

Terms Of Service

Urban Homestead Design Consultancy



The following terms of service ("Terms of Service") governs the relationship between Cheryl Garson - ABN: 26 441 841 334 trading as *Stella Hacienda* and the Client in connection with the provision of Design Consultancy Services.

1. DEFINITIONS AND INTERPRETATION

1.1 In these Terms Of Service:

"Additional Items" means any activities, work or services supplied or to be supplied by *Stella Hacienda* of a type and nature not specifically referred to in the Quote;

"Agreement" means the documents comprising the Quote and these Terms Of Service;

"Business Day" means a day on which the banks are open for general banking business in Queensland, except Saturdays, Sundays and public or statutory holidays;

"Contract Sum" means the total amount in the quantities specified in the Quote;

"Client" means the person identified in the Quote and if more than one means each of them jointly and severally;

"Intellectual Property Rights" includes any copyright (as defined in the Copyright Act 1968 (Cth)); design, patent or trademark (whether registered, unregistered or applied for); trade, business, company or domain name; know-how, invention, process (whether in writing or recorded in any form); or any other proprietary, licence or personal rights arising from intellectual activity in the business, industrial, scientific or artistic fields;

"Quote" means the initial document entitled 'quote', 'proposal' or similar provided by *Stella Hacienda* to the Client;

"Design Services" means the activities, work and services described in the Quote and includes the Additional Items; and

"Site" means the property, location or site specified in the Quote.

- 1.2 Headings are for convenience only and do not form part of these Terms Of Service.
- 1.3 Reference to the singular includes the plural and the plural includes the singular.
- 1.4 A provision of these Terms Of Service must not be construed to the disadvantage of a party merely because that party prepared or required it.
- 1.5 A 'person' includes any entity which can sue and be sued and any legal successor to or representative of that person.
- 1.6 'Including' and similar expressions are not words of limitation.



2. ACCEPTANCE AND ENGAGEMENT

- 2.1 The Client is deemed to have confirmed and accepted the accuracy of the Quote, and to have read and accepted these Terms Of Service, by:
- (a) continuing to engage with *Stella Hacienda* in connection with the supply of the Design Services after delivery of the Quote; or
 - (b) paying any deposit or other amount specified in the Quote.

3. GUARANTEE

- 3.1 Any person accepting these Terms Of Service on behalf of the Client (“Guarantor”) hereby guarantees the full and punctual payment of all amounts due and payable under these Terms Of Service.
- 3.2 The Guarantor hereby agrees to pay to *Stella Hacienda* on demand all amounts due and payable under these Terms Of Service, without the need to provide proof of debt, and without the need to first seek recovery from the Client.
- 3.3 This guarantee will continue despite termination or completion of the Design Services until all monies owing to *Stella Hacienda* are paid in full.

4. QUOTATIONS AND PRICES

- 4.1 *Stella Hacienda* shall specify the Design Services to be provided based on the Client’s instructions and an estimate of *Stella Hacienda*’s price to provide such services. This price is an estimate only and may be varied by *Stella Hacienda* in accordance with these Terms Of Service.
- 4.2 The Client must pay to *Stella Hacienda* the Contract Sum in the amounts and at the times specified in the Quote, or if no time is specified, within 7 days of demand. In addition to the Contract Sum, the Client must pay to *Stella Hacienda* within 7 days of demand, all fees and charges otherwise payable in accordance with these Terms Of Service or approved by the Client.
- 4.3 If any supply by *Stella Hacienda* is subject to Goods and Services Tax (“GST”), the Client must, unless the price in the Quote expressly states that GST is included, pay the relevant GST amount in addition to the amount appearing in the Quote.

5. PERMITS AND APPROVALS

- 5.1 Any and all statutory and local government permits, consents or approvals (including but not limited to planning or building approvals) relevant to the implementation of the Design Services must be obtained by the Client at its sole cost.

