

Terms and Conditions
Construction Adjudication Matters

1. Commencing Your Matter – Offer and Acceptance

- 1.1 Thank you for your enquiry to Jackson McDonald (also referred to in this document as ‘we’, ‘us’ or ‘our’) to assist you with your adjudication application under the *Construction Contracts Act 2004 (WA)*(**Adjudication Application**).
- 1.2 If you wish to engage us to assist you with your Adjudication Application you will need to do the following:
- (a) Read these Terms and Conditions; and
 - (b) If you agree to these Terms and Conditions, click on the ‘Confirm and Submit’ button at the bottom of this document.
- 1.3 By clicking on the ‘Confirm and Submit’ button you will be making an offer to us, for us to assist you with your Adjudication Application, based on these Terms and Conditions.
- 1.4 Once you have done this, we will consider the initial information you provide and decide whether to accept your offer. Our acceptance of your offer will be subject to:
- (a) Us conducting a conflict check;
 - (b) Any additional information we require or request from you; and
 - (c) Us being satisfied it is appropriate that your claim is dealt with in this manner.
- 1.5 If we accept your offer for us to assist you with your Adjudication Application then these Terms and Conditions will apply to the work we do for you on your Adjudication Application, and these Terms and Conditions will form the basis of a legally binding agreement between you and Jackson McDonald.
- 1.6 We will confirm our acceptance of your offer after we have reviewed your Adjudication Application and returned it to you for your final approval, prior to us lodging it.
- 1.7 Upon our acceptance this document will also become the costs agreement between you and Jackson McDonald.
- 1.8 If you have questions about these Terms and Conditions, or the fees set out below, you should contact Tom Jacobs, the Partner in charge of these matters (on 9426 6611) to ask those questions prior to clicking ‘Confirm and Submit’. Tom will be happy to answer your questions.

2. Terms and Conditions

- 2.1 These Terms and Conditions set out:
- (a) The work we will do for you;
 - (b) The service we will provide to you;
 - (c) How our costs will be calculated; and
 - (d) Your rights and any information which we are required to disclose to you according to the relevant law in Western Australia, being the *Legal Profession Act 2008 (WA)* (**Act**), and the *Legal Profession Regulations 2008* (**Regulations**).
- 2.2 These Terms and Conditions will apply only to your Adjudication Application matter and are not intended to apply to any other legal matters you may have, or other legal work or services that we may provide to you.

3. Scope of work

- 3.1 The work we will do for you, and the service we will provide to you, is as follows:
- (a) You will be granted access to use our online forms (**‘Forms’**) in our Get Paid Quick (**GPQ**) online tool for inputting relevant data to facilitate the preparation of your Adjudication Application.
 - (b) Once you have completed inputting the data into the Forms and submitted the Forms and relevant documents to us, one of our lawyers will carefully check your completed Forms. We will then :

- (i) review the documents you have uploaded, including the contract;
 - (ii) finalise the necessary legal submissions to demonstrate entitlement to payment of the amount that you claim; and
 - (iii) as necessary, finalise any submissions necessary to rebut arguments raised by the other party as to why they are not paying you.
- (c) We will confirm that your matter can be dealt with under the *Construction Contracts Act 2004 (WA)* and by this process.
- (d) We will if necessary contact you to clarify the information you have provided, and otherwise prepare the Forms for lodgement as noted above
- (e) We will send you the completed Forms for your final approval prior to their lodgement.
- (f) We will then:
- (i) finalise and sign the Forms on your behalf;
 - (ii) commence the adjudication process;
 - (iii) obtain the appointment of an Adjudicator; and
 - (iv) serve the Forms on the other party, (**Respondent**).

[a-f above together referred to in this document as **'Work'**]

4. Work we will not be doing - Work not included in the Fixed Fee

4.1 We will **NOT** be undertaking any of the following work or tasks (in items a-g below). These tasks are excluded from the scope of work and are not included in the Fixed Fee set out in clause #8 below.

