

GASS

ARCHITECTURE STUDIOS

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ARCHITECTS
STANDARD TERMS AND CONDITIONS FOR ARCHITECTURAL SERVICES

ENTERED INTO BETWEEN

GASS Architecture Studios (PTY) Ltd
REGISTRATION NUMBER: 2017/097734/07
("the Architect")

AND

("the Client")

PREAMBLE

WHEREAS the **parties** have agreed that the **architect** will provide professional services to the **client** in respect of a **project** to be undertaken by the **client**, the **parties** agree to the **architect**'s following standard terms and conditions:

1. DEFINITIONS

The following words and expressions shall have the meanings indicated, except where the context otherwise requires. Where words and phrases are bold in the text of this document they shall bear the meaning as defined in this 1.1 and where such words and phrases are not bold they shall bear the meaning consistent with the context:

- 1.1. **"Agreement"** – means these Standard Terms and Conditions for Architectural Services;
- 1.2. **"Architect"** – means GASS Architecture Studios (Pty) Ltd;
- 1.3. **"Client"** – means the party appointing _____ to provide Architectural Services;
- 1.4. **"Day"** – means a twenty-four (24) hour day commencing at midnight (00:00), which excludes Saturdays, Sundays and statutory holidays;
- 1.5. **"Party"** – The **architect** or the **client** entering into this **agreement**
- 1.6. **"Project"** – means the **project** to be undertaken by the **client** in respect of which the **architect** receives instructions to perform work; and
- 1.7. **"Services"** – means the Architectural Services rendered by the **architect** to the **client** under this **agreement**.

1.2 Interpretation

This **agreement** shall be interpreted according to the following provisions, unless the context requires otherwise:

- 1.2.1 The headings of clauses and sub-clauses have been inserted for convenience only and shall not affect the interpretation of this **agreement**.
- 1.2.2 Any reference to one gender shall include the other gender and the neuter.
- 1.2.3 Words in the singular shall include the plural and *vice versa*.
- 1.2.4 The number of **days** indicated to commit an act or indicated for any other purpose, is calculated by excluding the first day and including the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or Public Holiday.
- 1.2.5 Where figures are referred to in numerals and words, should any conflict arise between the two, the words shall prevail.

- 1.2.6 Should any conflict arise between these Standard Terms and Conditions and any other agreement entered into between the **architect** and the **client**, the former shall prevail.
- 1.2.7 Notice in terms of this **agreement** may be given as set out hereunder and shall be deemed to have been duly received when:
 - 1.2.7.1 Delivered by hand – on the **day** of delivery; and
 - 1.2.7.2 Sent by electronic mail – three (3) **days** after transmission.

2. GENERAL PROVISIONS

2.1. Entire Agreement

This **agreement** constitutes the entire **agreement** between the **parties** and no representations, terms, conditions or warranties not contained in this **agreement** shall be binding upon the **parties** unless reduced to writing and signed by the **parties** hereto. No agreement or addendum varying, adding to, cancelling or deleting from this **agreement** shall be effective unless reduced to writing and signed by both **parties**.

2.2. Any relaxation, indulgence or delay by any **party** in exercising, or any failure by any **party** to exercise, any right under this **agreement** shall not be construed as a waiver of that right and shall not affect the ability of that **party** to subsequently exercise that right or to pursue any remedy, nor shall any indulgence constitute a waiver of any other right (whether against that **party** or any other person).

2.3. Cession / Assignment

Neither **party** to this **agreement** shall be entitled to assign and/or delegate and/or cede any part of its rights and/or obligations under this **agreement** to any person without prior written consent of the other **party**.

2.4. Governing Law

The law applicable to this **agreement** shall be the law of the Republic of South Africa.

2.5. Severability

If any provision or clause of this **agreement** is declared as invalid, void or unenforceable by a Court of competent jurisdiction, such provision shall be deemed modified to the least degree necessary to remedy such invalidity and the remainder of the **agreement** will not be impaired or affected thereby. Each other term, provision and clause of this **agreement** will be of full force and effect, and valid and enforceable to the fullest extent permitted by Law.

2.6. Amendments and Annexures

No amendment or annexure to this **agreement** shall be valid unless such amendment or annexure is reduced to writing and signed by both parties hereto.

3. DURATION OF AGREEMENT

3.1. This agreement shall apply from the date on which the **architect** accepts the first instruction from the **client** or from the date on which the **architect** commences rendering services to the **client**, whichever occurs earlier.

3.2. This **agreement** shall have been discharged when the **architect** has completed the **services** and has received full payment of all amounts due.

4. THE ARCHITECT'S SERVICES

4.1. This **agreement** shall apply -

- 4.1.1. to all **services**, irrespective of the circumstances under which the **services** are rendered, and work instructed by the **client** and executed by the **architect** unless specifically amended by written agreement, which agreement shall be signed by both parties; and
- 4.1.2. to the exclusion of any terms and conditions which the **client** may seek to impose.