6. VARIATIONS IN PRICES

- 6.1 All prices in the Quote shall remain current for 30 days from the date of the Quote.
- 6.2 *Stella Hacienda* shall be entitled to vary any quotation previously provided to the Client if:
- (a) the Client has provided incomplete or inaccurate information to *Stella Hacienda* and that information has been relied on by *Stella Hacienda*;
 - (b) there is a delay of more than 15 days in the provision of the Design Services as a result of any action or inaction on the part of the Client;
 - (c) there is a delay of more than 15 days in the provision of the Design Services as a result of any works carried out by other persons at the Site, or the general conditions at the Site;
 - (d) the Client requests, and *Stella Hacienda* agrees to provide, at any time Additional Items; and any cause or event beyond *Stella Hacienda's* control.

7. BOOKING FEE

- 7.1 A non-refundable booking fee of \$100.00 (which is a part of the overall cost) applies for each appointment type. This booking fee is to enable sufficient time to prepare prior to each appointment. The booking fee is due at the time of booking the appointment and is payable to *Stella Hacienda* within 7 days of demand.

8. CANCELLATION CHARGE

- 8.1 The Client must provide no less than 24 hours' notice prior to the cancellation of any appointment type. If less than 24 hours' notice is provided by the Client, the Client will be liable for a cancellation fee equal to up to 50% of the price of the appointment or, where no price is indicated, \$200.00 plus reasonable travel time for late cancellation of face-to-face appointments, calculated by *Stella Hacienda* in accordance with its cancellation policy.
- 8.2 All cancellation fees are payable to *Stella Hacienda* within 7 days of demand.

9. COMMUNICATION CHARGE

- 9.1 The Client must provide clear and timely instructions at the times indicated by *Stella Hacienda*. Sufficient time has been allowed at the initial consultation and meetings to ask questions and provide feedback. If the Client requires additional appointments to those specified in the Quote, and *Stella Hacienda* agrees to provide those appointments, the Client will be charged an additional appointment fee for each additional appointment required, calculated at a minimum rate of \$180.00 per hour of appointment plus reasonable preparation and travel time.
- 9.2 *Stella Hacienda's* preferred method of communication outside the initial consultation and meetings specified in the Quote is email. All email messages will be kept and filed.
- 9.3 All additional appointment fees and call attendance fees are payable to *Stella Hacienda* within 7 days of demand.

10. ADDITIONAL ITEMS

- 10.1 If the Client requests that *Stella Hacienda* to provide Additional Items, and *Stella Hacienda* agrees to such a request, the Additional Items will be deemed to form part of the Design Services. The Client must pay to *Stella Hacienda* within 7 days after delivery of the Additional Items:
- (a) if *Stella Hacienda* has quoted the price for the Additional Items prior to providing those items, the amount quoted; or
 - (b) in the absence of any quotation, an amount calculated by *Stella Hacienda* at a minimum rate of \$180.00 per hour.
- 10.2 The Client acknowledges and agrees that any and all Design Services that are not specifically referred to in the Quote shall constitute Additional Items.

11. TERMS OF PAYMENT

- 11.1 The Client is required to pay to *Stella Hacienda* a deposit equal to 50% of the Contract Sum quoted to the Client before commencement of the Design Services. The Client acknowledges *Stella Hacienda* is under no obligation to supply or carry out provision of the Design Services as requested by the Client unless and until the deposit specified in the Quote is received by *Stella Hacienda* in full.
- 11.2 The balance of the Contract Sum is due on completion of the Design Services in accordance with the Quote.
- 11.3 The Client must pay to *Stella Hacienda* the amount of each invoice received from *Stella Hacienda*, within seven (7) days after the invoice date.
- 11.4 *Stella Hacienda* may, in its absolute discretion, seek and recover from the Client and the Client agrees to pay on demand:
- (a) interest on any amount not paid by the due date for payment under these Terms Of Service at the rate fixed under the State Penalties Enforcement Act 1999 (Qld) plus 2% on that amount, calculated and payable daily, computed from the due date until the amount is paid in full; and
 - (b) any costs and expenses incurred in collecting or attempting to collect any amounts that are not paid by the Client when due including debt collector's expenses, and solicitor's fees on a solicitor/client basis.
- 11.5 The Client must pay all amounts payable under these Terms Of Service without setoff or deduction.

