

INTERIOR
ARCHITECTURE
& DESIGN

**TERMS & CONDITIONS
DESIGN SERVICES**

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ZUNICA

TERMS & CONDITIONS DESIGN SERVICES

1. DEFINITIONS

1.1 Brief: Statements and materials assembled by the Client with the Zunica's assistance to summarise the Client's initial requirements, to address the Client's preferences and priorities, and to summarise the impact of context, environment and prevailing legislation at the time of signing this Agreement.

1.2 Construction Cost: The latest professionally prepared estimate for the final cost of constructing all elements of the Project designed or specified by the Zunica, including:

- (a) any contingencies for changes in work or design reserve cost allowances
- (b) the cost of any equipment and/or materials provided (as if new) or to be provided by the Client to a contractor for installation during construction of the Project
- (c) any direct costs carried out by, or on behalf of, the Client
- (d) provision for contractor's profit and overheads.

The Construction Cost shall not include:

- (a) GST (any other applicable tax)
- (b) design fees
- (c) cost of the land
- (d) any loss and/or expense payments paid to a contractor
- (e) any liquidated damages deducted by the Client
- (f) the costs of resolution of any dispute
- (g) the Client's legal and in-house expenses

1.3 Agreement: the agreement between the Client and Zunica consisting of all parts of the Design Proposal, Variations and all parts of this document.

1.4 Zunica: The company or firm identified as Zunica Pty Ltd ("Zunica") within the Design Proposal

1.5 Client: The person, company or firm identified as the Client within the Design Proposal.

1.6 Consultant: A person, company or firm appointed by the Client to perform professional services in connection with the Project.

1.7 Project Fee: The payment structure set out in Design Proposal that is payable to Zunica as agreed by the Client and the Zunica.

1.8 Hourly Rates: The hourly charge-out rates of the Zunica set out within the Design Proposal.

1.9 Project: The project identified within the Design Proposal, more specifically detailed in the Project Scope.

1.10 Project Schedule: The period of time agreed by the Client and Zunica for completion of the Deliverables as set out within the Design Proposal.

1.11 Deliverables: The Deliverables to be performed by Zunica as specified within the Design Proposal. Deliverables may be varied by the Client in accordance with this Agreement.

1.12 Site: The premises where the Works are to be carried out.

1.13 Works: Any permanent or temporary structure, building, fixture or access constructed or required to be constructed on the Site as part of the Project.

2. QUOTATIONS & ORDERING

2.1 These terms and conditions ("Terms") apply to all design services and associated goods, services and other deliverables ("Deliverables") that Zunica Pty Ltd ("Zunica") provides to the Client from time to time, as referred to in the Zunica's written Design Proposal or quotation ("Design Proposal"), upon the Client accepting the Design Proposal.

2.2 By ordering or receiving any Deliverables, the Client is deemed to have agreed that these Terms apply to the Deliverables, to the exclusion of all others. Any terms or conditions contained in any document issued by the Client or correspondence or documents passing between Zunica and the Client:

- (a) will not affect the agreement between Zunica and the Client pursuant to these Terms; and
- (b) do not constitute an offer or a counter-offer by the Client.

2.3 If requested to do so by the Client, Zunica may issue a further Design Proposal or Variation in respect of any further deliverables. Any Design Proposal or Variation will remain open for acceptance for up to 30 days from the date of issue, or for some other period if specified in the Design Proposal. Zunica may withdraw a Design Proposal at any time. If the Client accepts that Design Proposal, then these Terms will apply.

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TERMS & CONDITIONS DESIGN SERVICES

- 2.4** Where it is requested that Zunica Design be responsible for the procurement of goods a 10% service fee of the total amount for goods will apply and be added to the relevant monthly invoice (unless otherwise stipulated under the fee arrangement).
- 2.5** To the extent of an inconsistency between these Terms and a Design Proposal, the Design Proposal prevails. The Client acknowledges that where a Design Proposal provides that any amount is payable in advance, Zunica will not be obliged to commence work or provide Deliverables until that amount has been paid in full.
- 2.6** Zunica's accounts are maintained with a strict limit. Your limit is set at \$10,000. If the combined value of your work in progress, current invoices and new orders will exceed \$10,000 progress payments will be required for work to continue.