5. THE PARTIES' RIGHTS AND OBLIGATIONS

5.1. The **client** shall –

- 5.1.1. timeously, having due regard to when its obligations are to be performed so as not to delay the **architect** in the rendering of the **services**:
 - 5.1.1.1. accurately specify its requirements and provide site and other information to the **architect**;
 - 5.1.1.2. make decisions and provide instructions;
 - 5.1.1.3. relax restrictions and building lines and obtain local authority and any other approvals or consents as necessary;
 - 5.1.1.4. make available, at the **client's** cost, any other services deemed necessary by the **architect**;
 - 5.1.1.5. notify the **architect** of the appointment of any third parties and instruct such third parties to co-operate with, adhere to and comply with all reasonable requests by the **architect**;
 - 5.1.1.6. pay all costs and charges levied by any authority, association or body, unless otherwise agreed between the **parties**;
 - 5.1.1.7. review the designs, plans and specifications submitted by the **architect** on an ongoing basis and confirm that the **architect** has accurately interpreted the **client's** requirements and advise the **architect** immediately if the **architect** has, in the **client's** view, not accurately interpreted its requirements, failing which, the **client's** silence shall be deemed to constitute that the **architect** has accurately done so;
- 5.1.2. allow the **architect** a reasonable time within which to render the services;
- 5.1.3. use and benefit from the documents and/or designs prepared and/or produced by the **architect** for the sole purpose of its intended use on the project undertaken by the **client** subject to compliance with the terms and conditions of this **agreement**;
- 5.1.4. pay the **architect's** invoices timeously;

- 5.1.5. upon request by the **architect**, provide proof that funding is available for the ongoing requirements of the project and/or provide a guarantee acceptable to the **architect** for the payment of the **architect's** fees and disbursements; and
 - 5.1.6. be obliged to make full disclosure of all terms of this **agreement** to any bank, financial institution or funder of any specific project and shall indemnify the **architect** against all claims associated with any failure to make such non-disclosure.
- 5.2. The **architect** shall, in the rendering of **services** -
- 5.2.1. rely on the accuracy of information provided by the **client**;
 - 5.2.2. give advice and render **services** under prevailing conditions and shall not be responsible for changes in circumstances;
 - 5.2.3. when rendering its **services** exercise a reasonable degree of skill, care and diligence and act in accordance with the ethics and standards of the architectural profession and applicable legislation;
 - 5.2.4. if the **architect's** services include inspection and/or certification, exercise such function in an independent and professional manner;
 - 5.2.5. when performing inspections and/or issuing certificates, be responsible only for having identified and dealt with those aspects of the works that can be identified by ordinary visual inspection;
 - 5.2.6. not be obliged to issue or hand over any designs, drawings, materials and/or documentation unless paid for in full by the **client**;
 - 5.2.7. retain the copyrights associated with any designs, drawings and documentation produced by the **architect** or any person in the **architect's** employ;
 - 5.2.8. render only such services as are generally regarded as architectural services to the extent included in the **architect's** scope of employment;
 - 5.2.9. decide on the appropriate personnel to render the **architect**, considering that it is the **architect's** policy that **services** be rendered at the appropriate level of seniority, having due regard to the nature and complexity of the **services** to be rendered;
 - 5.2.10. do so on the **architect's** understanding and interpretation of the **client's** requirements and relevant laws, statutes, regulations, rules and practices applicable at the time of the rendering of the **services**.
- 5.3. The **parties** acknowledge and agree that the **architect** shall have no obligations towards any party who is not a party to this **agreement**.
- 5.4. Undertakings which may be required from the **architect** by third parties and/or reliance placed on the work, certifications or any other actions performed by the **architect** in any way associated with this **agreement**, shall not create any legal nexus to or any other obligation on

the **architect**. The **client** hereby agrees to indemnify the **architect** against all claims arising from all undertakings required from the **architect** by any bank, financial institution or funder of any specific project.

6. FEES

- 6.1. The **architect** is entitled to fees as set out in the latest Government Gazette relating to professional fees for architectural services, applicable at the time of last signature of this **agreement**, unless otherwise agreed between the **parties**, which agreement shall be reduced to writing and signed by both **parties**.
- 6.2. The **architect** shall have the right to receive payment as soon as the **architect** receives any instruction or request from the **client** to perform work in terms of this **agreement** and the **architect** performs same.
- 6.3. The **parties** agree that the right to payment shall only be exercised once funding is received by the **client** for the project (whether received by this **client** or any subsequent developer of the project), alternatively if the work required to be executed by the **architect** associated with the **project** includes work from design development stage onwards, whichever is the earlier.
- 6.4. Should the client request a specific fee proposal from the **architect**, the fee proposal shall be the basis for the **architect's** entitlement to receive payment and shall be provided to the **client** on the basis that the **architect's** fee provides for a maximum of 3 (three) revisions per drawing. Any work requested from the **architect** after the third revision shall be charged on a time-spent basis at a rate of R2000 per hour, or any part thereof.