12. INSURANCE

- 12.1 The Client must take out and maintain its own insurances covering the Site, including public liability insurance to a minimum of \$10,000,000 for any one claim.

13 INTELLECTUAL PROPERTY

- 13.1 *Stella Hacienda* is the owner or licensee of all Intellectual Property Rights subsisting in or attaching to all materials, designs, drawing and plans of whatever nature and in any format (including all design files, drafts and working drawings) created in the provision of the Design Services.
- 13.2 *Stella Hacienda* grants to the Client a non-exclusive non-transferable licence to use the final concept plan issued by *Stella Hacienda* for landscaping design purposes at the Site and no other purposes.
- 13.3 The Client indemnities *Stella Hacienda* from and against all costs, claims, demands, liabilities and expenses (including legal costs on a solicitor own client basis) arising from or in connection with any breach of the licence granted under this clause.

14. EXCLUSION OF WARRANTIES

- 14.1 To the extent that the Client acquires goods or services from *Stella Hacienda* as a consumer within the meaning of the Australian Consumer Law, the Client may have certain rights and remedies (including, without limitation, consumer guarantee rights) that cannot be excluded, restricted or modified by agreement. Nothing in this clause operates to exclude, restrict or modify the application of any implied condition or warranty, provision, the exercise of any right or remedy, or the imposition of any liability under the Australian Consumer Law or any other statute, where to do so would:
- (i) contravene that statute; or
 - (ii) cause any term of this agreement to be void, (“Non-excludable Obligation”).
- 14.2 Except in relation to Non-excludable Obligations, all conditions, warranties, guarantees, rights, remedies, liabilities or other terms that may be implied by custom, under the general law or by statute are expressly excluded under these Terms Of Service.
- 14.3 In relation to Non-excludable Obligations, except for goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption (in respect of which *Stella Hacienda* does not limit its liability under this clause), *Stella Hacienda's* liability to the Client for a failure to comply with any Non-excludable Obligation is limited to:
- (a) in the case of goods:
 - (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of the goods;
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having the goods repaired; and
 - (b) in the case of services:
 - (i) supplying the services again; or
 - (ii) paying the cost of having the services supplied again

15. LIMITATION OF LIABILITY

15.1 Except in relation to Non-excludable Obligations:

- (a) *Stella Hacienda* will not be liable to the Client or any other person or third party in respect of any indirect, consequential or economic loss or damage (including loss of profit, loss of income or loss to reputation) arising out of or in connection with the provision of Design Services or these Terms Of Service;
- (b) *Stella Hacienda's* liability arising out of or in connection with the provision of the Design Services or these Terms Of Service whether under the law of contract, in tort, in equity under statute or otherwise shall be limited in aggregate to an amount equal to the Contract Sum;
- (c) *Stella Hacienda* shall not be liable to the Client for any statements, representations, guarantees, conditions or warranties not expressly contained in the Quote.

16. NOTICES

16.1 A notice from one party to another shall be deemed to have been served upon the receiving party if:

- (a) the notice is delivered personally to the other party;
- (b) the notice is delivered by email or facsimile to the other party and the sending party receives a delivery confirmation upon transmission of the email or facsimile; or
- (c) the notice is posted to the other party to the address provided in the Quote, whereby delivery will be deemed to have occurred on the third business day following the posting of the notice.

17. DISPUTE RESOLUTION

17.1 If the Client fails to pay money owing under these Terms Of Service, *Stella Hacienda* may sue for the unpaid money immediately without first seeking mediation.

17.2 A party may seek urgent interlocutory relief in relation to the actions of the other party under these Terms and Services without first seeking mediation.

17.3 If a dispute arises in connection with the provision of the Design Services, including any dispute as to breach or termination under these Terms Of Service, a party must not commence court proceedings relating to that dispute unless:

- (a) The party claiming the dispute has arisen has given written notice to the other party specifying the nature of the dispute; and
- (b) The parties first endeavour in good faith to resolve the dispute expeditiously using mediation, applying the procedures and within the timeframes specified below.

