



STANDARD TERMS & CONDITIONS

The information detailed herein is for general appointment purposes only and is related only where an official signed Agreement is not available. It is the responsibility of the owner and/or owner's agent to obtain individual project specific fee proposals for all projects from our office prior to submitting any applications.

1 OBLIGATIONS

- 1.1 The RBS shall;
- Assess all applications for a building permit under the Act, Regulations and Building Code of Australia deemed to satisfy controls.
 - Assess and if appropriate issue a building permit.
 - Collect and remit the applicable building permit levy to the relevant Building Authority in the state of VICTORIA.
 - 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
 - Inspections;
 - conduct mandatory inspections as specified on the building permit;
 - conduct any further inspections where either requested by you or required in our discretion for the proper completion of the building work
- 1.2 The Owner shall;
- Provide Simple Permits with all information required to enable us to perform our role;
 - Pay the any/all fees and any/all fee adjustments as allocated/billed by Simple Permits in accordance with the fee proposal.
- 1.3 Comply with all your other obligations under the Act, Regulations and Simple Permits conditions.

2 OWNERS WARRANTIES AND INDEMNITIES

- 2.1 The owner warrants;
- The accuracy and completeness of all information given to Simple Permits.
 - That the RBS when carrying out the Services acts with the owner's authority.
 - They are the registered proprietor of the project or the duly authorised agent of the registered proprietor. If requested by Simple Permits, you will produce written authority of the registered proprietor authorising you to act on its behalf.
 - That no other person has been appointed as the RBS for the *subject property*.
 - To provide or ensure a safe workplace for all our employees and 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 you have provided us with written verification of a safe workplace.
 - To provide accurate total cost of works estimates relevant to the project.
- 2.2 The owner shall indemnify and keep the RBS and Simple Permits Building Consultants Pty Ltd, its officers, employees, agents, workmen and contractors indemnified from and against all costs, expenses, losses or damages which the owner or agents (including the builder), officers and employees of the owner may sustain incur or suffer or be or become liable for or in respect of any suit action proceeding judgment or claim brought by any person arising from or referable to the Agreement or non-compliance with the Agreement.

3 SERVICE OF NOTICES

- 3.1 If Simple Permits Building Consultants Pty Ltd becomes aware of anything which may cause the serving of enforcement notices or change the scope or timing or cost of the Services, then it shall as soon as practicable give written notice to the Client. The notice shall as far as practicable contain particulars of the reason for the notice. A notice (and any other document) shall be deemed to have been given and received:
- if addressed or delivered to the relevant address in this Agreement or last address communicated in writing to the person giving the notice; and
 - on the earliest day of
 - actual receipt;
 - confirmation of correct transmission of fax; or
 - two (2) days after posting.

4 INFORMATION

- 4.1 The owner shall:
- promptly answer any reasonable enquiries made by the RBS in connection with the Services;
 - direct others to liaise, co-operate and confer with the RBS when necessary; and
 - provide the RBS with all relevant information.

5 LEGISLATIVE REQUIREMENTS – COMPLIANCE

- 5.1 If a *legislative requirement* necessitates a change to:
- the owner's project requirements;
 - the building work;
 - the services; or
 - a fee or charge or payment of a new fee of charge;
- there shall be a *fee adjustment*.

6 THE RBS' REPRESENTATIVES AND KEY PERSONNEL

- 6.1 The RBS shall provide the Services personally or by a competent representative.

