



TERMS AND CONDITIONS

The following terms and conditions ("**Terms and Conditions**") govern the relationship between Lisa Harper ABN 96 101 403 637 trading as Lisa Harper Designs ("**LHD**") and the Client in connection with the supply of Design Services.

1. DEFINITIONS AND INTERPRETATION

1.1 In these Terms and Conditions:

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

"**Agreement**" means the documents comprising the Quote and these Terms and Conditions;

"**Business Day**" means a day on which the banks are open for general banking business in Victoria, 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 LHD 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 and Conditions.

1.3 Reference to the singular includes the plural and the plural includes the singular.

1.4 A provision of these Terms and Conditions 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 and Conditions, by:



- (a) continuing to engage with LHD 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 and Conditions on behalf of the Client ("**Guarantor**") hereby guarantees the full and punctual payment of all amounts due and payable under these Terms and Conditions.
- 3.2 The Guarantor hereby agrees to pay to LHD on demand all amounts due and payable under these Terms and Conditions, 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 LHD are paid in full.

4. QUOTATIONS AND PRICES

- 4.1 LHD shall specify the Design Services to be provided based on the Client's instructions and an estimate of LHD's price to provide such services. This price is an estimate only and may be varied by LHD in accordance with these Terms and Conditions.
- 4.2 The Client must pay to LHD 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 LHD within 7 days of demand, all fees and charges otherwise payable in accordance with these Terms and Conditions or approved by the Client.
- 4.3 If any supply by LHD 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. VARIATIONS IN PRICES

- 5.1 All prices in the Quote shall remain current for 30 days from the date of the Quote.
- 5.2 LHD shall be entitled to vary any quotation previously provided to the Client if:
 - (a) the Client has provided incomplete or inaccurate information to LHD and that information has been relied on by LHD;
 - (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 LHD agrees to provide, at any time Additional Items; and
 - (e) any cause or event beyond LHD's control.

6. BOOKING FEE



6.1 A non-refundable booking fee of \$[350] 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 LHD within 7 days of demand.

7. CANCELLATION CHARGE

7.1 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, \$[150] plus reasonable travel time for late cancellation of face-to-face appointments, calculated by LHD in accordance with its cancellation policy.

7.2 All cancellation fees are payable to LHD within 7 days of demand.

8. COMMUNICATION CHARGE

8.1 The Client must provide clear and timely instructions at the times indicated by LHD. 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 LHD 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] per hour of appointment plus reasonable preparation and travel time.

8.2 LHD's preferred method of communication outside the initial consultation and meetings specified in the Quote is email. If the Client wishes to contact LHD by phone, the Client will be charged a call attendance fee for each phone call received, calculated at a minimum rate of \$[45] per 15 minutes rounded up.

8.3 All additional appointment fees and call attendance fees are payable to LHD within 7 days of demand.

9. ADDITIONAL ITEMS

9.1 If the Client requests that LHD to provide Additional Items, and LHD agrees to such a request, the Additional Items will be deemed to form part of the Design Services. The Client must pay to LHD within 7 days after delivery of the Additional Items:

- (a) if LHD 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 LHD at a minimum rate of \$[180] per hour.

9.2 The Client acknowledges and agrees that any and all Design Services that are not specifically referred to in the Quote shall constitute Additional Items.

10. TERMS OF PAYMENT

10.1 The Client is required to pay to LHD a deposit equal to 50% of the Contract Sum quoted to the Client before commencement of the Design Services. The Client acknowledges LHD 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 LHD in full.

10.2 The balance of the Contract Sum is due on completion of the Design Services in accordance with the Quote.



- 10.3 The Client must pay to LHD the amount of each invoice received from LHD, within seven (7) days after the invoice date.
- 10.4 LHD 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 and Conditions at the rate fixed under the Penalty Interest Rates Act 1983 (Vic) 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.
- 10.5 The Client must pay all amounts payable under these Terms and Conditions without setoff or deduction.

11. PERMITS AND APPROVALS

- 11.1 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.

