

Building Act 1993

Building Regulation 2018

**TERMS & CONDITIONS OF ENGAGEMENT
SYNERGY BUILDING SURVEYING**

1. NATURE OF CONTRACT

1.1. The RBS shall carry out upon request by the owner or agent and in accordance with the Building Act 1993 (the Act) and Building Regulations 2018 (the Regulations), the Services in accordance with this Agreement

1.2. The owner or agent shall pay the RBS the fee and fee adjustments in accordance with this Agreement.

2. PRIVATE BUILDING SURVEYOR FUNCTIONS

2.1 The Private Building Surveyor (PBS) functions include:

- 2.1.1. Assessing the building permit application;
- 2.1.2. The issuing of a building permit;
- 2.1.3. The carrying out of building inspections under Part 4 of the Act

2.2. The PBS may:

- 2.2.1. Request further information from the owner;
- 2.2.2. Issue a building permit for a stage of the building work;
- 2.2.3. Issue a building permit with conditions;
- 2.2.4. Issue a building permit without conditions; or
- 2.2.5. Refuse to issue a building permit.

2.3. The Private Building Surveyor Functions exclude:

- 2.3.1. preparation of the design of the Project;
- 2.3.2. matters pertaining to Building Quality
- 2.3.3. any guarantee by the Building Surveyor that the Project will be granted a building permit or occupancy permit or that it will be considered compliant in any inspections undertaken.
- 2.3.4. any act or activity deemed by the Building Surveyor to be contrary to the requirements of the Act, the Building Regulations 2018 or the National Construction Code, as relevant.

3. SERVICES

The RBS shall provide the Services personally or by a competent representative.

3.1. The Appointment

3.1.1 Subject to this Part, a person who is entitled to apply for a building permit, occupancy permit or temporary approval under this Act in respect of a building or building work, may appoint a private building surveyor to carry out the functions set out in section 76 in respect of that building or building work.

3.1.2 Except as provided in this Part, a person must not appoint a private building surveyor to complete any functions set out in section 76 in respect of a building or building work if another private building surveyor or a municipal building surveyor has already commenced to carry out functions set out in that section in respect of that building or building work. Penalty: 240 penalty units, in the case of a natural person, 1500 penalty units, in the case of a body corporate.

3.1.3 Despite the terms of an appointment under this section, a private building surveyor, in carrying out any functions set out in section 76, must comply with this Act and the regulation

3.2 Building Permit

The owner or an agent of the owner in making an application for a building permit must:

- 3.2.1 Complete an Application for Building Permit Form 1 and,
 - 3.2.2 Pay the required fee;
 - 3.2.3 Pay the required building permit levy under the Building Act 1993;
 - 3.2.4 Comply with the requirements of the Building Act 1993;
 - 3.2.5 Provide all documents and information required under the Building Act 1993 and its Regulations or as requested by the RBS;
 - 3.2.6 Comply with the conditions of any Planning Permit or other prescribed approval issued in relation to the subject property;
 - 3.2.7 State the contract price for the building work including the costs of labour and materials if there is a contract for the building work; or
 - 3.2.8 In any other case provide such sufficient information to enable the RBS to estimate the costs of the building work including the cost of labour and materials; and
 - 3.2.9 Include any necessary report and consent of any prescribed reporting or service authority under the Building Act 1993 or any necessary permit or approval of a responsible authority under the Planning and Environment Act 1987.
- 3.3 Inspections
- 3.3.1 It is the responsibility of the Builder to contact Synergy Building Surveying office for the mandatory inspections as specified on the Building Permit.
 - 3.3.2 All inspections MUST be approved prior to proceeding to the next stage.
 - 3.3.3 Where the RBS or his authorized representative (including subcontractors) carry out an inspection of the building work, the builder shall provide the RBS with not less than 24 hours' notice and shall cease any works on the subject property until such time as the RBS has caused the subject property to be inspected.
 - 3.3.4 It is the Builder's responsibility to ensure a copy of all documentation and endorsed plans are available on site at all times to ensure all tradesmen carry out the building work strictly in accordance with the approved plans / regulations, and to allow for mandatory building inspections.
 - 3.3.5 Where applicable, all pre-fabricated floor and roof truss manufacturer computations and plans are to be submitted to this office for assessment and approval 48 hours prior to erection on site. Frame Inspections will not be booked until truss computations and plans have been approved by this office.
 - 3.3.6 The Owner / Builder shall pay the RBS a fee adjustment for any additional inspection required under this Agreement (at full inspection costs) before the Issue of the Final Inspection Certificate/ Occupancy Permit. Additional inspections are those carried out which exceed the amount of inspections specified in the building permit condition.
- 3.4 Variation of Building Permit
- 3.4.1 The owner may lodge an application requesting a building permit be varied and or extended by the RBS;
 - 3.4.2 The application must:
 - 3.4.2.1 Be in writing;
 - 3.4.2.2 Include all documents required under the Building Act 1993 and the Regulations or requested by the RBS;
 - 3.4.2.3 Be accompanied by the required fee as per this Agreement.
- 3.5 The Client acknowledges that the Building Surveyor is subject to the requirements of the Act. As a result, the Client understands that the Building Surveyor may be required to refuse the Client's application or otherwise not grant a permit sought by the Client.
- 3.6 The Client acknowledges that the Building Surveyor may engage in any other business, occupation or activity during the Term, provided that does not detrimentally affect the performance of the Private Building Surveyor Functions.
- 3.7 If the Client engages another person to provide services substantially the same as the Private Building Surveyor Functions in respect of the Project, then the Building Surveyor may terminate this agreement.
- 3.8 Inspections carried out will be the minimum required to ensure compliance with the Act and Regulations and not supervision of all the work. Inspections will not be measured against the Guide to Standards and Tolerances. It is the responsibility of the builder to construct the building fully in