7 PAYMENT

- 7.1 The RBS shall claim payment in accordance with the *fee schedule*;
- 7.2 Each claim shall be in writing, include details for the value of Services provided together with any disbursements incurred by the RBS and may include details of other moneys then due to the RBS pursuant to the provisions the Agreement.
- 7.3 The owner shall pay the full amount owing of any claim made by the RBS within 7 days of the date of the claim.
- 7.4 Services that have not been allowed for within the scope of works of the fee schedule shall incur additional costs as outlined in the exclusions section of the fee proposal.
- 7.5 If the Client disputes the whole or any portion of the amount claimed in an account submitted by Simple Permits Building Consultants Pty Ltd, then it shall pay that portion of the amount stated in the account which is not in dispute and it shall notify Simple Permits Building Consultants Pty Ltd in writing of the reasons for disputing the account. If it is established that some or all of the amount in dispute ought properly to have been paid at the time it was first claimed, then the Client shall pay the amount finally established together with interest on that amount in accordance with clause 8.
- 7.6 If the performance of the Services is delayed beyond a reasonable period for any reason other than a breach of the Agreement by Simple Permits Building Consultants Pty Ltd, then the Client shall pay to Simple Permits Building Consultants Pty Ltd a reasonable sum of money to cover the consequential costs and expenses suffered by Simple Permits Building Consultants Pty Ltd as a result of the delay.
- 7.7 If after the date of these Terms of Engagement there is any change to the laws, by-laws, regulations or ordinances of the Commonwealth of Australia or a State or Territory of Australia or any statutory authority and that change directly or indirectly increases or decreases the costs or expenses incurred by Simple Permits Building Consultants Pty Ltd in performing the Services, then the fees and expenses otherwise payable to Simple Permits Building Consultants Pty Ltd under these Terms of Engagement shall be increased or decreased accordingly.

8 INTEREST ON OVERDUE PAYMENT

- 8.1 In addition to all other rights and remedies of Simple Permits Building Consultants Pty Ltd, if the Client fails to pay all monies as and when due, Simple Permits Building Consultants Pty Ltd shall be entitled to recover interest at the rate of 15% per annum and the rate that is 2% higher than the rate for the time being fixed under Section 2 of the Penalty Interest Rates Act 1983.

9 SCOPE OF LIABILITY

9.1 Direct and Indirect Loss

The liability of Simple Permits Building Consultants Pty Ltd to the Client arising out of the performance or non-performance of the Services, whether under the law of contract, tort or otherwise shall be limited to the direct cost of rectifying the Building Works.

9.2 Maximum Amount of Liability

The maximum liability of Simple Permits Building Consultants Pty Ltd to the Client arising out of the performance or non-performance of the Services, whether under the law of contract, tort or otherwise, shall be determined through the dispute resolution process.

9.3 Release

To the greatest extent possible at law the Owner and Agents of the Owner release us from any and all liability for any costs, loss, claims or demands arising from any costs incurred in connection with the Services in excess of the Simple Permits Building Consultants Pty Ltd and any liability of the Owner or Agent of the Owner to third parties arising from or in relation to building work performed by them or on their behalf and the performance of our role as relevant building surveyor (including the time we take to perform that role and any decision by us not to issue the building permit and and/or occupancy permits or certificates of final inspection as required).

9.4 Duration of Liability

Simple Permits Building Consultants Pty Ltd shall be deemed to have been discharged from all liability in respect of the Services, whether under the law of contract tort or otherwise, at the expiration of one (1) year from the completion of the Services, and the Client (and persons claiming through or under the Client) shall not be entitled to commence any action or claim whatsoever against Simple Permits Building Consultants Pty Ltd (or any employee of Simple Permits Building Consultants Pty Ltd) in respect of the Services after that date.

9.5 Extent of Warranty

Except to the extent imposed by law or specifically provided for in these Terms of Engagement, Simple Permits Building Consultants Pty Ltd does not give any warranty nor accept any liability in relation to the performance or non-performance of the Services. If, apart from this clause, any warranty would be implied whether by law, custom or otherwise, that warranty is to the full extent permitted by law hereby excluded. Nothing herein, contained shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of any goods or services pursuant to these Terms of Engagement of all or any of the provisions of Part V of the Trade Practices Act 1974 (as amended) or any relevant State Act or Territorial Ordinance which by law cannot be excluded, restricted or modified.

9.6 Indemnity

The Client shall indemnify and keep indemnified the RBS and Simple Permits Building Consultants Pty Ltd from and against all suits, actions, claims or demands by any person for any loss, damages, expense or costs as a result of any negligence or default by the Client.

10 TERMINATION BY CLIENT

10.1 The termination of the RBS under this Agreement may only occur with the owner first obtaining written consent to terminate from the *Building Authority* pursuant to Section 81(1) of the *Building Act*.