- (a) Any verification of or investigation into the facts contained in the Forms or the Adjudication Application. We will be relying upon the information and details you input into the Forms and we will assume that what you tell us is true;
- (b) Provision of any legal advice to you regarding the outcome of the adjudication the subject of the Adjudication Application, including the merits of any appeal or review;
- (c) Any legal advice upon the matters raised by the Respondent in their response to your Adjudication Application;
- (d) Dealing with any questions raised by the Adjudicator once the adjudication process has commenced. The Adjudicator sometimes asks questions or requires further information from either or both of the parties. Where this occurs, you can ask us to assist with this, and we can do so but it will incur additional fees (as it is not included in the Fixed Fee) for which we will charge the following, discounted hourly rates:

Fee Earner	Hourly/Daily Rate	Rate (inc GST)
Senior Lawyer	Hourly	\$484
Junior Lawyer	Hourly	\$341
Restricted Practitioner	Hourly	\$297
Clerk/Paralegal	Hourly	\$231

If this occurs we will discuss this with you before we incur any additional fees.

- (e) Advising on or taking any action to secure payment of any money owed to you as a result of the Adjudicator's decision on your Adjudication Application or any settlement of your matter; and
- (f) Any face-to-face meetings or conferences with you.

4.2 If you wish to instruct us to do any of these additional tasks then we will discuss the tasks and the fee arrangement with you (which we will also confirm in writing) before we commence these tasks and/or incur any additional fees.

5. Simple Adjudication Claims

- 5.1 For the purposes of this agreement a **Simple Adjudication Claim** means a claim with all of the following features;
- (a) The claim is for no more than \$300,000;
 - (b) The claim results from either of the following situations;
 - (i) you have done original contract work or varied work, and you have issued an invoice for the work, and you are claiming for payment of the invoice; or
 - (ii) if you have had construction work done for you (or you have subcontracted the work to another party), and you are claiming payment of liquidated damages or the costs of correcting defective work done by the other party, and this is allowed by a clause in your contract; and
 - (c) We consider the claim is suitable for the adjudication process under these Terms and Conditions, using the Fixed Fee arrangement (as per clause 8 of these Terms and Conditions).
- 5.2 Use of the Forms and our service is available on the basis that your Adjudication Application is a Simple Adjudication Claim (as per the definition above).
- 5.3 We retain sole discretion to determine whether or not your Adjudication Application is in fact a Simple Adjudication Claim and is suitable for adjudication using the Forms.
- 5.4 As a result of us reviewing your completed Forms and uploaded documents, we may determine your claim is not a Simple Adjudication Claim. If we make this determination, then we reserve the right to **not** proceed to lodge your Adjudication Application using the Forms.
- 5.5 Where we have determined your claim is not a Simple Adjudication Claim you will still be able to engage us to prepare your Adjudication Application but your work will **not** be done under these Terms and Conditions or in accordance with the Fixed Fee arrangement set out in clause 8 of the Terms and Conditions. Instead, we will negotiate a different agreement and fee structure with you.
- 5.6 You may decide that because of the complexity of your Adjudication Application, or for other reasons that you wish to engage us to prepare and submit an Adjudication Application **without** using the Forms. If you decide this, your Adjudication Application will not be done under these Terms and Conditions or in accordance with the Fixed Fee arrangement set out in clause 8 of the Terms and Conditions. Instead, we will negotiate a different agreement and fee structure with you.

6. Our Commitment to you

- 6.1 We will perform the Work for you with professional skill and diligence.
- 6.2 We will comply with all ethical, professional and legal obligations.
- 6.3 We will appoint the most suitable staff to perform the Work.

7. What you are required to do

- 7.1 You will need to complete the required online Forms in our GPQ online tools by inserting the required information accurately and correctly and by providing the required documents.
- 7.2 You will need to respond to our questions and promptly give us instructions so we can adequately do the Work.
- 7.3 You are required to upload the documents requested in the Forms.

8. Our Fees

- 8.1 Our fees for the Work will be 12.5% (plus GST) of the value of your claim (excluding GST) in your Adjudication Application, with a minimum fee of \$1,875 (plus GST) and a maximum fee of \$20,000 (plus GST) (**Fixed Fee**). **GST** is as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

For example:

- (a) if the value of your claim in your Adjudication Application is \$15,000 (excluding GST) or less, then you will pay a fee of \$1,875 (plus GST);

- (b) if the value of your claim in your Adjudication Application is \$50,000 (excluding GST), then you will pay a fee of \$6,250 (plus GST) (\$50,000 multiplied by 12.5%); or
- (c) if the value of your claim in your Adjudication Application is \$160,000 (excluding GST) or more, then you will pay a fee of \$20,000 (plus GST).