accordance with the approved permit documents, good practice, guide to standards and tolerances, and the NCC

4. FEES

- 4.1. In appointing Synergy Building Surveying Pty Ltd as the Relevant Building Surveyor (RBS) for the project, the Building Permit fee must be paid in full prior to the issue of the permit including Government Levies which are a portion of the job cost/contract amount.
- 4.2. The Fee payable for the Private Building Surveyor Functions is, at the Building Surveyor's discretion, either:
 - 4.2.1. as indicated on invoices provided by the Building Surveyor to the Client in respect of Private Building Surveyor Functions supplied; or
 - 4.2.2. the Building Surveyor's quoted Fee (subject to variations where applicable) which is binding upon the Building Surveyor provided that the Client shall accept the quote in writing within 30 days of receipt.
- 4.3. The Building Surveyor reserves the right to change the Fee in the event of a variation to the scope of work for the Private Building Surveyor Functions. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation due to unforeseen circumstances, or as a result of increases to the Building Surveyor in the cost of materials and labour) will be charged for on the basis of the Building Surveyor's fee proposal and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 4.4. Payment of an invoice is required within 14 days of issue.
- 4.5. Payment will be made by direct credit, or by any other method as agreed to between the Client and the Building Surveyor.
- 4.6. Receipt by the Building Surveyor of any form of payment does not constitute payment until that payment has been honoured, cleared or recognised by the building surveyor.
- 4.7. GST, other taxes, duties, disbursements and applicable government and council fees and charges will be added to the Fee other than where they are expressly included in the Fee.

5. ADDITIONAL SERVICES

The PBS shall not be obliged to proceed with additional services which are not described in the fee proposal or agreement until a request is received from the client and agreed to by the PBS. The hourly rate of \$280.00 plus GST per hour will apply for any additional work requested. Additional services include but not limited to those services described below:

- 5.1. The change in scope of works as specified in the application,
- 5.2. Multiple re-assessment of documents (up to 2 assessments are included in the agreement),
- 5.3. Changes to the design of the building,
- 5.4. Obtaining additional information and documents from a council and other authority;
- 5.5. Carrying out additional inspections of the subject property;
- 5.6. Matters relating to protection of adjoining properties,
- 5.7. Assessment and acceptance of Codemark and other accredited products,
- 5.8. Certification, review or advice in relation to alternative design solutions, dispensations, modifications,
- 5.9. Matters relating to written directions to fix building work, building notices, building orders or other enforcement provisions,
- 5.10. Attendance at the Building Appeals Board
- 5.11. Certification of structural design,
- 5.12. Complaints from neighbours or general public in connection with the building works,
- 5.13. Disputes between a builder and client which require input from the RBS,
- 5.14. Matters relating to works being more than 50% subject to Regulation 233 (including inspections),
- 5.15. Combined allotment statement,
- 5.16. Notice of imminent lapse of building permit is \$300.00 plus GST,
- 5.17. Extension of time of building permit is \$700.00 plus GST for a period of up to 12 months,
- 5.18. Referral of written direction to fix building work to Victorian Building Authority (VBA)
- 5.19. Transfer of PBS functions.
- 5.20. Building Notices and Building Orders. In the case of refusal of a mandatory Building Inspection, a written direction to fix building work will be sent to the owner and builder and in the event of non-response within an appropriate time the written direction to fix building will be referred to the VBA as per the requirements of the Act. At this time a Building Notice will also be issued by the PBS. The

PBS reserves the right to charge an hourly rate for all works directions and subsequent correspondence relating to a written direction to fix building work. Note: The minimum fee payable for a Building Notice or a Building Order is \$1,500.00 plus GST. The hourly rate charged for following up of written directions will be \$280/hr plus GST. This includes preparation and attendance at the Building Appeals Board or other Board, Panel, or Courtroom or any other enforcement meeting or procedure.

NOTE: It is a requirement of the Building Regulations that all documents be prepared to the professional standards, usually by a registered building practitioner (RBP). When calculating our fees, we have assumed that all documents are to be prepared by suitably qualified RBP's in the correct category and class. Acceptance of documents prepared by owner builders or builders dramatically increases the exposure and risk of SP Building Surveyors. As such, we will not accept a building permit application where the working drawings have not been prepared by a RBP unless specifically requested by the applicant and agreed to by Synergy Building Surveying. A substantial increase in fees will be payable for acceptance of any documents prepared by an owner or builder who is not a RBP in the correct category or class.

