

This Agreement is between **Nimmo Nielsen Collective Pty Ltd ABN 46 619 861 479 (NNC)** and the **Client**.

## IT IS AGREED AS FOLLOWS:

### 1. ACCEPTANCE

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This Agreement includes any schedules, annexures, attachments relating to this Agreement that are provided with this Agreement, or separately, also form part of this Agreement. By proceeding with payment of the Deposit, the Client will be deemed to have read, understood and accepted to be bound by the terms and conditions contained herein, and that this digital version is the sole requirement for this Agreement to be binding on the parties. The Client acknowledges and agrees that if they do not accept these terms and conditions, they must not proceed with the Services.

### 2. DEFINITIONS

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In this Agreement, unless expressed or implied to the contrary:

**Approved Purpose** means the purpose specified in this Agreement.

**Business** means the business of NNC and includes any Business carried on under any brand name associated with the Business, or by any subsidiary or associated entity of the Business.

**Client** includes any Person or Organisation (or Representative of any Person or Organisation) who is the named recipient of the **Proposal**.

**Client Content** means any content owned or held by the Client, which is relevant to the Services.

**Client System** means any computer or other technology system owned or operated by the Client, which is relevant to the Services.

**Design Material** means any material that exists at the beginning of the Services and which is provided in connection with the Services, in whatever form, including but not limited to documents, specifications, reports, products, information, data, drawings, graphics, images, and any material provided in connection with the Services that is created, written, or otherwise brought into existence by or on behalf of NNC during the performance of the Services.

**Design Proposal** means the document sent to the client outlining the Project Quote, Scope of Works, and outline of the Fees, in relation to the Agreement.

**Direction** includes agreement, approval, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request, and requirement.

**Project** means that which relates to the Client and Services as outlined in the **Design Proposal**.

**Project Quote** means the estimated cost of the Project provided to the Client by NNC in relation to the Scope of Works outlined in the Proposal, and any additional items as agreed.

**Project Timeline** means the estimated timeline and milestones for completing the Project.

**Project Site** means the property defined in the **Design Proposal**.

**Scope of Works** means the scope of services to be performed by NNC under this Agreement, as described in the **Proposal**.

**Services** means the services that NNC offers, accessible at [www.nncollective.com.au](http://www.nncollective.com.au) and as specified for the Project in the **Proposal**.

**Work or Works** means any building or construction works that have flowed from Design Works.

### 3. THE SERVICES

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#### 3.1 Provision of Services

- (a) The Services are provided in accordance with this Agreement and NNC's Code of Conduct accessible at [www.nncollective.com.au/codeofconduct](http://www.nncollective.com.au/codeofconduct).
- (b) NNC may provide consultant and/or project facilitation services as part of the Project as agreed. For the purpose of the Agreement, these services include but are not limited to co-ordinating, organising, and administering specified parts of the Project to the extent permissible under the regulations to which NNC is governed by.
- (c) The Client agrees, where NNC is engaged for additional services, additional fees will apply, and the Client may be invoiced separately for these fees.
- (d) NNC will do its best to complete the Services in accordance with the Project timeline however, the Client acknowledges that Project deadlines, and hence the completion may be subject to the vagaries of the marketplace and the performance of third parties.
- (e) The Client acknowledges the nature and extent of the Design Material.

### **3.2 Design Work**

- (a) All sketches, Illustrations and drawings created or provided by NNC are conceptual in nature and intended to set forth design intent and are not to be used for engineering or construction purposes. All technical drawings with accurate check measures must be verified and provided by licenced architects, building designers, engineers, cabinet makers, builders and/or other qualified tradesman, and NNC makes no guarantees or warranties in relation to the finished construction project.
- (b) NNC may outsource and facilitate part or all of the architectural or drafting services on behalf of the client to accompany Interior Design Plans and Schedules. Although NNC will oversee the design work, they are not responsible for the final plans, and it is up to the client to check these plans prior to signing off.
- (c) Design Plans & Documents including detailed 'Schedule of Finishes' are considered a 'work in progress' document that can be amended as the project progresses.
- (d) The design process evolves over several meetings either in studio or onsite. NNC allow 2-3 minor revisions of the plan or schedule as set out in the Proposal after which time further revisions will be charged at an agreed amount.
- (e) Should the client change the design direction part way through the process, or increases the scope, additional fees may be payable as agreed.

