

## Holdfast Building Surveyors – Project Engagement

### Type of engagement (please X)

Certificate of Likely Compliance

Temporary Occupancy Permit

Work Subject to a Building Order

Professional Report/Advice

### Applicant details

\*Applicant:

Contact person:

Address:

\*Phone No.:

\*Email:

\*Owner:

Contact person:

Address:

\*Phone No.:

\*Email:

\*Billing details:

Contact person:

Address:

\*Phone No.:

\*Email:

\*Mandatory fields

### Details of Building Work:

Project address:

Lot No.:

Certificate of Title:

Description:

*(new building/ alterations/ additions/  
repairs/ demolition/ other)*

Use:

*(Dwelling/ Shed/ Deck/ Shop/ Accommodation/ etc.)*

Value of work:  (incl. GST)

Contract Price (X):

Estimate (X):

### Owner/Agent Declaration:

I, the Owner/Agent of the subject property, confirm I

- have read the attached Conditions of Engagement and, where applicable, have made decisions in relation to the service I require for this agreement.
- have not engaged or received advice from another Building Surveyor in relation to this project.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

# Holdfast Conditions of Engagement

## 1. Nature of contract

- 1.1. Upon engagement by the Owner/Agent the Building Surveyor shall provide statutory building surveying and consultancy services in accordance with this agreement and the *Building Act 2016*.
- 1.2. The contractual agreement is between the Owner of the land and the Building Surveyor, no matter who appoints the Building Surveyor.
- 1.3. **Where an Agent acts on behalf of an Owner, they must provide written confirmation from the Owner to act on their behalf and commit them to the all clauses of this agreement.**
- 1.4. The Owner shall pay the Building Surveyor the fees in accordance with this agreement.
- 1.5. The engagement period is for a period of 24 months from the date of issue of the Building Permit, and can be extended at the Building Surveyor's discretion.

## 2. Owner's warranties and indemnities

- 2.1. The owner warrants:
  - a) the accuracy and completeness of all information provided to the Building Surveyor,
  - b) that the Building Surveyor acts with the Owner's authority when conducting the *services*, and
  - c) that no other person has been appointed as the Building Surveyor for the project subject to this engagement.
- 2.2. The Owner shall indemnify the Building Surveyor against any claims in respect of the Building Surveyor acting on the Owner's authority in conducting the *services*.

## 3. Owner's obligations

- 3.1. The owner shall:
  - a) promptly answer any reasonable enquiry made by the Building Surveyor with respect to the *services*, and
  - b) direct others to liaise, cooperate and confer with the Building Surveyor when necessary.
- 3.2. The Owner acknowledges that their ongoing obligations under the *Building Act 2016*, the *Building Regulations 2016* and this agreement include:
  - a) Providing the Building Surveyor with unfettered access to the subject property.
  - b) Not providing information which may be misleading or deceptive.
  - c) Advising the Building Surveyor:
    - i. of any changes in relation to the engagement of a Building Practitioner
    - ii. of any change to the Owner's address
    - iii. if building works cease on the subject property, and
    - iv. if the subject property is transferred to a new Owner.
  - d) Completing the attached engagement form **in full** and provide all listed documents and relevant information to the Building Surveyor.

- e) Ensuring documents supplied for assessment are **complete, drawn and specified to the Building Code of Australia by a suitably qualified and licensed person, and that describe all building and site features relevant to assessment and construction of the project.**
- f) Referencing their local Council in relation to the requirements for compliance and issuing Building, Planning and Plumbing Permits, and providing Permits and endorsed plans to the Building Surveyor where Permits or approvals are required.
- g) Supplying a completed (**in full**) copy of the *Start Work Application* to the Building Surveyor notifying the intended start of work **prior** to the commencement of construction.
- h) Contacting the Building Surveyor at least 48 hours prior to the required time for a mandatory notification stage (Footings, Slab, Frame or Final), regardless of whether it is the Building Surveyor or a third party conducting the inspection, or any other required inspection (e.g. Fire Wall construction, Occupancy, Completion), as noted on the *Certificate of Likely Compliance*.
- i) At mandatory notification stages, ceasing building work related to the mandatory notification stage until the Building Surveyor has caused the subject property to be inspected and has consented to works proceeding.
- j) Providing the Building Surveyor with the required documents certifying compliant construction/installation of elements that could not be inspected visually during mandatory notification stage inspections. The required documents shall be specified on the *Certificate of Likely Compliance* and it is the Owner's responsibility to ensure this is provided to the responsible Builder.
- k) Complying with any direction issued by the Building Surveyor during construction to ensure compliance with the Building Code of Australia and relevant Australian Standards.
- l) Not knowingly disregarding or breaching the *Building Act 2016* during this engagement, including:
  - i. starting work without the **required** Start Work Authorisation being issued,
  - ii. failing to notify of an inspection as required by the *Certificate of Likely Compliance*,
  - iii. covering up building work prior to inspection of required structural elements,
  - iv. occupying a building without the necessary *Occupancy Permit* issued, and
  - v. failing to notify for a Final inspection at the completion of building work.