5 OWNERS/AGANT OBLIGATIONS

6.1 Owner/agent warranties and indemnities

6.1.1 The owner/agent warrants:

6.1.1.1 The accuracy and completeness of all information given to the RBS;

6.1.1.2 That the RBS when carrying out the Services acts with the owner's authority;

6.1.2 The owner shall indemnify the RBS against any claims in respect of the RBS acting within authority as the owner's agent.

6.2 The owner hereby acknowledges his/her/its ongoing obligations pursuant to the Building Act 1993 and the Regulations including but are not limited to:

6.2.1 providing the RBS with unfettered access to the subject property;

6.2.2 not obstructing the RBS in carrying out its functions;

6.2.3 not provide the RBS with any information which may be misleading or deceptive;

6.2.4 advising the RBS:

6.2.4.1 of any changes in relation to the engagement of a Building Practitioner or an insured architect within 14 days of such change;

6.2.4.2 of any change to the owner's address;

6.2.4.3 if building work cease on the subject property;

6.2.4.4 if the subject property is transferred to a new owner; and

6.2.4.5 ensuring the building work the subject of any building permit issued by the RBS are carried out in accordance with the building permit, directions of the RBS, the Building Act 1993 and the Regulations.

6.2.4.6 to make application for and obtain required occupancy permit, certificate of final inspection, report and consent or other permits or approvals deemed by the RBS to be necessary to the carrying out of the functions.

6.3 In the event that a builder enters into Liquidation the relevant building surveyor:

6.3.1 Accept no responsibility for matters or costs resulting from the inability to obtain insurance for unfinished works, and

6.3.2 Will not be held liable for the failure to provide a final list of items required in order to issue a Certificate of final inspection or Occupancy permit.

7 ENTIRE AGREEMENT

7.1 This document embodies the entire agreement between the parties and any previous or simultaneous negotiations, representations, arrangements and agreements are superseded by this Agreement. No amendment or variation may be made to this Agreement other than in writing executed by each of the parties.

7.2 In the event that any condition or provision of this Agreement is held to be invalid or unenforceable for any reason whatsoever that condition or provision shall be read down to the extent necessary to give it, if possible, partial operation, but if that is not possible, the condition or provision may be severed and the remainder of this Agreement shall remain in full effect.

8. INTELLECTUAL PROPERTY AND DATA

- 8.1 Nothing in this agreement affects the Intellectual Property Rights of either party, except as set out in this clause.
- 8.2 The Client grants the Building Surveyor an unrestricted, royalty free licence to use and manipulate all Intellectual Property Rights in any Data which the Client provides to the Building Surveyor to the extent reasonably necessary for the Building Surveyor to perform the Private Building Surveyor Functions.
- 8.3 The Client warrants that any Data provided by it to the Building Surveyor will not infringe the Intellectual Property Rights of any person. The Client indemnifies the Building Surveyor against any direct loss, costs, expenses, demands or liability arising out of a claim by a third party against the Surveyor alleging that such Data infringes any such Intellectual Property Rights.

9. DEFINITIONS

In this Agreement—

Building	includes structure, temporary building, temporary structure and any part of a building or structure;
Building Appeals Board	means the Building Appeals Board under Part 10 of the Building Act 1993;
Victorian Building Authority	means the Victorian Building Authority under Part 12 of the Building Act 1993;
Building Practitioner	has the same meaning as it has in the Building Act 1993;
Building Practitioners Board	means the Building Practitioners Board under Part 11 of the Building Act 1993;
Building Work	means work for or in connection with the construction, demolition or removal of a building;
Certificate of Consent	means a certificate of consent under Division 3A of Part 3 of the Building Act 1993;
Council	means a council within the meaning of the Local Government Act 1989;
Domestic Building Work	has the same meaning as it has in the Domestic Building Contracts Act 1995;
Fee	means the fee calculated in accordance with the Fee Schedule attached hereto;
Fee adjustment	means a sum to be added to or deducted from the fee;
Function	includes power, authority and duty;
Legislative requirements	includes <ul style="list-style-type: none"> (a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction where Services are being provided; (b) Certificates, licences, consents permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of the Services and (c) Fees and charges payable in connection with the foregoing;
Municipal Building Surveyor	means a person for the time being appointed, employed or nominated by a council as its municipal building surveyor for the purposes of this Act;
Owner	means <ul style="list-style-type: none"> (a) the person who is registered or entitled to be registered as proprietor, or the persons who are registered or entitled to be registered as proprietors, of an estate in fee simple in the land; and (b) in relation to Crown land reserved under the Crown Land (Reserves) Act 1978 and managed or controlled by a committee of management, means the Minister administering that Act; and (c) in relation to any other Crown land, means the Minister or public authority that manages or controls the land; (d) in relation to a building, means the owner of the land on which a building is situated.

Applicant Name: _____

Signature: _____

Date: _____