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- 17.4 Upon the service of a dispute notice the parties must jointly agree on a mediator and the mediator's remuneration. If the parties fail to agree within five days of the service of the dispute notice or such other period agreed by the parties, either party may ask the President of the Queensland Law Society (or their nominee) to appoint a mediator on behalf of the parties and determine the mediator's remuneration.
- 17.5 The parties must observe the instructions of the mediator about the conduct of the mediation and seek to resolve the dispute with the assistance of the mediator within 10 business days of the appointment of the mediator or such other period agreed by the parties. If the dispute is not resolved within that time, then either party may commence court proceedings.
- 17.6 The costs of the mediator will be borne equally by the parties.

18. SUSPENSION OR TERMINATION BY *STELLA HACIENDA*

- 18.1 *Stella Hacienda* may, in its sole discretion, immediately:
- (a) suspend in part or in whole; or
 - (b) terminate in part or in whole,
- the provision of Design Services by written notice to the Client at any time if:
- (c) payment in full of any amount payable under these Terms Of Service is not received by the due date;
 - (d) the Client, being an individual, commits an act of bankruptcy or, being a corporation goes into liquidation or has a receiver or administrator appointed to control its affairs, is unable to pay its debt when due or has a petition presented for its winding up or for an administrative order (or steps have been taken which in the opinion of *Stella Hacienda* will likely result in any of these events occurring); or
 - (e) the Client fails to carry out any provision of these Terms Of Service and:
 - (i) where that failure is capable of being remedied, fails to remedy that failure within fourteen (14) days after a request to do so; or
 - (ii) where that failure is not capable of being remedied, that failure constitutes a breach of a material provision of these Terms Of Service; or
 - (iii) in any other case, the failure (whether alone or together with other failures, evinces an intention on the part of the Client that it does not wish to be bound by these Terms Of Service.
- 18.2 Any suspension or termination under this clause shall be without prejudice to and shall not affect any rights of *Stella Hacienda* against the Client that have accrued up to the time of suspension or termination (as the case may be).

- 18.3 If *Stella Hacienda* terminates its engagement under clause 18.1:
- (a) all amounts payable under these Terms Of Service by the Client to *Stella Hacienda* become immediately due and payable;
 - (b) the deposit and all other amounts already paid by the Client are forfeited to *Stella Hacienda* absolutely; and
 - (c) *Stella Hacienda* is entitled to payment of all activities, work and services performed up to and including the date of termination.

19. TERMINATION BY THE CLIENT

- 19.1 These Terms Of Service, including any Quote accepted in accordance with these Terms Of Service, may only be cancelled or varied by the Client with the prior written consent of *Stella Hacienda*.
- 19.2 To the extent permitted by law, *Stella Hacienda* may require, as a condition of such consent, that the Client pay reasonable charges for such cancellation or variation, which takes into account expenses incurred by *Stella Hacienda*, including the costs of any plants, design time, materials, labour or equipment hire, up until the date of cancellation or variation.

20. ASSIGNMENT

- 20.1 The Client must not assign or otherwise deal with its rights and obligations under these Terms Of Service without the prior written consent of *Stella Hacienda*.

21. SEVERANCE

- 21.1 If any part of these Terms Of Service are found to be void, voidable or not enforceable, that part shall be struck out without affecting or eroding the enforceability or validity of the remaining parts and such severance shall not detract from the obligations each party has under these Terms Of Service.

22. ENTIRE AGREEMENT

- 22.1 These Terms Of Service contains the entire agreement and understanding between *Stella Hacienda* and the Client in connection with the provision of the Design Services. The parties agree that any negotiations that lead to the formation of this Agreement have been accurately incorporated under these Terms Of Service.
- 22.2 In accepting these Terms Of Service, the parties hereby acknowledge that neither party has made any warranties or representations to the other except as expressly set out in these Terms Of Service.

23. APPLICABLE LAW

- 23.1 These Terms Of Service are governed by the laws of Queensland and the parties submit to the exclusive jurisdiction of the Queensland Courts, Australia.