8.2 Included in the Fixed Fee will be the following:

- (a) The fee for lodgement and appointment of the Adjudicator – (approximately \$200-\$300 per appointment);
- (b) Process server fees – to serve the Adjudication Application on the Adjudicator nominating body and the Respondent - up to a limit of \$100, which will cover service in the Perth CBD, but not regionally. Any amount over this allowance of \$100 will be billed as an additional expenses; and
- (c) General administration costs such as, secure online payment fee, general postage, photocopying and local telephone calls.

9. Your additional out of pocket expenses

- 9.1 The Adjudicator will charge you a fee for his or her services. Your share of the Adjudicator's fee will be an additional out of pocket expense and is not included in the Fixed Fee. We estimate your share of the Adjudicator's fee to be within a range of \$1,500 - \$5,000 (plus GST) (as set out in clause 10 below "Adjudicator's fee") however this may be higher or lower depending the fees charged by the Adjudicator.
- 9.2 We do not expect there to be any additional out of pocket expenses, but we will let you know if any arise.

10. Adjudicator's fee

- 10.1 Your matter will incur an Adjudicator's fee. The Adjudicator's fee is estimated to fall within a range of between \$3,000 - \$10,000 (plus GST) depending which Adjudicator is appointed however this may be higher or lower depending the fees charged by the Adjudicator.
- 10.2 Generally the Adjudicator's fee will be equally split between the parties (50% each) and therefore you will generally be required to pay 50% of the Adjudicator's fee.
- 10.3 In very rare circumstances one party may be ordered to pay the entire fee (for example where one party has acted unreasonably which could be where an application is lodged which has clearly no prospects of success).
- 10.4 On occasion the Adjudicator will require the applicant (which is you) to deposit the entire Adjudicator's fee to be held as security. However in most cases (except if clause #10.3 above applies) you will be refunded 50% of the Adjudicator's fee once the matter is decided (even if you are not successful).

11. Prospects of success in your matter

- 11.1 For the purposes of these Terms and Conditions **success** or **successful** means, a decision by the Adjudicator in your favour. There is no guarantee that your Adjudication Application will be successful.
- 11.2 Regardless of the outcome of your matter you would only have to pay the Respondent's costs in the unlikely event that the circumstances in clause #10.3 apply.
- 11.3 Our Fixed Fee is not dependent on the success of your matter. Our Fixed Fee will be the same whether or not your matter is successful.
- 11.4 If upon review of your Forms and documents we determine your matter has a low prospect of success (or we consider that lodging the application might cause the circumstances in clause #10.3 to be invoked) we reserve our right to not proceed to lodge the Adjudication Application. If this occurs we will contact you to discuss this.
- 11.5 If we exercise our right to not proceed with lodging your Adjudication Application due to our assessment of low prospects of success, we will return to you any funds we hold for you on trust. This means in these circumstances you will not be charged any fees for our Work.

12. No costs jurisdiction = no recovery of costs

- 12.1 Your matter is in a no costs jurisdiction. This means that in almost all circumstances (except as set out at clause #12.3 below) even if you are successful you will not be able to

recover your legal costs (including the Fixed Fee or out of pocket expenses) from the Respondent.

- 12.2 Similarly, if the Adjudicator's decision is in favour of the Respondent they will not be able to recover their costs from you.
- 12.3 If the Adjudicator is satisfied that a party has commenced the matter unreasonably, or acted unreasonably, and has therefore caused the other party to unnecessarily incur costs, then the Adjudicator may order the offending party to pay some or all of the other party's costs. However this is extremely rare.

