
TERMS OF APPOINTMENT AGREEMENT

This agreement is for the provision of professional building surveying and other services whereby the applicant engages **Rocco Di Raco/James Reardon** trading as **West Side Building Surveying (VIC) Pty Ltd** to act as the Relevant Building Surveyor (hereafter referred to as “RBS”) pursuant to the provisions of the Building Act 1993 (hereafter referred to as the “Act”) and Building Regulations 2006 (hereafter referred to as “Regulations”), for projects referred to the RBS, and shall pay the fees as nominated hereunder.

Use of the services provided by West Side Building Surveying (VIC) Pty Ltd (to be known as the Relevant Building Surveyor or RBS) is governed by the terms and conditions of this Agreement. Please read this Agreement carefully before accessing or using this service. By accessing or using the service, you agree to be bound by all the terms and conditions of this Agreement. This Agreement is intended to be fully effective and binding upon both parties.

CLAUSES

1. NUMBER OF INSPECTIONS TO BE PROVIDED AND/OR INCLUDED

The number of mandatory inspections will be nominated on the Building Permit. The total number of inspections included in the fee for Building Surveying services is nominated on the invoice. Further inspections, where requested by the client or required by the RBS, will each be charged at the relevant rate at the time of the inspection.

2. PAYMENT TERMS

All fees and charges are normally payable prior to consideration of the building permit application. Schedule 2 of the Building Act requires an application for a building permit to be accompanied by the fee determined by the council in accordance with the Local Government Act or as determined by the relevant private building surveyor. The RBS is not obliged to issue the building permit unless the invoice has been paid in full or the client has a payment term pre approved in writing. All accounts are to be settled in full within the agreed payment terms noted on the Invoice. These terms will only continue if payment is maintained in accordance with the agreed payment terms.

It is agreed that –

- Should the client default in making any payment in accordance with the agreed payment terms, then all monies due to the RBS shall immediately become due and payable.
- Further fees and charges will apply if action to recover an outstanding balance is undertaken – this may include charges from Debt Recovery firms/agencies and/or legal firms.
- In the event of default by the client, she/he further consents and authorises the RBS to forward all relevant confidential information pertaining to her/him to a third party including but not limited to attorneys, debt collectors and tracing agents.
- It is expressly understood and agreed that this arrangement may be terminated at any time by the RBS. In that event, all monies owing to the RBS will be immediately due and payable.
- Cancellation fees may apply if the application or building permit is cancelled by the client/agent.

Important: Please read and understand the following conditions and terms before commencing to use our services.

CONDITIONS AND TERMS FOR PROVISION OF BUILDING SURVEYING AND ASSOCIATED SERVICES

1. OUR OBLIGATIONS

The RBS will assess an application for a building permit under the Act, Regulations and Building Code of Australia to ensure it can be deemed to satisfy these requirements and if appropriate issue a building permit. The RBS will collect and remit the applicable building permit levy to the Victorian Building Authority, assess and if appropriate issue the applicable occupancy permit or certificate of final inspection, provide copies of all relevant permit documents to the council, issue statutory directions notices or orders if necessary in our discretion for the proper completion of the building work, and conduct mandatory inspections as specified on the building permit as well as conducting any further inspections where either requested by you or required in our discretion for the proper completion of the building work.

2. YOUR OBLIGATIONS

The Client's obligations include providing the RBS with all information required to enable the RBS to perform its role, pay all fees and disbursements applicable to each application as set out in this document, and comply with all other obligations under these conditions. The Client will provide or ensure a safe workplace/site for inspections to be undertaken by the RBS's employees and/or contractors. Inspections requested where adequate safety measures are not in place will be refused and recharged at the applicable rates. Re-inspections will not be carried out unless the Client provides the RBS with written verification of a safe workplace. When further information is requested from the Client to allow the prompt finalisation of the building permit the Client will need to ensure that all documentation is delivered to the RBS within 30 days of the date of request.