10.2 If this Agreement is terminated in accordance with clause 9.1, the owner shall pay to the RBS all outstanding payments owing to the RBS at the time of termination.

10.3 The RBS shall be entitled to charge additional fees for costs and disbursements arising as a consequence of the termination, for the period up to and including the date of termination.

11 TERMINATION BY SIMPLE PERMITS BUILDING CONSULTANTS PTY LTD

11.1 Subject to the provisions of the Building Act (as amended), Simple Permits Building Consultants Pty Ltd may by notice in writing served on the Client, terminate Simple Permits Building Consultants Pty Ltd's obligations under these Terms of Engagement:

- (a) If the Client is in breach of the conditions of any part of clause 14 hereof and the breach has not been remedied within seven (7) days (or such longer period as Simple Permits Building Consultants Pty Ltd may allow) of the service by Simple Permits Building Consultants Pty Ltd on the Client of a notice requiring the breach to be remedied; or
- (b) If the Client is in breach of the provisions of any other clause hereof and the breach has not been remedied within twenty-eight (28) days (or such longer period as Simple Permits Building Consultants Pty Ltd may allow) of the service by Simple Permits Building Consultants Pty Ltd on the Client of a notice requiring the breach to be remedied; or
- (c) If Simple Permits Building Consultants Pty Ltd serves on the Client a notice requiring that these Terms of Engagement be terminated on a date specified in the notice being not less than sixty (60) days after the date of the notice.

12 TERMINATION NOT TO AFFECT RIGHTS IN RESPECT OF PRIOR BREACHES

12.1 Termination shall be without prejudice to any claim which either party may have against the other in respect of any breach of the provisions of these Terms of Engagement which occurred prior to the date of determination.

13 THE SERVICES

13.1 Building Permit

- (a) The owner or agent of owner may lodge an application for a building permit to be issued by the RBS.
- (b) The owner or agent of owner in making an application for a building permit must:
 - (i) complete an Application for Building Permit Form 1 Annexed hereto;
 - (ii) pay the required fee;
 - (iii) pay the required building permit levy under the *Building Act*;
 - (iv) comply with the requirements of the *Building Act*;
 - (v) provide all documents and information required under the *Building Act* and its *Regulations* or as requested by the RBS;
 - (vi) comply with the conditions of any Planning Permit or other prescribed approval issued in relation to the *subject property*;
 - (vii) state the contract price for the *building work* including the costs of labour and materials if there is a contract for the *building work*; or
 - (viii) in any other case provide such sufficient information to enable the RBS to estimate the costs of the *building work* including the cost of labour and materials; and
 - (ix) include any necessary report and consent of any prescribed reporting or service authority under the *Building Act* or any necessary permit or approval of a responsible authority under the *Planning and Environment Act 1987*.
- (c) The RBS may:
 - (i) request further information from the owner;
 - (ii) issue a building permit for a stage of the building work;
 - (iii) issue a building permit with conditions;
 - (iv) issue a building permit without conditions; or
 - (v) refuse to issue a building permit.

13.2 The building permit once issued shall be forwarded to the owner or the owner's agent as nominated on the application for a building permit.

13.3 If a Building Permit is refused

If an application for a building permit is refused by the RBS the owner may make a further application for a building permit.

13.4 Variation of Building Permit

The owner may lodge an application requesting a building permit be varied and or extended by the RBS;

The application must:

- (a) be in writing;
- (b) include all documents required under the Building Act and the Regulations or requested by the RBS;
- (c) be accompanied by the required fee as per this Agreement.

13.5 Other Services

If the Owner or Owners Agent request Simple Permits to perform other services that are not included in the scope of services described in this agreement, Simple Permits are not obliged to proceed with such additional work until Owner or Owners Agent provide Simple Permits with a written request, which we may or may not agree to. Any additional work we agree to perform, requested or required by Owner or Owners Agent or the proper performance of our role as relevant building surveyor or the Act or Regulations will be invoiced separately and must be paid within seven days.

14 NON COMPLIANCE

14.1 If the owner/ owner's agent fails to comply with:

- (a) the building permit and/or its conditions;
 - (b) any directions issued by the RBS;
 - (c) a section of the *Building Act* and the *Regulations*; and
 - (d) the RBS provides additional Services under the *Building Act*, the *Regulations* or this Agreement;
- the owner shall pay the RBS a *fee adjustment* in accordance with this Agreement.

