

LS Planning Pty Ltd – Terms & Conditions of Trade

1. **Definitions**
- 1.1 "L S Planning" shall mean LS Planning Pty Ltd ATF The LSP Discretionary Trading Trust T/A LS Planning Pty Ltd its successors and assigns or any person acting on behalf of and with the authority of LS Planning Pty Ltd ATF The LSP Discretionary Trading Trust T/A LS Planning Pty Ltd.
- 1.2 "Client" shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by L S Planning to the Client.
- 1.3 "Guarantor" means that person (or persons) who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 "Services" shall mean all Services supplied by L S Planning to the Client and includes any advice or recommendations.
- 1.5 "Price" shall mean the price payable for the Services as agreed between L S Planning and the Client in accordance with clause 4 of this contract.
2. **The Competition and Consumer Act 2010 ("CCA") and Fair Trading Acts ("FTA")**
- 2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the CCA or the FTA in each of the States and Territories of Australia (including any substitute to those Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable.
- 2.2 Where the Client buys Services as a consumer these terms and conditions shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer's statutory rights.
3. **Acceptance**
- 3.1 Where L S Planning gives advice, recommendations, information, assistance or service to the Client or the Clients agree, regarding the Goods or Services then it is given in good faith and L S Planning shall not be liable in any way whatsoever for any damages, losses or costs however arising resulting from the Client relying on the same.
- 3.2 Any instructions received by L S Planning from the Client for the supply of Services and/or the Client's acceptance of Services supplied by L S Planning shall constitute acceptance of the terms and conditions contained herein.
- 3.3 These terms and conditions are meant to be read in conjunction with the Terms and Conditions contained in L S Planning's Letter of Engagement or Fee Proposal. If there are any inconsistencies between the two documents then the terms and conditions contained in this document shall prevail.
- 3.4 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 3.5 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of L S Planning.
- 3.6 The Client shall give L S Planning not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by L S Planning as a result of the Client's failure to comply with this clause.
- 3.7 Services are supplied by L S Planning only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Client's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.
4. **Price and Payment**
- 4.1 At L S Planning's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by L S Planning to the Client in respect of Services supplied; or
- (b) L S Planning's quoted Price (subject to clause 4.2) which shall be binding upon L S Planning provided that the Client shall accept L S Planning's quotation in writing within thirty (30) days.
- 4.2 L S Planning reserves the right to change the Price in the event of a variation to L S Planning's quotation.
- 4.3 At L S Planning's sole discretion a deposit may be required.
- 4.4 Time for payment for the Services shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due fourteen (14) days following the date of the invoice.
- 4.5 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Client and L S Planning.
- 4.6 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
5. **Delivery of Services**
- 5.1 At L S Planning's sole discretion delivery of the Services shall take place when:
- (a) the Client takes possession of the Services at L S Planning's address; or
- (b) the Client takes possession of the Services at the Client's nominated address (in the event that the Services are delivered by L S Planning or L S Planning's nominated carrier).
- 5.2 At L S Planning's sole discretion the costs of Delivery are:
- (a) in addition to the Price; or
- (b) for the Client's account.
- 5.3 The failure of L S Planning to deliver shall not entitle either party to treat this contract as repudiated.
- 5.4 L S Planning shall not be liable for any loss or damage whatsoever due to failure by L S Planning to deliver the Services (or any of them) promptly or at all where due to circumstances beyond the control of L S Planning.
6. **Risk**
- 6.1 If L S Planning retains ownership of the Services nonetheless, all risk for the Services passes to the Client on delivery.
7. **Client's Responsibilities**
- 7.1 The Client shall as soon as practicable make available to L S Planning all information, documents and other particulars relating to the Client's requirements for the Services.
- 7.2 Unless the parties specifically agree otherwise, the Client shall as soon as practicable obtain all approvals, authorities, licenses and permits which are required from governmental, municipal or other responsible authorities for the lawful implementation and completion of the project.
- 7.3 The Client agrees that the Services do not include any services which are properly carried out by other professions such as legal or accounting and if other such professional services are required the Client shall obtain these services at his own cost.