3. CLIENT WARRANTIES

The Client warrants to the RBS (which the RBS will rely on to complete its obligations) that the Client is either the registered proprietor of the project or the duly authorised agent of the registered proprietor. If requested by the RBS, the Client will produce written authority of the registered proprietor authorising the Client to act on their behalf. The Client warrants that the information provided with each application will be accurate, correct and complete and that they have read, understood and agree to be bound by the terms and conditions contained in this agreement.

4. NO DUAL APPOINTMENTS

It is an offence pursuant to Section 78 of the Act to appoint a person as an RBS if another building surveyor has already been appointed or otherwise authorised for the project. The client therefore warrants that no other building surveyor has been, or will be, appointed (or has otherwise commenced duties) in relation to any projects referred to the RBS as part of this agreement.

5. PLANNING PERMITS

The Client shall be responsible for obtaining (and the payment of) any planning permits, and shall provide a copy of the planning permit and approved planning permit drawings to the RBS. The RBS shall not be required to issue a building permit after being appointed until any required planning permit and approved planning permit drawings are received by the RBS.

6. ENTIRE AGREEMENT AND NO REPRESENTATIONS

These terms and conditions constitute the entire agreement between the RBS and the Client and no reliance may be placed by the Client upon any oral discussions or representations made prior to or at the time of this agreement. The Client will make no claim or demand in relation to any such representations either at common law or alleged breach of the Trade Practices Act 1974 (Commonwealth) or the Fair Trading Act 1985 (Vic). The RBS is not an estimator or quantity surveyor or project managers/site supervisors and is not engaged by the Client to provide these services.

7. ADDITIONAL SERVICES

Where the Client requests additional services from the RBS that are not included in the scope of mandatory services described in Clause 1 of this agreement the RBS shall not be obliged to proceed with such additional work until a request is received from the Client and agreed to by the RBS. In the event that additional inspections or other work is required by the Client, and/or is within the scope of the mandatory services specified in Clause 1 of this agreement, and/or the Act or Regulations require the RBS to proceed with such further work to complete the obligations and functions of the RBS, the RBS shall be entitled to deliver an account to the Client for such additional work. The amount of such fees will be invoiced to the designate party and payment shall be duly made within the period stated on the invoice.

8. CLIENT TO NOTIFY RELEVANT BUILDING SURVEYOR OF OTHER BUILDING PRACTITIONERS

The Client must give written notice to the RBS of each building practitioner engaged by the Client for the building work referred to in this agreement, including details of any building practitioner certificate issued to the building practitioner under Part 11 of the Act. Such notice must be given either upon the appointment of the RBS where the Client has already engaged a building practitioner/s or within fourteen (14) days of the client engaging the building practitioner/s where the building practitioner/s is/are engaged after the appointment of the Relevant Building Surveyor.

9. TERMINATION OF APPOINTMENT

The appointment of the RBS may be terminated by the Client only with the written consent of the Victorian Building Authority. On such termination the RBS shall be entitled to be paid all fees and disbursements incurred to the date of termination. In the event that the building work nominated in this agreement is terminated before commencement or completion, the Client must notify the Victorian Building Authority by written notice. When this written notice is issued the appointment of the RBS shall be deemed to be terminated. The Client must thereupon pay all fees and disbursements incurred to the date of termination and the RBS shall be entitled to deliver an account for the same. Furthermore the

Client must not engage another RBS to complete the functions of the RBS specified in this agreement in respect of the building work without the written consent of the Victorian Building Authority.

10. THE BUILDING PERMIT & THE RBS

The building permit issued will be an assessment of the drawings for compliance with the Building Act and Regulations and not the serviceability, quality or functionality of the work approved by the permit. This appointment of an RBS is limited to ensuring the work carried out complies with the Act and Regulations that are applicable at the time. The RBS is responsible for the carrying out of inspections that will be listed on the Building Permit. The client is responsible to ensure that the RBS is given adequate notification for inspection and shall ensure that works do not continue beyond the notification stage until the inspection is approved.