13. Security or money on account

- 13.1 It is our practice to ask clients who are using our Adjudication Application process to pay the Fixed Fee in advance for our expected fees.
- 13.2 You will be required to pay the Fixed Fee at the time of submission of your Forms to us.
- 13.3 Payment of the Fixed Fee is in advance of our fees, and the money received will be placed into and remain in our general trust account until we have prepared your Adjudication Application, and it is ready for lodgement.
- 13.4 Once you have completed the Forms the electronic system will notify you of how much money you are required to pay. Once paid this money will be placed in our general trust account.
- 13.5 Once the Adjudication Application is ready for lodgement we will return it to you for your final approval, and we will provide you with our bill. At that point we will use the money held in trust on your behalf to pay our bill.
- 13.6 Any money provided to us in advance for out of pocket expenses (such as the Adjudicator's fee) will initially be placed in our general trust account and we will use these funds to pay the expenses as and when they are due.

14. Trust money and withdrawal of trust funds for payment of a bill

- 14.1 As our general trust account is not an interest bearing account, interest will not be paid on money placed in this account.
- 14.2 You authorise us to withdraw your funds held by us in our general trust account, to pay our bill, once we have sent you our bill and we have reviewed the forms and sent them back to you for final checking, prior to lodgement.
- 14.3 A bill referred to in 14.2 above, may include our fees and/or any out of pocket expenses.

15. Billing and Payment

- 15.1 We will provide you with our bill once the Adjudication Application is ready for lodgement, but before it is lodged.
- 15.2 If we do not hold enough money on trust to pay our bill in full, then you must pay our bill (or balance of a bill) by the due date, being 14 days after receiving the bill.

16. Confidentiality & Privacy

- 16.1 We must not disclose or use any confidential information you disclose to us, other than with your consent, except to the extent that:
- (a) the disclosure is required by law, or a Court order; and/or
 - (b) the disclosure is necessary for us to or defend a formal complaint against us or any of our current or former partners or staff.
- 16.2 In the course of doing the Work we may obtain personal information from you. You consent to us using this information for the Work and related purposes. Our Privacy Statement is on our website at www.jacmac.com.au.
- 16.3 Unless you notify us otherwise, we may disclose to third parties we act or have acted for you. We will not disclose any other confidential information.

17. Other Clients and Conflicts of Interest

- 17.1 Due to the nature of our practice, conflicts of interest can occur, which prevent us from acting for clients. Sometimes conflicts are apparent at an early stage when instructions are first taken but sometimes the conflict either does not arise or does not become apparent

until later. If we identify a conflict we may not be able to commence acting for you or we may need to cease acting for you, and if so we reserve our right to not commence acting for you or withdraw from acting for you.

- 17.2 If we need to withdraw due to a conflict of interest we will return to you any funds we still hold for you on trust.
- 17.3 Some of our other clients may have interests which are inconsistent with yours. Some of them may operate in your industry or may be involved in transactions or disputes on the opposing side to you. This will not necessarily constitute a conflict which requires us to cease acting.
- 17.4 Providing we continue to maintain your confidentiality we will remain free to act for other clients and future clients even if those other clients' interests are inconsistent with yours.
- 17.5 Where an actual conflict of interest or conflict of duties exists we will take steps to resolve the conflict, which may include ceasing to act for you.
- 17.6 We will not disclose or use your confidential information to assist any of our other clients.
- 17.7 Similarly we will not disclose or use another client's confidential information to assist you or your matter.

18. Law governing costs

- 18.1 Western Australian law applies to this agreement, including any matters regarding costs.

19. Professional Standards Scheme

- 19.1 We are part of the Professional Standards Scheme (**Scheme**). The Scheme limits any client's claim to \$10,000,000 (\$10 million) against us.