### **3.3 Sourcing and Specifying Products**

- (a) NNC will provide samples of finishes where possible, however due to the variation of some products, these samples should be seen as indicative only.
- (b) Product images on schedules are a guide and indicative only. They may not be a true representation of the specified product.
- (c) The Client agrees to accept all products and acknowledges that it bears all risk and responsibility for the products upon placement of any order for such products by NNC.
- (d) NNC can specify & supply products direct to the Client, but there is no obligation for the Client to purchase through NNC.
- (e) NNC will not commit to the purchase of any goods from third-party suppliers on behalf of the Client, unless the Client has paid to NNC the full amount for the purchase, and the Client agrees they are responsible for the costs and payments of any and all goods sourced from third-party suppliers by NNC, on the Client's behalf.
- (f) The Client agrees NNC is entitled to charge a trade commission on all outsourced services or items sourced by NNC, on the cost of trade prices, on all purchases as specified in the Project Quote and any subsequent quotes, plus any delivery, freight, or storage fees. NNC are under no obligation to reveal trade pricing between supplier & NNC.

- (i) NNC may pass on any trade discount or to reveal the supply partner to the Client, at their sole discretion.
- (j) Where the Client has approved purchases for goods sourced from third-party suppliers or invoices have been paid, NNC cannot guarantee, nor is responsible for, returns or refunds on purchased goods. Any refunds or returns on purchased items will be at the sole discretion of the supplier, and NNC will not be responsible to the Client for changes of mind.
- (k) Product warranties are available upon request.

### **3.4 Third-Party Contractors and Suppliers**

- (a) The Client acknowledges and agrees all representations, recommendations and referrals made by NNC are made in good faith, but that NNC makes no warranties as to the suitability reliability of third-party suppliers and contractors or guarantees as to the outcome or results of the services.
- (b) The Client acknowledges NNC is not responsible for the compliance, safety, supervision, daily direction, control, quality or outcome of the work of any third-party supplier, contractor or sub-contractor the Client engages to complete the Works, regardless of whether NNC has referred, recommended or engaged the supplier, contractor or sub-contractor on behalf of the Client.
- (c) The Client agrees that where building or construction work is required for the Services, it must enter into a contract that is independent of this Agreement, and acknowledges NNC is not responsible nor can be held liable for any damages or loss incurred by the Client arising out of or associated with that contract.

## **5. Delay & Variations & Faults**

- (a) The Client acknowledges and agrees that it is fully responsible for any errors, defects or faults (and rectification thereof) after signing off on and approving the drawings and Design Material, and agrees NNC shall be held harmless for relying on the accuracy of information provided by the Client in preparing the Design Material.
- (b) Within seven (7) days of it becoming evident to NNC that anything beyond its control may result in delay to the Project, including an act or omission of the Client, consultants, other contractors or agents; a Force Majeure event; or the supply of erroneous information by the Client, NNC agrees to notify the Client of the extent of the likely delay and the costs and expenses associated with that delay.
- (c) If the Client proposes a variation, NNC shall advise the Client whether the proposed variation can be reasonably implemented, and the anticipated effect the proposed variation will have on the Project, including price and timing. The Client agrees that where they proceed with the proposed variation, they will accept and agree to any of the costs or anticipated delays.

## **6. Completion**

- (a) Within seven (7) days of receiving notification from NNC that the Services are complete, the Client shall inspect the Products and/or Premises and inform NNC of any defects or outstanding items.
- (b) Where any defects in the Services are the result of third-party building or construction work, such defects shall be the responsibility of the relevant third-party supplier as per **clause 3.4(c)**, and Completion may therefore occur before these defects are rectified.

