

## Conditions of Engagement

### 1. DEFINITION

"Intellectual Property Rights" means without limitation all copyright, trade marks including registered and unregistered trade marks, designs, patents, trade secrets, business or company names or other proprietary rights, or any rights to registration of such rights, whether created on or before or after the date of this agreement, in relation to the Materials.

"Materials" means the designs, drawings, artwork, proofs, models, prototypes and other materials developed by ORO design for the purposes of the Project.

"Project" means the e.g. Westfield Evolution interior design project.

"Services" means the services to be performed by ORO design under the Proposal.

### 2. ENGAGEMENTS AND ACCEPTANCE

2.1 The Client has requested ORO design and ORO design has agreed to provide Services for the Project in accordance with this agreement.

2.2 This agreement comes into effect when the Client authorises ORO design to begin performing the services.

2.3 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works.

2.4 These terms and conditions may only be amended with the ORO design's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and ORO design.

2.5 ORO design's standard timeframe for the standard work such as retail, commercial and hospitality fit-out design Works is 3 months.

### 3. PRICE AND PAYMENT

3.1 The Client must pay to ORO design:

(1) The amount of the Project Fees in the Proposal as per payment schedule. Exclusions and additional are detailed in the Proposal.

(2) Travel expenses incurred by ORO design in relation to the project including air fares, ground transportation, accommodation and daily expenses, outside of the stated site visits quoted, will be billed at cost; and

(3) All GST payable by ORO design in relation to amounts payable to ORO design under this agreement.

3.2 All amounts are payable 3 days after date of invoice, and are to be made by direct deposit to ORO design account.

3.3 ORO design reserves the right to change the Price:

(1) If a variation to the Materials which are to be supplied is requested; or

(2) If a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or

(3) In the event of delays caused by the Client, Council inspectors or certifiers; or

4.1 ORO design reserves the right to the additional design fees and expenses in the event of delays caused by the Client, Council inspectors or certifiers by longer than our standard time frame (referred to in clause 2.5) at our hourly rate.

### 4. COST RECOVERABLE

4.1 Any expenses, costs or disbursements incurred by ORO design in recovering any outstanding monies including debt collection fees and Solicitor costs shall be paid by the Client, providing that those fees do not exceed the scale charges as charged by that Debt Collection Agency/Solicitor plus any out of pocket expenses

### 5. INTELLECTUAL PROPERTIES

5.1 Where the ORO design has designed, drawn, written plans or a schedule of Works, or created any products for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in the ORO design, and shall only be used by the Client at the ORO design's discretion.

5.2 All design and other material, in final form, that is approved by the Client and used for the Project will become the property of the Client subject to payment in full for the services of ORO design. All other designs and materials developed in the course of the Project work and that are not used by the Client shall remain the property of the Design Consultant (ORO).

5.3 The Client warrants that all designs, specifications or instructions given to ORO design will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify ORO design against any action taken by a third party against ORO design in respect of any such infringement.

5.4 Upon payment in full for the services by Client of the Design Consultant, Copyright of the design and drawings provided by the ORO design pursuant to the Agreement shall remain the property of ORO design.

5.5 The Client agrees that ORO design may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which ORO design has created for the client.

### 6. CHANGES TO THE PROJECT

6.1 If the Client wishes to make a change to the Proposal or to any artwork, proofs, samples, prototypes etc after approving them, it must request such change in writing to ORO design. ORO design must promptly advise the Client of the additional design fees and expenses that would be incurred if such change were implemented, and any delay it estimates to the completion of the Project as the result of such change. No such change is effective without the written confirmation of the parties.

6.2 If the Client has approved Materials for the Project and subsequently discovers that the Materials contain a mistake or omission on the part of ORO design, has no liability other than to correct such mistake or rectify such omission.

6.3 ORO design shall not be liable for any delay or failure to perform its obligations if such failure or delay is due to any act, omission or circumstance outside of ORO design's reasonable control including but not limited to war, industrial action, natural disaster, storm, or terrorism ('Force Majeure'). Further if ORO design's completion of the Services is delayed more than 30 days as the result of a Force Majeure it is acknowledged by the parties that the cost to ORO design of performing the Services may increase. If such delay occurs, the parties must use their best endeavours to agree on the terms and the amended Project Fees which will apply in relation to completion of the Services.