3. ZUNICA'S OBLIGATIONS

- 3.1** Subject to these Terms, Zunica will provide the Deliverables:
- (a) in a timely and professional manner, with due care and skill;
 - (b) in accordance with the project schedule in the Design Proposal (subject to any delay, act or omission by the Client, Contractors and/or Builders);
 - (c) utilising appropriately qualified and skilled personnel;
 - (d) cooperatively with the Client and its personnel; and
 - (e) in accordance with the specifications or descriptions referred to in the Design Proposal (as varied from time to time by agreement between the parties); and
 - (f) ensure the correct and appropriate insurance for all services.

In relation to the Deliverables, either party shall advise the other upon becoming aware of a need to vary the Deliverables, the Project Schedule or Construction Cost, the fees and/or any other part of this Agreement.

4. CLIENT'S GENERAL OBLIGATIONS

- 4.1** The Client will:
- (a) promptly provide anything required by Zunica to enable it to provide the Deliverables (as referred to in a quotation or otherwise requested in writing from time to time) including information, Client briefs, CAD drawings, surveys and reports in a timely manner;
 - (b) ensure that it has the right to permit Zunica to use anything provided to Zunica under paragraph (a) without infringement of any third party right (including any intellectual property right or right of privacy) or any applicable law;
 - (c) perform its obligations under these Terms with due care and skill; and
 - (d) work cooperatively with Zunica and its personnel and contractors.
 - (e) directly appoint all other consultants required by the Project which may include, but is not limited to: cost consultant, landscape architect, engineers and surveyors. The Client will require that said Consultants maintain professional liability insurances appropriate to the services provided. Upon Zunica's request the Client shall furnish Zunica with copies of the Consultant's scope of service.
 - (f) directly appoint the contractor and where required subcontractors and require that said contractor and subcontractors maintain professional liability insurance as appropriate to the services provided. Upon Zunica's request, the Client shall furnish Zunica with copies of the contractor's and subcontractors' scope of service.
 - (g) hold each such Consultant/subconsultant/contractor/subcontractor, however appointed, and not Zunica, responsible for the proper performance of their services and shall require such other party(s) to cooperate with Zunica to enable Zunica to properly and effectively perform the Services.
 - (h) where decisions are required of the Client, such decisions shall be given in a reasonable time to Zunica to enable Zunica to perform the Services properly and in a timely manner.
 - (i) commit adequate resources to the Project to enable the Zunica to perform the Services properly and in a timely manner.

5. CLIENT APPROVAL OF DELIVERABLES

5.1 The Client must promptly and carefully check and approve any draft or revision versions of Deliverables delivered by Zunica. By approving a Deliverable the Client confirms to Zunica that the Client has checked, and is satisfied that the Deliverable is accurate and complete, meets the Client's requirements, and complies with any applicable laws. Without limiting that obligation, the Client will:

- (a) comply with Zunica's procedures for varying or approving Deliverables (as notified from time to time) or ordering additional Deliverables;
- (b) fully and accurately provide to Zunica all details and information required to be provided;

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DESIGN SERVICES**

- (c) promptly review all drawings or other revision Deliverables from Zunica upon receipt, to make sure that they are complete, accurate and meet the Client's satisfaction; and
- (d) promptly notify Zunica of any inaccuracies or changes required, or alternatively promptly approve (in writing) the Deliverable.

5.2 The parties acknowledge that if the Client requires more than two reviews of a Deliverable or changes to the initial brief, Zunica can charge the Client for performing those additional reviews.