## 4. Building Surveyor services and obligations

- 4.1. The Building Surveyor shall provide the *services* personally or by a competent representative.
- 4.2. The Building Surveyor shall provide the *services* with such skill, care and diligence as is generally exercised by competent member of the Building Surveying profession performing services of a similar nature.

- 4.3. The Building Surveyor agrees to provide the following services:
- a) Liaise with the Architectural, Engineering and services consultants during the design/documentation stages as required, and limited to statutory building surveying advice without consultancy and design input, unless specifically engaged for such purpose.
  - b) Provide preliminary advice of a routine or general nature.
  - c) Assess the building work in accordance with the *Building Act 2016*, the *Building Regulations 2016* and the Building Code of Australia.
  - d) Liaise when necessary with other authorities such as the Tasmania Fire Service, local Environmental Health Officer, Function control Authorities and Permit Authorities.
  - e) Issue the *Certificates* referred to under the *Building Act 2016* for assessment of the building work.
  - f) Complete statutory inspections as listed on the issued *Certificate*. Inspection of mandatory notification stages are undertaken to confirm the building work is in accordance with the issued Building Permit and must be conducted by a suitably licensed building practitioner if not the building surveyor. Inspections are not to be relied upon by the owner or any third parties for quality assurance, construction compliance, contractual milestones, progress payments, standards or workmanship, or for any other reasons.
  - g) Issue an *Occupancy Permit*, if appropriate, and *Certificate of Final Inspection* or *Certificate of Completion* when required.
  - h) Undertake any of the other functions prescribed in the *Building Act 2016* as appropriate.

## 5. Council Permits

- 5.1. Documentation certified by the Building Surveyor must be submitted to Council within 12 months from the date of certification.
- 5.2. Building Permits issued by Council expire if work has not commenced within 12 months of the date of issue: commencement of work is authorised by Building Surveyor with the *Start Work Authorisation*.
- 5.3. Building Permits issued by Council expire if building work is not completed within 24 months from the date of issue.
- 5.4. The Owner shall pay the Building Surveyor the fee or fee adjustment for the re-issue of certification or where extensions to the Building Permit are required.
- 5.5. The Building Surveyor is not obligated to consent to an extension of the service contract past the 24-month period from the date of issue of the Building Permit.
- 5.6. No refunds will be issued by the Building Surveyor for certification services where the Council refuse issue of a Building Permit or the permit lapses due to non-commencement within the 12 months of issue.

## 6. Services of Notices

- 6.1. A Notice (and any other document) shall be deemed to have been given and received

- a) If delivered to the relevant address in this agreement or the last address communicated in writing to the Building Surveyor, and
- b) On the earliest day of
  - i. actual receipt,
  - ii. confirmation of correct electronic transmission, or
- c) 3 days after posting.

## 7. Service fees payable

- 7.1. Service fees detailed in the fee proposal include:
  - a) Assessment and certification of design documentation in accordance with relevant legislation, regulations and standards,
  - b) generation and issue of a *Certificate of Likely Compliance*,
  - c) Liaison with and referral to Reporting, Function Control and Permit Authorities,
  - d) issue of a *Start Work Authorisation*,
  - e) Issue of *Building Inspection Directions* as required,
  - f) Issue of an *Occupancy Permit* (if required),
  - g) Issue of a *Certificate of Final Inspection* or *Certificate of Completion*, and
  - h) Other professional and consulting services if specified, and are payable before issue of the *Certificate of Likely Compliance*.
- 7.2. Owner Builder Registration surcharge – Dwelling: \$650 (excl. GST).
- 7.3. Owner Builder Registration surcharge – Outbuildings: \$250 (excl. GST).
- 7.4. Protection works surcharge: \$350 (excl. GST), plus hourly charges (Clause 7.10 below) beyond two hours.
- 7.5. Building Permit extension surcharge: \$250 (excl. GST).
- 7.6. Retrospective approval surcharge: \$1,200 (excl. GST), includes preliminary inspection and advice.
- 7.7. Submission of Building Permit application to local Permit Authority on behalf of Owner, if requested: hourly charges (Clause 7.10 below).
- 7.8. Additional inspections that cannot be determined at the outset but that may be required during construction, beyond that specified in the fee proposal:
  - a) \$400 per Structural residential inspection (excl. GST),
  - b) \$550 per Final/Occupancy residential inspection. (excl. GST),
  - c) \$650 per commercial inspection (excl. GST).
- 7.9. Additional assessment, alterations, amendments, consultations, general advice and the like:
  - a) \$200 per hour (excl. GST) for residential projects,
  - b) \$240 per hour (excl. GST) for commercial projects.
- 7.10. Assessment of performance solutions: \$200 per hour (excl. GST) – Residential.
- 7.11. Assessment of performance solutions: \$250 per hour (excl. GST) - Commercial.

