

360 DEGREE SURVEYING PTY LTD - TERMS & CONDITIONS

1. AGREEMENT

- A. The contract is binding between the Client and 360 Degree Surveying Pty Ltd (Adrian Cummins & Associates) upon the earlier of the Client signing and returning a copy of the Quote or providing instructions or documents in connection with the Scope of Works, whichever occurs first.
- B. For the purpose of these Terms and Conditions, 360 Degree Surveying Pty Ltd is referred to as "360DS".
- C. If the Client comprises two or more parties each of those parties is jointly and severally liable under these Terms and Conditions..
- D. These Terms and Conditions cannot be varied or amended except where in writing and signed by both parties.
- E. Where there is any discrepancy, inconsistency or ambiguity between the Quote, these Terms and Conditions and the documents comprising the Scope of Works, 360DS will determine how the discrepancy, inconsistency or ambiguity must be resolved. Any additional services or costs necessary to overcome a discrepancy, inconsistency or ambiguity, must be treated as a variation.
- F. 360DS is an independent contractor and is not an agent or employee of the Client.
- G. The Quote is valid for a period of 1 month unless stated otherwise.

2. PERFORMANCE OF SERVICES

- A. The Services must be performed by 360DS in accordance with these Terms and Conditions.
- B. Prior to the commencement date the Client shall provide 360DS all the necessary information and specifications required for 360DS to complete the project to the Client's requirements. It is the responsibility of the Client to ensure the correct and current information is supplied to 360DS. The nature and extent of the services which 360DS provides to the Client shall be determined on the basis of the Scope of Works. The Scope of Works shall be fully documented and agreed upon by 360DS and the Client prior to commencing the Services.
- C. Unless otherwise agreed upon in writing, 360DS will use reasonable endeavours to complete the Services during standard operating hours between 07:00 and 18:00 Monday to Friday and by the completion date. If a situation arises which requires Services to be provided outside the standard operating hours, reasonable attempts will be made by 360DS to contact the Client to gain approval.
- D. 360DS may at any time, by written notice to the Client, suspend performance of the Services to the extent it has been prevented, impeded, restricted or delayed by matters outside of its reasonable control. 360DS may also suspend the performance of the Services where the client is in breach of the contract or has failed to pay amounts due. The completion date is extended for the period of suspension.
- E. Any delivery schedule submitted prior to award of contract is given in good faith at the time of submitting the offer and is subject to confirmation upon acceptance of the offer.
- F. Where the Client is providing support to the survey parties, either by provision of transport, labour, accommodation or by issue of data or information and this support is delayed or is not of the type or nature agreed, then any delays thus caused to the employees of 360DS) will be subject to charges at day rates currently applicable.
- G. Where the survey is required to be undertaken in a different number of phases or to a differing time schedule to that stated then the survey proposal may be subject to revision at the discretion of 360DS.
- H. The prices quoted are for surveying the detail that exists at the time of the employees of 360DS observations. Any development subsequent to this date will be added, if requested, and the cost of the extra work involved will be charged at a rate to be agreed.
- I. Any estimate of cost is based upon the assumption that the survey will be able to proceed in the most efficient and logical manner possible, allowance has not been made for any delays that may be experienced due to only small sections of work being required, or that the work is ordered out of sequence, whether chronological or geographical.
- J. Any timelines provided by 360DS are an estimate only and it is NOT a breach of contract should those timelines not be met

3. SITE AND ACCESS

- A. It has been assumed in calculating the quotation that delays will not be experienced by the employees of 360DS due to weather, access on and to site, agreement with others on work completed or to be done, site clearance, demolition, obstructions to the survey by vegetation or buildings, other than that specifically allowed for and, therefore, stated as part of the proposal.
- B. 360DS shall not be responsible for delays arising due to matters beyond its control.
- C. The Client warrants that they have obtained permission of access to carry out the survey over all of the contract area(s)/Site.
- D. The Site must be prepared by the Client prior to commencement date. The Client must ensure that the working area is clear, dry, clean and free of materials, plant and equipment, and above all, a safe working environment.
- E. 360DS is not responsible for providing lighting, scaffold, stairs or the like on the Site.
- F. Any delays or rescheduling costs incurred by 360DS as a result of the Client failing to comply with this clause 3 are deemed to constitute a Variation to the Quote.