7. PAYMENT

- 7.1. The **architect's** invoices are due and payable within 30 days of receipt thereof unless agreed otherwise, which agreement shall be reduced to writing and signed by both parties.
- 7.2. The **parties** agree that invoices shall be valid if presented electronically.
- 7.3. The **client** shall pay all invoiced amounts by electronic bank transfer or direct deposit to the **architect's** bank account, the details of which appear on the **architect's** invoice.
- 7.4. Should the **client** fail to pay any invoice within 30 (thirty) **days** from the date of presentation, the **client** shall be liable for interest on the outstanding amount from time to time at 2% (two percent) above the interest rate applicable from time to time to prime borrowers of the **architect's** bank.
- 7.5. The **client** shall not withhold payment unreasonably nor apply set-off to such payment unless expressly agreed between the **parties**.
- 7.6. Should the **client** dispute any aspect of an invoice issued by the **architect** the **client** shall give written notice with reasons within thirty (30) **days** and shall not delay payment of the undisputed amount.

8. TERMINATION, SUSPENSION AND DEFERMENT OF SERVICES

8.1. The **architect** shall be entitled, at its election and without prejudice to any other right it may have, to terminate or suspend the whole of or part of the services, by giving the **client** not less than 5 (five) **days** prior written notice of its election to do so.

9. TOTAL AGGREGATE OF ARCHITECT'S LIABILITY

9.1. The **architect's** total aggregate liability shall be limited to the amount actually received under the **architect's** professional indemnity insurance policy (after policy exclusions, legal costs and tax) as a result of a claim notified to insurers in relation to a claim received by the **architect** or any specific event which may give rise to a claim. The **client** waives all claims against the **architect** exceeding the stated total aggregate liability and agrees to indemnify and hold the **architect** harmless against any claims exceeding the **architect's** total aggregate liability.

10. RESOLUTION OF DISPUTES

10.1. Should any dispute whatsoever arise between the **parties**, either **party** hereto may declare a dispute by delivering notice of the details thereof to the other **party**, which dispute may be referred to adjudication prior to arbitration.

10.2. Prior to arbitration and should the **parties** so agree, the dispute shall be referred to a single adjudicator. The adjudicator shall be selected by agreement between the **parties** within fourteen (14) **days** of agreeing to such adjudication. Failing such agreement, the adjudicator shall be nominated on the application of either **party** by the Association of Arbitrators (Southern Africa).

10.3. The adjudication shall be conducted in accordance with the latest version of the rules current at the time of the notice of arbitration, published by the Association of Arbitrators of Southern Africa.

10.4. The adjudicator shall deliver a copy of his reasoned opinion to each **party** within forty (40) **days** of his appointment.

10.5. The opinion so expressed by the adjudicator shall be final and binding on the **parties** unless either **party** within twenty one (21) **days** of the delivery of the opinion, notifies the other **party** of its unwillingness to accept the said opinion, in which event the dispute shall be referred to arbitration in terms of this **agreement**.

10.6. The costs of adjudication shall be determined by the adjudicator and shall be borne equally by the **parties** and shall be due and payable to the adjudicator on presentation to them of the adjudicator's invoices.

10.7. Each **party** shall bear any other costs it may have incurred in connection with the adjudication.

10.8. The adjudication proceedings shall not prejudice the rights of the **parties** in any manner whatsoever in the event of the dispute proceeding to arbitration.

10.9. Arbitration shall be heard by a single arbitrator who shall be nominated by agreement between the **parties** within fourteen (14) **days** of the rejection of the adjudicator's opinion in terms of 10.5, alternatively following the direct reference of the dispute to arbitration. Failing such

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agreement, the arbitrator shall be nominated, on the application of either party, to the Association of Arbitrators (Southern Africa).

- 10.10. The arbitrator shall have power to open up, review and revise any opinion, decision, requisition or notice and to determine all matters in dispute which shall be submitted to him/her, and of which notice shall have been given as aforesaid, in the same manner as if no such opinion, decision, requisition or notice had been given.
- 10.11. The arbitration shall be conducted according to the most recent rules of the Association of Arbitrators (Southern Africa) current at the time of the declaration of the dispute.
- 10.12. The **parties** agree that the arbitration proceedings shall not be subject to the provisions of s23(a) of the Arbitration Act 42 of 1965 .
- 10.13. Any award made by the arbitrator will be final and binding on the **parties** and may be made an order to any court to whose jurisdiction the **parties** are subject.
- 10.14. Nothing contained in this clause shall preclude any **party** from obtaining intermediate relief on an urgent basis from a court of competent jurisdiction, pending the decision of the arbitrator.
- 10.15. Clause 10 (Resolution of Disputes) of this **agreement** shall survive termination of this **agreement**.

SIGNED AT _____ ON THIS _____ DAY OF _____ 2017.

Signed on behalf of the **Architect**

1. _____

Witness

2. _____

Witness

SIGNED AT _____ ON THIS _____ DAY OF _____ 2017.

Signed on behalf of the **Client**

1. _____

Witness

2. _____

Witness