6. INVOICING & PAYMENT

6.1 The Client's approval of the Deliverables authorises Zunica to confirm orders and direct manufacture to commence production as specified in a Design Proposal or otherwise ordered by the Client.

Unless Zunica otherwise specified in writing, all prices specified in the Design Proposal exclude:

- (a) any tax, including any Goods and Services Tax within the meaning of the A New Tax System (Goods and Services Tax) Act 1999 (Cth) (GST), duty or impost levied in respect of any Deliverables; and
- (b) out of pocket costs and charges relating to the provision of the Deliverables (including all third party fees, charges and expenses that may be incurred); and
- (c) any additional expense arising as a consequence of an instruction or lack of instruction from the Client, which the Client will pay, in addition to the amounts specified in the Design Proposal.

6.2 Zunica may invoice for Deliverables at the times specified in the Design Proposal, or if no times are specified, on a monthly basis. Generally, service will commence upon the payment receipt of the nonrefundable Deposit Payment as specified in the Design Proposal's Payment Schedule.

At the discretion of Zunica and the project size, Progress Payment invoices will be issued at the commencement of each Stage or each calendar month. Each Stage and all associated outstanding fees and charges are to be paid for in full prior to the commencement of the next stage.

Delivery of final stage works is subject to full payment of final invoice and all other outstanding fees and charges. Should the Client request additional work and service charged at an hourly rate, this component will be added to the relevant invoice.

Payment is due within seven (7) days of the date of the issued invoice, unless Zunica specifies otherwise in writing. If Zunica does not receive payment by the due date, then without limiting its rights under these Terms or generally, Zunica may:

- (a) charge the Client interest on the amount outstanding at the rate fixed from time to time under Section 2 of the Penalty Interest Rates Act 1983 (Vic) (compounding daily);
- (b) suspend the provision of Deliverables, whether under a particular Design Proposal or generally, until the Client has paid the outstanding amount and interest; and
- (c) retain any amount received from the Client on account of the Deliverable (including any such amount referred to in clause 2.4).

6.3 The Client is liable for all reasonable expenses (including debt collection commission) and legal costs (on a solicitor/own client basis) incurred by Zunica in the enforcement of the Client's obligations and the recovery of monies due from the Client to Zunica.

6.4 The Client may not deduct, reduce or withhold any payments due to Zunica under this Agreement by reason of claims or alleged claims against Zunica.

7. INTELLECTUAL PROPERTY RIGHTS

7.1 If the Client provides any materials (such as photographs, artwork, drawings) to Zunica or to any third party for the purpose of that material being incorporated into any Deliverable, the Client:

- (a) warrants to Zunica that the Client is the owner of the copyright in relation to that material, or that it holds an irrevocable licence (with the right to sub-license) to use that material for the purpose of inclusion in the Deliverables;
- (b) grants to Zunica an assignable, irrevocable, fee-free licence (or sub-licence) to use and reproduce that material for and in the Deliverables; and
- (c) agrees to indemnify and keep Zunica, its employees and contractors indemnified from and against any claim of any nature (including any claim of breach of copyright and any claim or complaint by the Client) arising from the use, reproduction or appearance of such material in any Deliverables.

7.2 On payment by the Client of all monies owing under these Terms, nothing in this clause obliges Zunica to provide to the Client any of its working files or works in progress.

7.3 Zunica retains copyright in all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials and any other materials provided by Zunica in connection with the Project.