- 7.4 If the Client becomes aware of any matter which may change the scope or timing of the Services then the Client will give written notice to the L S Planning.
- 7.5 The Client acknowledges that it is the Client's responsibility to check measurements supplied, before L S Planning commences the Services. L S Planning shall not be liable for any loss damages or costs however arising resulting from the Client's failure to comply with this clause. Measurements taken off plans or the Client's figures by L S Planning are done so at the Client's own risk and no responsibility is taken by L S Planning for their accuracy.
8. **Title**
- 8.1 L S Planning and the Client agree that ownership of the Services shall not pass until:
- (a) the Client has paid L S Planning all amounts owing for the particular Services; and
- (b) the Client has met all other obligations due by the Client to L S Planning in respect of all contracts between L S Planning and the Client.
- 8.2 Receipt by L S Planning of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then L S Planning's ownership or rights in respect of the Services shall continue.
- 8.3 It is further agreed that:
- (a) until such time as ownership of the Services shall pass from L S Planning to the Client L S Planning may give notice in writing to the Client to return the Services or any of them to L S Planning. Upon such notice the rights of the Client to obtain ownership or any other interest in the Services shall cease.
- (b) if the Client fails to return the Services to L S Planning then L S Planning or L S Planning's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Services are situated and take possession of the Services.
9. **Personal Property Securities Act 2009 ("PPSA")**
- 9.1 In this clause financing statement, financing charge statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 9.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all goods/documents that have previously been supplied and that will be supplied in the future by L S Planning to the Client.
- 9.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which L S Planning may reasonably require to:
- (i) register a financing statement or financing charge statement in relation to a security interest on the Personal Property Securities Register;
- (ii) register any other document required to be registered by the PPSA; or
- (iii) correct a defect in a statement referred to in clause 9.3(a)(i) or 9.3(a)(ii);
- (b) indemnify, and upon demand reimburse, L S Planning for all expenses incurred in registering a financing statement or financing charge statement on the Personal Property Securities Register established by the PPSA or releasing any goods/documents charged thereby;
- (c) not register a financing charge statement in respect of a security interest without the prior written consent of L S Planning;
- (d) not register, or permit to be registered, a financing statement or a financing charge statement in relation to the goods/documents in favour of a third party without the prior written consent of L S Planning;
- (e) immediately advise L S Planning of any material change in its business practices of selling the goods/documents which would result in a change in the nature of proceeds derived from such sales.
- 9.4 L S Planning and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 9.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 9.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 9.7 Unless otherwise agreed to in writing by L S Planning, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 9.8 The Client must unconditionally ratify any actions taken by L S Planning under clauses 9.3 to 9.5.
- 9.9 If any provisions of these terms and conditions are inconsistent with the PPSA, the PPSA shall prevail to the extent of that inconsistency.
10. **Errors and Omissions**
- 10.1 The Client shall inspect the Services on delivery and shall within seven (7) days of delivery (time being of the essence) notify L S Planning of any alleged defect, shortage in quantity, errors, omissions or failure to comply with the description or quote. The Client shall afford L S Planning an opportunity to inspect the Services within a reasonable time following delivery if the Client believes the Services are defective in any way. If the Client shall fail to comply with these provisions, the Services shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage. For defective Services, which L S Planning has agreed in writing that the Client is entitled to reject, L S Planning's liability is limited to either (at L S Planning's discretion) replacing the Services or rectifying the Services, except where the Client has acquired Services as a consumer within the meaning of the Competition and Consumer Act 2010 (Cv/Wh) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Services, or rectification of the Services, or replacement of the Services.
11. **Intellectual Property**
- 11.1 Where L S Planning has designed, drawn or written documents for the Client, then the copyright in those designs and drawings and documents shall remain vested in L S Planning, and shall only be used by the Client at L S Planning's discretion.
- 11.2 The Client warrants that all designs or instructions to L S Planning will not cause L S Planning to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify L S Planning against any action taken by a third party against L S Planning in respect of any such infringement.
- 11.3 The Client agrees that L S Planning may use any documents, designs, drawings or goods created by L S Planning for the purposes of advertising, marketing, or entry into any competition.