11. PURPOSE OF INSPECTION, AND THE PROVISION AND DISPLAY OF PERMIT INFORMATION

Inspections carried out will be the minimum required to ensure compliance with the Act and Regulations, and not supervision of any work. The RBS will carry out the mandatory inspections listed on the building permit. It is the responsibility of the builder to construct the building fully in accordance with the approved permit documents. Variations must be approved by the RBS prior to construction and those variations that require further documentation, survey, assessment and/or approval will incur an additional fee. The Client is responsible for ensuring that the RBS is given adequate notification of a request for an inspection (by no later than 3.00pm the business day prior to the inspection), ensuring that works are ready for inspection and do not continue beyond the notification stage until the inspection is approved. Should inspections be cancelled, postponed or not be ready without adequate notice (ie. enough time to ensure an inspector does not attend the site), then additional inspection charges may apply. The Client, under Regulation 317 of the Building Regulations 2006, must take all reasonable steps to ensure that a copy of the building permit and one set of any approved plans/specification/documents are available for inspection at the relevant site/allotment whilst works are in progress. Failure to do so may cause an inspection to be deemed non-compliant/not approved.

12. BUILDING NOTICES & ORDERS

Building Notices and Orders are formal documents prescribed in the Regulations when breaches and non compliances are identified for the purpose of securing compliance with the permit documents and other relevant provisions of the Regulations. Notices and Orders are required to be served as a matter of course for significant areas of non compliance or where safety is or may be compromised. In the case of routine rectification works an inspection report or letter will normally be sent to the owner and/or builder as applicable and in the event of non response within an appropriate time a Building Notice will be served and further fees may be payable.

13. ACKNOWLEDGEMENTS

The Client acknowledges that they understand that my Building Permit may be delayed if all relevant documentation is not supplied. I understand that if all copies of plans and certificates are not supplied, I will be charged photocopying fees at the relevant rate. I understand that all Building Notices and Building Orders served upon the owner or builder will incur a fee. Inspection bookings must be lodged before 3 pm to ensure a prompt response. West Side Building Surveying may, at any stage, be entitled to withhold supply of goods or services until any outstanding invoices have been paid to the satisfaction of West Side Building Surveying. West Side Building Surveying will rely on the accuracy and completeness of all information supplied by you in performing our obligations under this agreement. Notice for cancellations - as long as the Inspector does not attend the property then the client will not be charged the full Inspection Fee. Our appointment is limited to ensuring the building work carried out complies with the Act and Regulations that are applicable at the time.

14. EXCLUSIONS

The RBS makes no repetitions or warranties that the building work is commercially viable; that the Client will be able to gain any required planning permits; or that the proposed building work is suitable for the issuing of a building permit (unless one is issued by the RBS).

15. RELEASE

To the greatest extent possible at law the Client releases the RBS from any and all liability for any costs, loss, claims or demands arising from the RBS' decision not to issue a building permit, occupancy permits or certificates of final inspection; any liability of the Client to third parties arising from or in relation to building work performed by the Client or on the Client's behalf; the performance of the RBS' role as relevant building surveyor (including the time taken to perform that role) and any decision by the RBS not to issue the building permit, occupancy permits or certificates of final inspection as required.

16. INDEMNITY

The Client indemnifies the RBS from any costs, losses, claims or demands arising from or in relation to building work performed by the Client or on the Client's behalf or by the builder; the performance of the RBS' role as the relevant building surveyor (including the time taken to perform that role and any decision not to issue the building permit, occupancy permit or certificate of final inspection).

17. AMENDMENTS AND VARIATIONS TO THE BUILDING WORK

Any and all variations to the approved permit documents requested by the Client will be assessed only when accompanied by a written request with sufficient details to enable the proper assessment of any variations, and accompanied by the relevant administration fee as determined by the RBS.