15 INSPECTIONS

- 15.1 If the RBS is requested by the owner or the owner's agent to carry out an inspection of the building work, the owner shall provide the RBS with not less than 24 hours' notice and shall cease any works on the subject property until such time as the RBS has caused the subject property to be inspected.
- 15.2 The owner shall pay the RBS the fee or a fee adjustment required under this Agreement for any inspections.

16 ADDITIONAL SERVICES

- 16.1 The RBS may perform additional Services in exercising its obligations under this Agreement, the Building Act and its Regulations and or any other relevant legislation including but not limited to:
- (a) obtaining additional information and documents from a council and other authority;
 - (b) carrying out additional inspections of the subject property;
 - (c) reporting any matters to the Building Authority or other authority;
 - (d) responding to any requests for information from the Building Authority or other authority including but not limited to a council and the Building Appeals Board;
 - (e) issuing any notices or orders under the Building Act and the Regulations.
- 16.2 Upon the RBS carrying out additional Services the owner shall pay the RBS the fee or a fee adjustment required under this Agreement.

17 OWNERS OBLIGATIONS

- 17.1 The owner hereby acknowledges his/her/its ongoing obligations pursuant to the Building Act and the Regulations including but are not limited to:
- (a) providing the RBS with unfettered access to the subject property;
 - (b) not obstructing the RBS in carrying out its functions;
 - (c) not provide the RBS with any information which may be misleading or deceptive;
 - (d) advising the RBS:
 - (i) of any changes in relation to the engagement of a Building Practitioner or an insured architect within 14 days of such change;
 - (ii) of any change to the owner's address;
 - (iii) if building work cease on the subject property;
 - (iv) if the subject property is transferred to a new owner; and
 - (e) ensuring the building work the subject of any building permit issued by the RBS are carried out in accordance with the building permit, directions of the RBS, the Building Act and the Regulations.
 - (f) to make application for and obtain required occupancy permit, certificate of final inspection, report and consent or other permits or approvals deemed by the RBS to be necessary to the carrying out of the functions.