- 7.12. Legal reporting and dispute resolution: \$240 per hour (excl. GST) – Residential.
- 7.13. Legal reporting and dispute resolution: \$290 per hour (excl. GST) – Commercial.
- 7.14. Statutory enforcement, actions and unapproved works: hourly charges (see Clause 7.10 above).
- 7.15. Vehicle travel costs: \$6.00 per km (excl. GST) beyond 20 kms from city centres (calculated one way).
- 7.16. Payment of Reporting, Function control & Permit Authority fees, State Government levies and any other third-party fees or charges are the responsibility of the Owner. Any third-party fees or costs paid by Holdfast, if requested to do so by the Owner, will incur cost + 15% disbursement.

## 8. Fee and service exclusions and exceptions

- 8.1. The Building Surveyor is not a project/construction manager, supervisor or quality inspector for the building work.
- 8.2. The Builder is responsible for the construction work and compliance with relevant codes and standards even though the work may be inspected by the Building Surveyor.
- 8.3. Inspections are often charged independently as the number and type of inspections required often depend on the project and how the Builder goes about building works. The owner shall pay the Building Surveyor the inspection fee or fee adjustment for any inspections undertaken in accordance with this agreement.
- 8.4. If a legislative requirement necessitates a change or a fee/charge, there may be a fee adjustment.
- 8.5. Where Notices and Orders are served for enforced compliance under the *Building Act 2016* there will be a fee adjustment in accordance with this agreement.

## 9. Payment claims

- 9.1. Payment claims are made in accordance with the *Building and Construction Industry Security of Payments Act 2009*.
- 9.2. The Building Surveyor shall claim payment in accordance with the fee schedule to this agreement.
- 9.3. Each claim shall be in writing and include details of the value of the services provided, together with any disbursements incurred by the Building Surveyor, and may include details of the other moneys then due to the Building Surveyor pursuant to this agreement.
- 9.4. The owner shall pay any claim made by the Building Surveyor within 7 days of the date of the claim.
- 9.5. Mediation, where required, is to be undertaken in accordance with the provisions of the *Building and Construction Industry Security of Payments Act 2009*.

## 10. Interest

- 10.1. Interest at a rate of 5% shall be due and payable by the Owner as from the 15<sup>th</sup> day after the invoice (claim) is issued.

## 11. Limitation of liability

- 11.1. Subject to Conditions 11.2, 11.3 and 11.4 below, the Building Surveyor's liability to the Owner arising out of, or in connection with, this agreement (including the

performance or non-performance of the *services*), whether under the law of contract, in tort, in equity, under statute or otherwise, shall be limited in aggregate to \$1,000,000.

- 11.2. The Building Surveyor is not liable to the Owner in respect of any indirect, consequential or special losses (including loss of profit, loss of business opportunity, and payment of liquidated sums or damages under any other agreement).
- 11.3. The Building Surveyor shall be deemed to have been discharged from all liability in respect of statutory *services* whether under contract, in tort, in equity, under statute or otherwise, on the expiration of ten (10) years from the issue of the Occupancy Permit, Certificate of Completion or Final Inspection, or completion of the *services*.
- 11.4. The Building Surveyor shall be deemed to have been discharged from all liability in respect of consulting *services* whether under contract, in tort, in equity, under statute or otherwise, on the expiration of three (3) years from the completion of the *services*.
- 11.5. If, and to the extent that, any of this clause is void as a result of Section 68 of the *Trade Practices Act 1974* (Cth), then the Building Surveyor liability for a breach of a condition or warranty is limited to the supplying of the relevant *services* again or the payment of the cost of having the *services* supplied again.

## 12. Termination

- 12.1. The termination of the Building Surveyor's appointment under this agreement may only occur
  - a) By mutual agreement between the owner and the Building Surveyor.
  - b) After first obtaining written consent from the Director of Building Control in accordance with Sections 36 & 37 of the *Building Act 2016*.
  - c) At the Building Surveyor's discretion where
    - i. The expiry of the 12-month period for submission of documentation for the issue of a Building Permit (Condition 5.1 of this agreement), or
    - ii. The Building Permit lapses after 12 months due to work not commencing (Condition 5.2 of this agreement), or
    - iii. The issue of the *Certificate of Completion (Notifiable)* or *Certificate of Final Inspection (Permit)*.
- 12.2. If this agreement is terminated in accordance with Condition 12.1, the Owner shall pay to the Building Surveyor ALL outstanding payments owing at the time of termination.
- 12.3. The Building Surveyor shall be entitled to charge additional fees for costs and disbursements arising as a consequence of the termination.