20. Termination of this Agreement

- 20.1 You may terminate this agreement at any time, by giving us written notice.
- 20.2 If you terminate this agreement prior to us commencing the preparation of your Adjudication Application, then we will refund you any funds we hold on your behalf in our trust account.
- 20.3 If you terminate this agreement after we have completed preparation of your Adjudication Application, we will be entitled to, and will charge you the entire Fixed Fee.
- 20.4 If you terminate this agreement while we are in the process of preparing your Adjudication Application, we will cease work on your Adjudication Application at the time you instruct us in writing to terminate the agreement. We reserve the right to charge you a proportion of the Fixed Fee on a pro-rata basis, which we will calculate based on the amount of the Adjudication Application which we have already prepared.
- 20.5 We may terminate this agreement in the following circumstances:
 - (a) In accordance with clause #11 (re: low prospects of success);
 - (b) In accordance with clause ##17 (re: conflict);
 - (c) If in our opinion the necessary mutual trust between you and us no longer exists; and/or
 - (d) We consider that by continuing to act for you we might breach a legal or ethical duty.
- 20.6 Unless otherwise stated in this agreement, if either we or you terminate this agreement, you must pay us the Fixed Fee if we have completed the work required to lodge your Adjudication and it is ready for lodgement. You must also pay us any out of pocket expenses already incurred, or which will become payable after termination, but cannot reasonably be cancelled or avoided.
- 20.7 Clauses 16-21, 23, 24 will continue to apply after termination of this agreement.

21. Records

- 21.1 We generally keep client files for at least seven years after completion of the matter, after which we may destroy the files without further notice to you.
- 21.2 If we hand over a file to you or another law firm, we reserve our right to retain a copy.

22. Email and other electronic communication

- 22.1 We and you may communicate and send information including documents by email.
- 22.2 We and you will do this at your risk, but we will take reasonable precautions to protect all email communications from harmful software, loss, delay, or interception. We accept no responsibility or liability for any loss you may incur in connection with our email communications or any of these things in this sub-clause, and you release us from all such claims.
- 22.3 We may send you emails using any email address you provide to us from time to time, and may reply to any email address from which you send us an email. It is your responsibility to ensure the secure and confidential receipt and storage of any information we send to you by email to any of these addresses.
- 22.4 We may send you email newsletters, and promotional material to you. You may notify us if you do not want us to send this to you.

23. Copyright and intellectual property

- 23.1 We retain all our intellectual property in the Adjudication Application Product and in any documents we create in the course of doing work for you.

24. Compliance with statutory requirements

- 24.1 If in connection with your work we are required to comply with any statutory or other legally binding requirement (for example a subpoena) you must pay our reasonable costs of compliance, including after termination of this agreement.

25. YOUR LEGAL RIGHTS IN REGARD TO COSTS AND THIS AGREEMENT

- 25.1 We will not be using a costs determination to calculate our fees, but rather our fees will be the Fixed Fee set out above. Despite this, by law we are required to tell you there may be a particular costs determination which may apply to the Work we will do for you, and therefore could be used to calculate our fees (if we were to use such a determination).
- 25.2 We are **not** required to use a costs determination to calculate our fees. If a costs determination was to be used to calculate fees for your Work then the 'Solicitors Costs' costs determination would be the appropriate determination for this type of work. It can be found on the Legal Costs Committee of WA's website at <http://www.legalcosts.wa.gov.au/>.
- 25.3 You have a right to seek independent legal advice about these Terms and Conditions, and if you choose to do so, you should seek advice prior to clicking on 'Confirm and Submit' to complete and issue your application to us.
- 25.4 You have a number of rights under the Act and the Regulations. We have reproduced these in red below (our clarification is in black italics).

"You have the right to —

- negotiate a costs agreement with us
 - receive a bill of costs from us
 - request an itemised bill of costs after you receive a lump sum bill from us
 - request written reports about the progress of your matter and the costs incurred in your matter (at no cost to you)
- [We note the above words "at no cost to you" only apply to a report in regard to cost. Reports requested in regard to progress of the matter may attract a fee].*
- apply for costs to be assessed within 12 months if you are unhappy with our costs
 - apply for the costs agreement to be set aside
 - accept or reject any offer we make for an interstate costs law to apply to your matter
 - notify us that you require an interstate costs law to apply to your matter"

For more information about your rights, there is a further information provided by the Legal Practice Board or Law Society. The website addresses follow:

WA Legal Practice Board - www.lpbwa.org.au

WA Law Society - www.lawsocietywa.asn.au

26. Confirmation of reading these Terms and Conditions

26.1 I confirm that I have read and understand these Terms and Conditions, and agree that if my offer to do the Work is accepted by Jackson McDonald then these Terms and Conditions will form the basis of a legally binding agreement between myself and Jackson McDonald.