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**TERMS & CONDITIONS
DESIGN SERVICES**

- 7.4** Zunica hereby grants, subject to payment of all outstanding fees, to the Client a non exclusive limited licence to use and reproduce the Materials for all purposes relating to the Project for which the Design Proposal has been drawn.
- 7.5** Zunica shall have no liability for any use of the Materials other than that for which the same were originally prepared and provided.
- 7.6** Such limited licence shall, in any case, not extend to the Client developing (whether itself or through a third party) any models or merchandise (e.g. furniture pieces, artwork, lighting) based on the Materials. Any such activity would be subject to separate terms, including an entitlement of Zunica to suitable royalties.
- 7.7** If Zunica rightfully terminates the Agreement for causes as specified in section 11, the licence granted under section 7 will be revoked.
- 8. PUBLICITY**
- 8.1** The Client shall, where required by Zunica and subject to section 7, in any publicity relating to the Project, give full credit to Zunica and its consultants for their services related to the project.
- 8.2** Zunica shall be entitled to royalties on any invention, new product or exploitation of any images arising out of the Services and/or the Materials.
- 8.3** Zunica and its Consultants shall have the right to photograph the Project and to use the photographs in the promotion of its professional service through publication, advertising, public relations, brochures, websites, or other marketing media. The use of any drawings or documents prepared by Zunica or reference to the company or directors or staff in any form shall be made only with the consent of Zunica. Zunica and its consultants must be attributed in any public information containing a 2 or 3 dimensional representation of the project promulgated for or on behalf of the Client or Zunica, whether the project is complete or not.
- 9. RELATIONSHIP**
- 9.1** Zunica and the Client are not partners, employees or agents of each other. Neither party has the power or authority, directly or indirectly or through their respective servants or agents, to bind the other to any agreement with any person or vary, release or discharge any obligation, except as specified in these Terms.
- 9.2** Zunica is providing Deliverables to the Client on a non-exclusive basis, and may provide goods and services of a similar nature to other parties. Nothing in this clause permits a party to breach any obligations of confidentiality or infringe the other party's intellectual property rights, whether under these Terms or otherwise.
- 10. CONFIDENTIALITY**
- 10.1** Neither party may, without the other party's prior written consent, disclose to any third party or use, any Confidential Information of the other party imparted to or obtained by it during or in connection with these Terms. This obligation of confidence will cease to apply in relation to information that the party is required to disclose by any law, or which becomes part of the public domain other than as the result of a breach of any obligation of confidence by any party.
- 10.2** The term "Confidential Information" includes any information belonging to or relating to a party which is by its nature confidential, secret or sensitive, regardless of the form (if any) in which the information is stored or represented, where the other party is or should reasonably have been aware of the nature of the information, but excludes any information which is or has become part of the public domain. The contents of any Design Proposal and pricing are Zunica's Confidential Information.
- 10.3** Clauses within section 10 survives termination of any agreement under these Terms for any reason.
- 11. TERMINATION**
- 11.1** Either party may terminate its agreement under these Terms or any accepted Design Proposal by written notice if either party:
- (a) breaches any term of these Terms and the breach is not capable of remedy or the Client does not remedy that breach within fourteen (14) days of written notice;
 - (b) becomes insolvent, or commits any act of insolvency, compounds with its creditors, has judgment entered against it in any court or, being a company, has a provisional liquidator, liquidator, receiver, receiver manager or administrator appointed; or
 - (c) ceases or threatens to cease conducting its business in the normal manner.
- 11.2** If Zunica gives the Client a notice under clause 11.1:
- (a) all sums then outstanding will become immediately due and payable to Zunica;
 - (b) Zunica may, in addition to terminating the agreement under these Terms or the Design Proposal:
 - (i) revoke any licence previously granted in respect of any Deliverable for which payment has not been made in full;
 - (ii) retain any monies paid by or on behalf of the Client, and charge the Client for work performed and expenses incurred for which Zunica has not previously rendered an invoice;

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DESIGN SERVICES**

(iii) be regarded as discharged from any further obligations under that agreement; and

(iv) pursue any additional or alternative remedies provided by law.

12. ALTERATIONS

12.1 The Client may request Zunica to change any plans or work-in-progress for Deliverables under an accepted Design Proposal and if so Zunica will take reasonable steps to comply and to minimise the Client's expense, provided that it can do so without incurring any liability under its own contractual obligations.

