law or requirement.
- 8.5 You agree that we may aggregate your Information and use and disclose that information in de-identified form as part of research and advice, including without limitation, benchmarking services or for Report purposes.
- 8.6 We will return to you or destroy your Information at any time at your request, however, we are entitled to retain a copy of your Confidential Information or any Information you give to us for any lawful record keeping purposes, provided that we continue to keep this Information confidential in accordance with this Agreement.
- 9. Personal information and privacy**
- 9.1 We will handle Personal Information in accordance with the Privacy Legislation and our privacy policy available at [www.opteonsolutions.com/au/privacy-policy/](http://www.opteonsolutions.com/au/privacy-policy/).
- 9.2 You agree to work with us to ensure that both of us meet any obligations that each of us may have under the Privacy Legislation including, where relevant, notifying the individual to whom the Personal Information relates of who we are and how we propose to use and disclose their information.
- 9.3 Where you provide us with any Personal Information, you confirm that you have collected the Personal Information in accordance with the Privacy Legislation, that you are entitled to provide the Personal Information to us and that we may collect, use and disclose the Personal Information for the purpose of providing the Services to you or as otherwise permitted by this Agreement.
- 10. Intellectual Property**
- 10.1 We own the Intellectual Property Rights in the Reports and Our Data. We grant, and if necessary, will procure from any third party the right to grant, to you an irrevocable, perpetual, worldwide, non-exclusive, royalty-free licence to use and reproduce the Reports for the Permitted Purpose and you may sub-license the right to use and reproduce the Reports to your auditors or external advisors for purposes related to the Permitted Purpose.
- 11. Our responsibility to you**
- 11.1 Where the law requires it, our liability to you will not be limited, but otherwise, you unconditionally and irrevocably agree that our maximum aggregate liability to you for any Loss or causes of action arising in connection with the Services or otherwise under this Agreement (whether arising by way of indemnity, negligence or otherwise) is limited to an amount which is the lesser of our Fees and \$100,000.
- 11.2 We will be liable to you only for that proportion of the total Loss that we have caused or to which we have contributed and even if we are negligent, we will not be liable to you (nor will you assert or pursue any claim against us) for any Consequential Loss, howsoever caused or arising in connection with the Services or this Agreement.
- 11.3 You acknowledge and agree that:
- 11.3.1 We are not liable for any Loss, or failure to provide the Services, to the extent caused by an Unexpected Delay or which arises as a result of us relying on any inaccurate, misleading or incomplete Information; or
- 11.3.2 We are not liable to you for any Loss or causes of action arising in connection with the Services or any Report, to the extent:
- (a) Directly or indirectly based upon, attributable to, or in consequence of any insulation and finishing system, wall panelling, cladding or facade material that is not compliant, or does not conform, or is installed, applied or used in a manner that does not comply, in whole or part, with all relevant provisions of the Building Code of Australia, the National Construction Code of Australia, Australian Standards, approved conditions of use or application, or any other applicable law or regulation, including any replacement thereof; or
- (b) Arising from or as a result of any newly enacted, or change to existing, Law, or any applicable judgment of a relevant court which changes the interpretation of a Law, which occurs after the date of our Report and which affects or alters the conclusions therein and/or the information or basis upon which we exercised any professional judgment;

- (c) Arising from any alteration, removal or addition to the subject asset or property (including its fittings or fixtures) which occurs after the date of Report.

11.4 You acknowledge and agree that we have entered into this Agreement relying on the terms that have been agreed in this clause and in clause 4.

## 12. Insurance

We will maintain appropriate insurance in relation to the Services, including professional indemnity insurance with a reputable insurer for an amount not less than \$1 million during the term of this Agreement and for a period of seven years after last performing the Services for you.

## 13. Conflict of interest

If we identify a conflict of interest in respect of a Services Request, we will evaluate the potential conflict and, depending on the circumstances, apply appropriate safeguards to manage it (having first notified you of the conflict and asked for your consent to proceed) or else decline the Services Request.