18 Acknowledgements

- 18.1 The Owner and Owners Agents acknowledge that:
- (a) They are responsible for obtaining (including the cost of) any required planning permit and will provide Simple Permits with a copy of the planning permit and approved planning permit drawings. If necessary, Simple Permits are not required to issue a building permit until we receive any required planning permit and approved planning permit drawings.
 - (b) They will prepare and submit four (4) complete sets of fully scaled permit documents or one (1) full set of all permit documents can be lodged electronically but must be in PDF format. This can be done via Email, Compact Disk (CD) or Universal Serial Bus (USB) stick. Note it is the applicant's responsibility to arrange for additional copies of any documents if when requested by Simple Permits. With all electronic lodgments the Owner or Owners Agent acknowledges and agrees that one (1) set of appropriate building permit documents will be emailed to the applicant nominated on the 'Application For Building Permit' (the Form 1) only and that they understand that it will be the applicants responsibility to create, provide, serve and/or forward copies of all permit documents onto the builder and/or other applicable parties and also make one (1) full set of permit documents available on site at all times. If the applicant is an agent of owner then the agent must also forward a copy of all permit documents onto the owner, if requested by the owner. Appropriate fees and printing/scanning/ mailing costs, etc. will apply if copies of the permit documents are not created and distributed by the applicant and/or if extra copies are requested from Simple Permits. Any such fees and charges must be paid for in full by the Owner or Owners Agent prior to the release of any additional hardcopies or scanned documents.
 - (c) This agreement constitutes the entire agreement between Simple Permits and the Owner or Agent of Owner. The Owner or Agent of Owner may not rely on any oral discussions or representations made prior to or at the time of signing the agreement.
 - (d) Simple Permits are not estimators, quantity surveyors or project managers/site supervisors and you have not engaged us to provide any of those services.
 - (e) They must notify Simple Permits in writing of each building practitioner engaged by you or on your behalf for the building work, 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 our appointment (where you have already engaged a building practitioner) or within fourteen days of engaging the building practitioners (where the building practitioner(s) is/are engaged after our appointment).
 - (f) They may terminate our appointment only with the written consent of the Authority, and that upon any such termination we are entitled to payment of all fees and disbursements incurred to the date of termination. In the event that the building work nominated in the agreement is terminated before commencement or completion, you must notify the Authority of this in writing. Only when this written notice is issued will our appointment end.
 - (g) All approvals Simple Permits issue have stipulated on them mandatory timeframes by which the approved building work must commence and must be completed. If you require an extension of time for any of these time limits you must make a formal written request to us stating the reasons why a time limit extension should be granted.
 - (h) Building Notices and Building Orders are formal documents prescribed in the Act and the Regulations to be served when breaches and non-compliance in the building work are identified. Such 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 we will normally send to the registered proprietor of the project an inspection report or letter (as applicable) and in the event of non-response or an insufficient response within an appropriate time (generally 7, 14 or 30 days) a Building Notice will be served and further fees will be payable.
- 18.2 Simple Permits make no repetitions or warranties that:
- (a) the building work are commercially viability;
 - (b) our appointment is limited to ensuring the building work carried out complies with the Act and Regulations that are applicable at the time;
 - (c) any building permit we issue will be an assessment of the drawings for compliance with the Act and Regulations and not the serviceability, quality or functionality of the building work approved by the permit;
 - (d) you will be able to gain any required planning permits;
 - (e) the proposed building work are suitable for the issuing of a building permit (unless we issue one);
 - (f) in fulfilling our statutory duties, we will issue a building permit, an occupancy permit or a certificate of final inspection;
 - (g) that in properly fulfilling our statutory duties, we will take as much time to investigate and determine applications for the building permit and/or occupancy permits or certificates of final inspection as reasonably required;
 - (h) we will rely on the accuracy and completeness of all information supplied by you in performing our obligations under this agreement;

19 GENERAL MATTERS

19.1 Transfer and Assignment

- (a) Simple Permits Building Consultants Pty Ltd and the Client each binds itself and its partners (if any), successors, executors, administrators, permitted assigns and legal representatives to the other party to these Terms of Engagement and to the partners (if any), successors, executors, administrators, permitted assigns and legal representatives of the other party in respect to all covenants and obligations of these Terms of Engagement.
- (b) Neither Simple Permits Building Consultants Pty Ltd nor the Client shall assign, sublet or transfer any right or obligation under the Agreement without the written consent of the other party. Unless specifically stated to the contrary in any written consent to an assignment, no assignment shall release or discharge the assignor from any obligation under these Terms of Engagement.
- (c) Nothing contained in this Clause shall prevent Simple Permits Building Consultants Pty Ltd from employing such persons or companies as it may deem appropriate to assist it in the performance of these Terms of Engagement.

19.2 Consultants

If circumstances arise which require the services of a specialist or expertise outside the field of Simple Permits Building Consultants Pty Ltd, then Simple Permits Building Consultants Pty Ltd may with the prior approval of the Client engage the appropriate consultant. The consultant shall be engaged at the Client's expense and on its behalf. The Client's approval shall not be unreasonably withheld.

19.3 Submission of Plans & Documents

- (a) The Owner and Owners Agent, agrees to either:
 - (i) Provide simple Permits with a minimum of Four (4) copies of all plans, documents and specifications of which one (1) set must be a fully scaled copy of plans; or
 - (ii) Provide one (1) complete set of all plans, documents and specifications electronically. This can be done via Email, Compact Disk (CD) or Universal Serial Bus (USB) stick. All electronic documents must be in PDF format. **IMPORTANT NOTE:** With all electronic submissions, the applicant acknowledges and accepts that only one (1) copy of applicable building permit documents will be returned back to them (this can be done via Email, Compact Disk (CD) or Universal Serial Bus (USB) stick) and they understand that it will be their responsibility to create, provide, serve and/or forward copies of all approved permits and documents onto the builder and/or other applicable parties. If the applicant is an agent of owner then the agent must forward copies of all approved permits and documents onto all relevant parties, including the owner. Applicable fees and printing/scanning costs will apply should copies of the approved permit and documents not be distributed by the

applicant and/or if any hardcopies are requested from Simple Permits. Any/all associated fees and charges must be paid for by the applicant prior to the release of any such scanned or hardcopy documents.