### 7. CONFIDENTIALITY

7.1 Any confidential information disclosed by one party to the other party pursuant to this agreement, including but not limited to trade secrets, plans, strategies, product information, financial information and concepts, must not be disclosed to third parties (excluding employees and professional advisers) without the consent of the other party, except if the information is in the public domain. Upon completion of the Project each party must return to the other party all materials relating to such confidential information.

### 8. TERMINATION

8.1 Either party may terminate this agreement with immediate effect if:

(1) the other party becomes insolvent,

(2) the other party breaches a term of this agreement and the breach, if capable of rectification, is not rectified after one month from the date the other party gives notice requiring such rectification.

## Conditions of Engagement (cont.)

### 9. LIABILITY

9.1 To the full extent permitted by law ORO design excludes all liability in contract, tort (including negligence), or otherwise for costs, loss or damage (direct or indirect) incurred by the Client or any other party in connection with this agreement. Except as expressly provided in this agreement and to the full extent permitted by law, ORO design excludes all terms and representations, whether express or implied. Any liability that cannot be excluded is limited in ORO design's discretion to the replacement or repair of the goods, or re-supply of the services affected by the breach, or payment of the cost of replacement or repair of those goods or resupply of those services.

### 10. DEFAULT AND CONSEQUENCES OF DEFAULT

10.1 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 ORO design's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

10.2 If the Client owes ORO design any money the Client shall indemnify ORO design from and against all costs and disbursements incurred by ORO design in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, ORO design's collection agency costs, and bank dishonor fees).

10.3 Without prejudice to any other remedies ORO design may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions ORO design may suspend or terminate the supply of Works to the Client. ORO design will not be liable to the Client for any loss or damage the Client suffers because ORO design has exercised its rights under this clause.

10.4 Without prejudice to ORO design's other remedies at law ORO design shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to ORO design shall, whether or not due for payment, become immediately payable if:

- (a) any money payable to ORO design becomes overdue, or in ORO designer's opinion the Client will be unable to make a payment when it falls due;
- (b) the Client becomes insolvent or bankrupt, 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.

### 11. PROJECT TIME FRAME

Standard Project means retail, commercial and hospitality fit out design requires industry standard process which allowed up to 3 months, it will be fixed timeframe, unless agreed otherwise or requested by the client in writing before the commencement of the work.

### 12. SEVERABILITY

12.1 Should any part of this agreement be or become invalid, that part shall be severed from this agreement. Such invalidity shall not affect the validity of the remainder of the agreement.

### 13. CANCELLATION

13.1 ORO design may cancel any contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Client. On giving such notice ORO design shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to ORO design for Works already performed. ORO design shall not be liable for any loss or damage whatsoever arising from such cancellation.

13.2 In the event that the Client cancels the delivery of Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by ORO design as a direct result of the cancellation (including, but not limited to, any loss of profits).

13.3 Cancellation of orders for commenced design work to the Client's specifications, or visiting the site, researching, discussing the ideas, mopboard, will definitely not be accepted and must be paid once production has commenced, or an order has been placed.

### 14. GENERAL

14.1 The failure by ORO design to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the ORO design's right to subsequently enforce that provision. 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.

14.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales in which ORO design has its principal place of business, and are subject to the jurisdiction of the Sydney Courts in that state.

14.3 Subject to clause 5 ORO design 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 ORO design of these terms and conditions (alternatively ORO design's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).

14.4 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 ORO design nor to withhold payment of any invoice because part of that invoice is in dispute. If any part of an invoice is in dispute, then the Client may only withhold payment for that part of the invoice that is in dispute and shall pay the balance of the invoice when due.

14.5 ORO design may license or sub-contract all or any part of its rights and obligations without the Client's consent.

14.6 The Client agrees that ORO design may amend these terms and conditions at any time. If ORO design makes a change to these terms and conditions, then that change will take effect from the date on which ORO design notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for ORO design to provide any Works to the Client.

14.7 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.

14.8 The client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.