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 LHD 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 LHD grants to the Client a non-exclusive non-transferable licence to use the final concept plan issued by LHD for landscaping design purposes at the Site and no other purposes.
- 13.3 The Client indemnities LHD 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 LHD 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 and Conditions.
- 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 LHD does not limit its liability under this clause), LHD'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) LHD 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 and Conditions;
 - (b) LHD's liability arising out of or in connection with the provision of the Design Services or these Terms and Conditions 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) LHD 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 and Conditions LHD 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 Conditions 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 and Conditions, 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.
- 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 Law Institute of Victoria (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 LHD

- 18.1 LHD 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 and Conditions 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 LHD will likely result in any of these events occurring); or
 - (e) the Client fails to carry out any provision of these Terms and Conditions 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 and Conditions; 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 and Conditions.

18.2 Any suspension or termination under this clause shall be without prejudice to and shall not affect any rights of LHD against the Client that have accrued up to the time of suspension or termination (as the case may be).

18.3 If LHS terminates its engagement under clause 18.1:

- (a) all amounts payable under these Terms and Conditions by the Client to LHD become immediately due and payable;
- (b) the deposit and all other amounts already paid by the Client are forfeited to LHD absolutely; and
- (c) LHD 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 and Conditions, including any Quote accepted in accordance with these Terms and Conditions, may only be cancelled or varied by the Client with the prior written consent of LHD.

19.2 To the extent permitted by law, LHD 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 LHD, 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 and Conditions without the prior written consent of LHD.

21. SEVERANCE

21.1 If any part of these Terms and Conditions 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 and Conditions.

22. ENTIRE AGREEMENT

22.1 This these Terms and Conditions contain the entire agreement and understanding between LHD 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 and Conditions.

22.2 In accepting these Terms and Conditions, the parties hereby acknowledge that neither party has made any warranties or representations to the other except as expressly set out in these Terms and Conditions.



LISA HARPER
DESIGNS

23. APPLICABLE LAW

23.1 These Terms and Conditions are governed by the laws of Victoria and the parties submit to the exclusive jurisdiction of the Courts of Victoria, Australia.



TO BE INCLUDED WITH EACH PROPOSAL

Proposal agreement

We, **INSERT NAMES AND ADDRESS OF PROJECT**, acknowledge and accept the following terms and agree to proceed with the design services described in this proposal:

- The fee for the concept plans and ongoing support as described in this proposal is \$**INSERT** incl GST.
- A payment of 50% of the fee is required upfront before commencement of the design stage.
- The balance of 50% will be invoiced on delivery of the final concept plans.
- The final invoice is due within 7 days after the date of invoicing.
- Additional work items beyond the scope of this proposal will be charged at \$180 per hour, unless otherwise quoted.
- Additional fees and charges may apply for booking additional appointments, cancellation of appointments under 24 hours, phone call attendances and **INSERT**.
- Additional work items requested will be added to the final invoice together with any additional fees and charges incurred.
- Exterior furniture styling service is included in this proposal.
- Additional specialist services like a site survey may be required. These services will be the subject of a separate agreement between you and the specialist service provider (if not provided to you with your architectural or building plans).
- The concept plans are for landscape construction purposes only. Some structures may require additional engineering drawings. If required, such drawings must be organised by you at your own cost and expense.
- The before and after images of your property will be taken and may be used by LHD online and for marketing purposes.
- The plans provided are not to be changed onsite or otherwise by any construction contractor without the permission of the landscape designer.

I acknowledge I have read the Terms and Conditions available at lisaharperdesigns.com.au/wp-content/uploads/2021/08/lhd-terms-and-conditions-may2023.pdf Copy and Paste link into Browser to read.

By signing below, I acknowledge and agree that the Terms and Conditions will form a binding agreement between me and Lisa Harper ABN 96 101 403 637 trading as Lisa Harper Designs in relation to the supply of the services.

Please Sign

Date: _____ Signature: _____ Name: _____
Date: _____ Signature: _____ Name: _____

*This proposal is valid for 30 Days from date of issue.