4. PROJECT TEAM

- A. 360DS will provide employees capable of providing the services specified in the Scope of Works. The employees may vary from time to time subject to availability, requirements of other 360DS projects, leave requirements and specific skill sets applicable to different stages in the project.

5. WARRANTY AND DEFECTS

- A. Within 6 months of completion of the Services (**Warranty Period**), the Client must notify 360DS in writing if it considers there to be a defect in the deliverables or service.
- B. Where the Client has notified 360DS of a defect within the Warranty Period, 360DS must either - Re-perform the services or pay the Client the reasonable costs of re-performing the Services.
- C. Notwithstanding anything to the contrary herein, the Client acknowledges that no representation, warranty or condition, express or implied, is given by 360DS that the Services provided comply with the rules, regulations, laws and legislation of the place where the Services are being provided.

6. VARIATION

- A. The Client may instruct in writing a Variation to the Scope of Works.
- B. Any work in addition to that stated in the Quote or Scope of Works, will require written instructions to be issued to 360DS the costs of which will either be at an agreed rate, or failing this based upon the employees of 360DS day rates for all time involved and for any delays incurred.
- C. 360DS may not vary the Scope of Works without the Client's consent.
- D. 360DS reserves the right to withdraw services and renegotiate an amended fee for any job that 360DS deems takes significantly longer or is more complex than what was originally quoted on.

7. FEES, DISBURSEMENTS AND PAYMENT TERMS

- A. The fees for the project shall be based on the agreed hourly rates or fixed rates applicable and as agreed to in writing.
- B. In consideration for the performance of the Services, the Client must pay the fees specified in the quote in respect of the provision of equipment, labour and ancillary services.
- C. The Client must reimburse 360DS for all third party and out of pocket expenses reasonably and properly incurred in connection with the Services (Disbursements). Disbursements include (but are not limited to) consumables, air travel and freight, accommodation, title and survey searching fees, data licence fees and the like.
- D. 360DS may claim payment for the fees and disbursements by issuing an invoice to the Client at our discretion in respect of the services performed to such date.
- E. 360DS may claim payment from the Client in respect of amounts relating to the performance of services involving any undertaking, engagement or work requiring interaction, Authority to Act, documentation or lodgement with any regulatory or statutory body or organisation which shall be paid in full prior to lodgements relating to these services.
- F. The Client must pay the fees and disbursements, including GST without any set-off or counter claim whatsoever, to 360DS within the applicable period from the date of the invoice or claim.
- G. Invoices to be paid in full as agreed or if no time period specified within 14 days of date of the invoice.
- H. 360DS shall be entitled to charge interest on overdue invoice amounts, which shall accrue from the date when payment becomes due daily until payment is received at a rate of RBA cash rate plus 5% per calendar month. Should recovery action be necessary, the full cost of recovery including solicitor's fees and any credit agency fees will also be invoiced to and be payable by the Client.
- I. 360DS may suspend or terminate the supply of goods or services until all outstanding invoices have been paid in full.

8. LIMITATION ON LIABILITY

- A. To the maximum extent permitted by law, the aggregated liability of 360DS arising under or in connection with the contract (whether in contract, tort (including negligence), statute, equity or otherwise) is limited to the fees payable under this contract.
- B. 360DS is not liable under any circumstance for indirect, special or consequential loss or damage or for fines, penalties or punitive damages.
- C. 360DS is not liable for any loss or damage to the extent caused or contributed to by inaccurate or incomplete information supplied by the Client relating to the services or breach of this contract by the Client.

9. INTELLECTUAL PROPERTY / COPYRIGHT

- A. All plans and documentation associated with or arising from the service is the property of 360DS. No plans or documentation can be given, reproduced or distributed to any person, public authority, organisation, company or institution without the express permission of a duly authorised representative of 360DS. 360DS retains ownership on all data, plans and documentation associated with any project.
- B. 360DS reserves all present and future moral rights in Intellectual Property Rights in all data.
- C. 360DS grants the Client a licence to use the data for the purposes of the project, conditional upon the following
 - The licence applies only to the project or that part of the project to which the data relates
 - 360DS has completed the relevant services or deliverables and
 - All fees and disbursements properly due to 360DS have been paid