- (b) It is the applicant's responsibility to ensure that all plans and documents are clear and legible. Failure to provide adequate legible copies of plans or documents will cause delays with their permit application and additional printing, scanning and/or copying costs may apply.
- (c) It is the Owners and Owners Agent's responsibility to ensure that a copy of the building permit and one set of the approved plans and specifications is available for inspection at the site at all times while building work is in progress.

20 **ENTIRE AGREEMENT**

20.1 This document embodies the entire agreement between the parties and any previous or simultaneous negotiations, representations, arrangements and agreements are superseded by this Agreement. No amendment or variation may be made to this Agreement other than in writing executed by each of the parties.

21 **SEVERANCE**

21.1 In the event that any condition or provision of this Agreement is held to be invalid or unenforceable for any reason whatsoever that condition or provision shall be read down to the extent necessary to give it, if possible, partial operation, but if that is not possible, the condition or provision may be severed and the remainder of this Agreement shall remain in full effect.

22 **PRIVACY**

Personal information requested is for the purposes of dealing with the building permit application and associated functions. It will be used solely by Simple Permits Building Consultants Pty Ltd and any legally authorized building authority including the Victorian Building Authority (VBA) for this primary purpose or other directly related purposes.

23 **DISCLAIMER**

This publication is provided solely on the basis that readers will be responsible for making their own assessment of matters discussed. No person should rely on the contents without first obtaining independent expert advice. In no event shall the RBS and Simple Permits Building Consultants be liable whatsoever for any direct or indirect or consequential damages or results of any actions taken on the basis of information provided nor for any error in or omission resulting from the use of information stated in this publication &/or forms attached. No other organisations or individuals are permitted to reproduce this publication without the prior written consent of the Principals of Simple Permits Building Consultants Pty Ltd.

24 **DEFINITIONS**

24.1 In this Agreement—

Building	includes structure, temporary building, temporary structure and any part of a building or structure;
Building Appeals Board	means the Building Appeals Board under Part 10 of the Building Act;
Building Authority	means the Victorian Building Authority (VBA) under Part 12 of the Building Act;
Building Code of Australia	has the same meaning as it has in the Building Regulations (BCA)
Building Practitioner	has the same meaning as it has in the Building Act;
Building Work	means work for or in connection with the construction, demolition or removal of a building;
Certificate of Consent	means a certificate of consent under Division 3A of Part 3 of the Building Act;
Council	means a council within the meaning of the Local Government Act 1989;
Domestic Building Work	has the same meaning as it has in the Domestic Building Contracts Act 1995;
Fee	means the fee calculated in accordance with the Fee Schedule attached hereto;
Fee adjustment	means a sum to be added to or deducted from the fee;
Function	includes power, authority and duty;
Legislative requirements	includes <ul style="list-style-type: none">(a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction where Services are being provided;(b) Certificates, licences, consents permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of the Services and(c) Fees and charges payable in connection with the foregoing;
Municipal Building Surveyor	means a person for the time being appointed, employed or nominated by a council as its municipal building surveyor for the purposes of this Act;
Owner	means <ul style="list-style-type: none">(a) the person who is registered or legally entitled to be registered as proprietor, or the persons who are registered or legally entitled to be registered as proprietors, of an estate, land or building, in whole or in parts or in shares; and(b) in relation to Crown land reserved under the Crown Land (Reserves) Act 1978 and managed or controlled by a committee of management, means the Minister administering that Act; and(c) in relation to any other Crown land, means the Minister or public authority that manages or controls the land;(d) in relation to a building, means the owner of the land on which a building is situated;
The Client	means the owner of the property and to the extent appropriate includes the applicant, agents (including the builder), officers and employees of the owner. "You" includes, jointly and severally, the registered proprietor of the project and, if the applicant for the approvals to be issued by us is not the registered proprietor, then the applicant. "You" also includes your successors and assignees. "Us" includes our successors and assignees.