## 14. Termination

14.1 You may terminate this Agreement by giving us at least 30 days prior written notice at any time. If the Agreement is terminated for any reason, you must pay our Fees for the Services performed and any other charges incurred, up to the time of termination.

14.2 We may terminate this Agreement:

- 14.2.1 by giving you reasonable notice of at least 30 days;
- 14.2.2 if any payment due by you under this Agreement is not paid on the due date;
- 14.2.3 if, by continuing to act for you, we would be required to act contrary to any legal, regulatory or professional conduct obligation or similar just cause; or
- 14.2.4 if there is any change in your financial or legal status.

14.3 Clauses 4, 5, 6, 8, 9, 10, 11, 12, 15 and this clause 14.3 survive the termination of this Agreement. Nothing in this clause prevents any other provision of the Agreement, as a matter of interpretation, also surviving the discharge, expiration or termination of this Agreement.

## 15. Dispute resolution

- 15.1 Each of us agrees to use reasonable endeavours to resolve any dispute that arises in connection with this Agreement.
- 15.2 If we are unable to resolve a dispute within 14 days of either of us giving the other notice in writing of a dispute, either of us may refer the dispute to mediation to be conducted in Melbourne, Victoria under the Australian Disputes Centre (ADC) guidelines for commercial mediation which are operating at the time the dispute is referred to the ADC.
- 15.3 If the dispute is not resolved by mediation within 28 days of the appointment of a mediator, either of us may commence court proceedings.
- 15.4 Despite the existence of a dispute, each of us must continue to perform all of our obligations under this Agreement.
- 15.5 Nothing in this clause prevents either of us applying to a court for urgent interlocutory relief.

## 16. General

16.1 We are engaged as an independent contractor. Neither of us is an agent or representative of or has the authority to bind the other. This Agreement is not intended and will not be taken to constitute a partnership, agency, employment, joint venture or fiduciary relationship between us.

16.2 This Agreement is the entire agreement between us for the Services. It supersedes all prior communications, negotiations, arrangements and agreements, either oral or written between us in relation to its subject matter.

16.3 Any changes to this Agreement must be agreed to in writing by both of us.

16.4 Neither of us may transfer, assign or novate this Agreement without the prior written consent of the other however we may elect to subcontract the performance of the Services (in whole or part) without giving notice to you but at all times, we remain liable to you for the acts or omissions of our subcontractors.

16.5 If any of the terms of this Agreement are not legally enforceable then that term or the relevant part of it will be either amended as appropriate to make it enforceable or ignored, but in all other respects this Agreement will have full effect.

16.6 This Agreement is governed by the law applying in Victoria and the parties submit to the non-exclusive jurisdiction of the courts of Victoria.

16.7 A waiver by one of us of a breach by the other of any term of this Agreement does not operate as a waiver of another term or a continuing breach by the other of the same or any other term of this Agreement.

16.8 To the extent permitted by law, we disclaim all warranties, either express or implied, in relation to the Services and the Reports other than any written warranty made in this Agreement.

## 17. Interpretation

In this Agreement:

- 17.1 headings and sub-headings are for ease of reference only and do not affect the interpretation of this Agreement;
- 17.2 words denoting the singular include the plural and vice versa;
- 17.3 the word 'includes' in any form is not a word of limitation;
- 17.4 where a word or phrase is defined, another part of speech or grammatical form of that word or phrase has a corresponding meaning;
- 17.5 a person includes a firm, partnership, joint venture, association, corporation or other body corporate;
- 17.6 '\$' is a reference to Australian dollars;
- 17.7 'this Agreement' is to this Agreement as amended from time to time;
- 17.8 a clause, schedule or attachment is a reference to a clause, schedule or attachment in or to this Agreement;
- 17.9 any document (such as a deed, agreement or other document) is to that document (or, if required by the context, to a part of it) as amended, novated, substituted or supplemented at any time; and

17.10 any legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced and includes any subordinate legislation issued under it.