12. **Default and Consequences of Default**
- 12.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at L S Planning's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 12.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any disbursements incurred by L S Planning.
- 12.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify L S Planning from and against all costs and disbursements incurred by L S Planning in pursuing the debt including legal costs on a solicitor and own client basis and L S Planning's collection agency costs.
- 12.4 Without prejudice to any other remedies L S Planning may have, if at any time the Client is in breach of any obligation (including those relating to payment) L S Planning may suspend or terminate the supply of Services to the Client and any of its other obligations under the terms and conditions. L S Planning will not be liable to the Client for any loss or damage the Client suffers because L S Planning has exercised its rights under this clause.
- 12.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 12.6 Without prejudice to L S Planning's other remedies at law L S Planning shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled until all amounts owing to L S Planning shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to L S Planning becomes overdue, or in L S Planning's opinion the Client will be unable to meet its payments as they fall due; or
- (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
13. **Security and Charge**
- 13.1 Despite anything to the contrary contained herein or any other rights which L S Planning may have howsoever:
- (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to L S Planning or L S Planning's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that L S Planning (or L S Planning's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
- (b) should L S Planning elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify L S Planning from and against all L S Planning's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint L S Planning or L S Planning's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 13.1.
14. **Cancellation**
- 14.1 L S Planning may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are delivered by giving written notice to the Client. On giving such notice L S Planning shall repay to the Client any sums paid in respect of the Price. L S Planning shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 14.2 In the event that the Client cancels delivery of Services the Client shall be liable for any loss incurred by L S Planning (including, but not limited to, any loss of profits) up to the time of cancellation.
15. **Privacy Act 1988**
- 15.1 The Client and/or the Guarantor/s (herein referred to as the Client) agree for L S Planning to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by L S Planning.
- 15.2 The Client agrees that L S Planning may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by the Client; and/or
- (b) to notify other credit providers of a default by the Client; and/or
- (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
- (d) to assess the creditworthiness of the Client.
- The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 15.3 The Client consents to L S Planning being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 15.4 The Client agrees that personal credit information provided may be used and retained by L S Planning for the following purposes (and for other purposes as shall be agreed between the Client and L S Planning or required by law from time to time):
- (a) the provision of Services; and/or
- (b) the marketing of Services by L S Planning, its agents or distributors; and/or
- (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Services; and/or
- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
- (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Services.
- 15.5 L S Planning may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client;
- (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- The information given to the credit reporting agency may include:
- (a) personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
- (b) details concerning the Client's application for credit or commercial credit and the amount requested;
- (c) advice that L S Planning is a current credit provider to the Client;
- (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
- (e) that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
- (f) information that, in the opinion of L S Planning, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);
- (g) advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once;
- (h) that credit provided to the Client by L S Planning has been paid or otherwise discharged.
16. **Lien**
- 16.1 Where the Client has left any of the Client's documentation with L S Planning for L S Planning to provide any Services in relation to that documentation and L S Planning has not received or been tendered the whole of the Price, or the payment has been dishonoured, L S Planning shall have:
- (a) a lien on the documentation; and
- (b) the right to retain the documentation whilst L S Planning is in possession of the documentation until such time as payment has been made in full; and
- (c) the lien of L S Planning shall continue despite the commencement of proceedings, or judgment for the Price having been obtained; and
- 16.2 L S Planning shall be under no obligation to release the documentation to the Client if the Client is in default of payment except as may be required by any law or statute.
17. **General**
- 17.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 17.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria and are subject to the jurisdiction of the courts of Victoria.
- 17.3 L S Planning shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by L S Planning of these terms and conditions.
- 17.4 In the event of any breach of this contract by L S Planning the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Services.
- 17.5 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by L S Planning nor to withhold payment of any invoice because part of that invoice is in dispute.
- 17.6 L S Planning may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 17.7 L S Planning reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which L S Planning notifies the Client of such change. The Client shall be under no obligation to accept such changes except where L S Planning supplies further Services to the Client and the Client accepts such Services.
- 17.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 17.9 The failure by L S Planning to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect L S Planning's right to subsequently enforce that provision.