12.2 In the event of any amendments, Zunica will charge the Client for:

(a) any work performed or expenses incurred that are thrown away as a result of the cancellation or amendment for which Zunica has not previously rendered an invoice; and

(b) any charges or expenses to which Zunica has previously committed for the provision of the Deliverable.

13. LIABILITY

13.1 Any action by the Client against Zunica must be commenced within one (1) year of the date of issue of a Final Certificate in respect of the Project or, if there is no such Final Certificate, within one (1) year of the cessation of Zunica's Deliverables or of the date when the Project achieved Practical Completion whichever be the earlier.

13.2 The liability of Zunica to the Client arising out of the performance or non-performance of the Deliverables, whether under the law of contract, tort or otherwise, shall be limited to those damages of an indirect or any quantitative nature whether financial or otherwise.

13.3 The liability of Zunica to the Client arising out of the performance or non-performance of the Deliverables, whether under the law of contract, tort or otherwise, shall be limited to a maximum of \$250,000 or to the amount of indemnity available to Zunica under Zunica's Professional Indemnity Insurance in respect of the relevant claim whichever is lesser.

13.4 Zunica shall be deemed to have been discharged from all liability in respect of the Deliverables, whether under the law of contract, tort or otherwise, at the expiration of the period specified clause 13.1 and the Client (and persons claiming through or under the Client) shall not be entitled to commence any action or claim whatsoever against Zunica in respect of the Deliverables after that date.

14. GENERAL PROVISIONS

14.1 The law applicable to this Agreement shall be the law of the Victoria, Australia.

14.2 Zunica shall be entitled to rely upon the accuracy and completeness of:

(a) the information furnished by the Client and

(b) the Client's approvals

14.3 Zunica is not responsible for ensuring the Project complies with the building contract documents, but when engaged for contract administration services, is required to instruct the building contractor regarding requirements of the building contract documents, according to the contract terms.

14.4 Any natural materials selected for the Project may change in appearance and dimension following exposure to use or climatic conditions and this is normal behaviour for such materials.

14.5 The scope of the Services does not include any services in relation to asbestos, other hazardous materials, or any other site contaminant.

14.6 Upon the completion of the Project, the Client is responsible for ongoing and regular maintenance of the Project, including its systems, finishes and equipment.

14.7 Nothing makes ineffective, or reduces, any protection at law from liability which Zunica is entitled to in the state of territory of the applicable law.

14.8 If, during the term of the Agreement or after completion of it, the Client becomes aware of any problem with the design, fault or defect in the Project, or non-compliance with the Project's contract documents, the Client must promptly, but not later than five (5) business days after becoming aware of it, notify Zunica about it in writing. If the Client does not do this, the Client will be treated as having waived any claim the Client may have against the Zunica (in contract, tort or otherwise) in relation to the problem, fault or non-compliance.

15. OTHER SPECIALIST CONSULTANTS

15.1 Specialist Consultant Engagement: The Client agrees the project may require the services of Specialist Consultants. Specialist Consultants are to be engaged directly and paid by the Client as well as those to be engaged directly and paid by Zunica as part of the service fees provided in the Design Proposal Agreement.

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- 15.2** In relation to any Specialist Consultant engaged directly and paid by the Client, the Client will engage each such Specialist Consultant on the basis that:
- (a) Zunica is not responsible for the services provided by the Specialist Consultant;
 - (b) Zunica is responsible for coordination of the Specialist Consultant's services; and
 - (c) The Client is to pay the Specialist Consultant all its fees and disbursements, but the Client may seek Zunica's confirmation that the Specialist Consultant's services invoiced have been provided.
- 15.3** Additional Specialist Consultants: Where Zunica and the Client agree that additional Specialist Consultant services are required beyond those specified in this Agreement, such additional Specialist Consultant's may be:
- (a) Engaged directly and paid by the Client, subject to the terms outlined in this clause.
 - (b) Engaged directly and paid by Zunica, in which case the associated fees will be charged in addition to the services outlined in the Fee section of this Agreement.

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