## 18. Definitions

In this Agreement, the following words have the following meanings:

**Commencement Date** means the date on which you first instruct us to provide our Services under this Agreement.

**Confidential Information** means any information or material which is proprietary to a party or acquired by either of us solely as a result of the Services and is designated as confidential or the recipient ought know or assume it is confidential, but excludes any information that:

- (a) is or becomes publicly available, except by a breach of this Agreement;
- (b) is disclosed to either of us by a third party provided that the recipient reasonably believes the third party is legally entitled to disclose such information;
- (c) was known to either of us before we received it from the other or is developed by either of us independently;
- (d) is disclosed with the other's consent; or
- (e) is required to be disclosed as contemplated by clause 8.3.

**Consequential Loss** means any loss of actual or anticipated profit or revenue, extraordinary or unexpected financing costs, anticipated savings or business opportunity, loss or corruption of data or systems, or damage to goodwill whether arising at law as direct or indirect loss, and any indirect, consequential, special, punitive, exemplary or incidental loss or damages, whether foreseeable or not and whether we were advised of the possibility of such damages.

**CPI** means the annual Consumer Price Index (All Groups), Australia (weighted average of eight capital cities) as published by the Australian Bureau of Statistics.

**Fees** means the fees for the Services set out in the Letter or any quote provided under clause 5.4, as calculated in accordance with our Fee Schedule (if any) or any higher fee applicable under clause 5.

**Fee Schedule** means our schedule of fees as supplied to you (if any), as amended from time to time.

**Franchisee** means an Opteon branded company who has entered into a franchise agreement with our franchisor entity Opteon Franchising Pty Ltd.

**GST** has the meaning given to it under *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Information** means any information, documents, material, facts, instructions or Confidential Information provided to us by you or your Representatives or anyone else at your request.

**Intellectual Property Rights** means all industrial and intellectual property rights throughout the world and includes rights in respect of copyright, trade marks, designs, trade secrets, know-how and circuit layouts.

**Law** means legislation, standards codes, or subordinate legislation, other ordinance, decree, by-law or any rule, circular, directive having the force of law.

**Letter** means an engagement letter or other written communication between us which confirms our engagement and scope of Services.

**Loss** means any losses, liabilities, claims, damages, costs or expenses (including interest where applicable and Consequential Loss), judgments or orders however caused or arising as a result of the Services, a Report or this Agreement.

**Our Data** means data attaching to the Reports, data collected, created or otherwise brought into existence by us in the provision of the Services (other than data provided by you to us) and data, photographs, field notes, sales data, explanatory or supporting material included in our Report files.

**Permitted Purpose** means, in the context of the Services provided, either tax claims by the current owner of a property under the Income Tax Assessment Act 1997 (Cth), insurance replacement assessment, or other cost estimating purposes, as may be confirmed in the Letter, or as otherwise agreed in writing and accepted by us.

**Personal Information** means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in writing or spoken, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

**Privacy Legislation** means the *Privacy Act 1988* (Cth) and any other law that applies to either of us that relates to privacy or to the collection, use, disclosure or handling of information about individuals (including a law of a State or Territory relating to privacy).

**Quantity Surveyor** means a person duly qualified and registered and licensed to provide services associated with estimating, cost planning, procurement, scheduling, or related construction activities, or the provision of insurance replacement assessments and/or compliant capital allowance / tax depreciation schedules.

**Report** means any report we provide in respect of our Services.

**Representatives** means any officer, employee, consultant, agent, adviser or contractor of either of us.

**Services** means tasks and services necessary to provide, as may be applicable, capital allowance / tax deduction assessments, insurance replacement assessments, costs estimates or related quantity surveying activities, as requested by you and agreed by us in accordance with this Agreement.

**Services Request** means the instruction provided by you requesting us to provide Services.

**Unexpected Delay** means any delay in providing the Services that is caused or contributed to by an act or event (including the non-performance of your obligations) that is beyond our control or as not reasonably foreseeable by us at the time of accepting a Services Request.

**Valuer** means a current Certified Practising Valuer who is a current financial member of the Australian Property Institute with the skills and experience to provide the Services.