## **4. FURNITURE, ACCESSORIES AND WINDOW FURNISHINGS**

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### **1. Purchases and Payment**

- (a) NNC only accepts payment via Electronic Bank Transfer.
- (b) NNC shall commence the Services once payment of the Deposit as indicated in the Proposal has been made.
- (c) Quoted items are valid for seven (7) days at date of issue and are based on quantities outlined. Any change to items in the quote may affect pricing and may need to be re-quoted.
- (d) Check measure and Installation costs are included for window furnishings.
- (e) Delivery cost for furniture, lighting and accessories is generally not included in the initial Proposal, as this is determined after purchase order to our supplier. NNC will offer accurate estimation.
- (f) A 50% deposit is required for all custom orders, including furniture or window furnishings and for items on back-order.
- (g) Full payment is required on all goods in stock and ready to deliver. If a deposit has been paid, a final Invoice will be required prior to delivery or install of Window Furnishings.
- (h) The Client acknowledges that a failure to pay the costs for purchase of the goods may cause delay to the Project, or other such consequence, of which NNC will not be liable for.

### **2. Cancellations, Returns and Refunds**

- (a) Colour changes in all materials, be it wood, lacquer, glass, fabric or leather may occur over time and so in cases of completed works, or replacements, any difference in tone that may occur shall not be grounds for consideration or return of the product.
- (a) Orders that are not fulfilled are the responsibility of the supplier
- (b) Orders that are delivered cannot be returned or exchanged.
- (c) Should you choose to return any item once it has been ordered, such return is strictly at the supplier's discretion and subject to their re-stocking and handling fee.
- (d) Custom orders are not restock-able or returnable.
- (e) Orders that are not fulfilled are the responsibility of the supplier.
- (f) In the case of faulty or damaged goods you must notify us or the supplier as soon as possible, via email with images where possible. NNC will do all things necessary and reasonably required to assist you but, but the repair, replacement or refund of damaged goods is the sole discretion of the supplier, and NNC cannot be held liable in these circumstances.

### **3. Lead Times**

- (a) All lead times are listed at the time of presenting this quotation. Lead times can change from day to day therefore we cannot guarantee lead time for delay in decision.

- (b) Lead times that are noted in writing will be subject to the lead time exceptions outlined.
- (c) All lead times are as accurate as possible and whilst we endeavour to meet anticipated lead times, we will not be responsible for extensions to lead times which, for various reasons may occur outside of our control.

#### 4. Delivery

- (a) At the time of receiving your goods and or installation you will be required to inspect the goods and confirm your goods have been received and you are satisfied they are in perfect condition. Any issues in relation to the condition of an item must be raised at the time of delivery and reported within forty-eight (48) hours.
- (b) Access limitations must be advised at the time of placing the order as deliveries that cannot take place due to access limitations are the responsibility of the Client. In the event goods cannot be delivered due to access limitations, a suitable time for re-delivery will need to be arranged. In addition to the delivery charge associated with the unsuccessful delivery, a return to warehouse delivery charge and re-delivery charge may be payable depending on the supplier, each equal to the value of the original delivery charge. If delivery is not possible at all due to access limitations (including if a goods lift is too small or stair access is too tight), the goods will be taken back to the supplier and may incur a return to warehouse delivery charge and/or restocking fee.
- (c) Unless requested or noted, delivery will be quoted assuming ground floor site location or sites accessible via a suitable goods lift. It is the responsibility of the purchaser to ensure that goods lifts are ready to take delivery at the agreed delivery time.
- (d) In the event that a client is either not ready to accept receipt of goods, or delays receipt of the goods as per the scheduled delivery and install dates, we may be required to arrange storage on the clients behalf and this will be charged to you at a quoted amount.
- (e) Storage fees will need to be settled monthly or prior to delivery depending on which comes first.

#### 5. CLIENT OBLIGATIONS

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##### The Client agrees to:

- (a) comply with all applicable laws and regulations, including relevant permits, licences, and/or any and all approvals and compliance required;
- (b) provide a thorough design brief, including details of the Client's budget and deadlines, accurate measurements, dimensions, or any other information as required;
- (c) co-operate with NNC and provide clear and reasonable Direction, instruction, and guidance, review and approve the Design Material in a timely manner; and
- (d) provide access to the Client System and the Client's Property as reasonably required by NNC to provide the Services.

#### 6. PAYMENT

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##### 1. Fees and Expenses

- (a) The Client will pay NNC the Fees as agreed in the **Design Proposal** and any additional Fees as applicable and agreed.
- (b) NNC will charge the Client the Fees according to the Services selected by the Client. Fees may be charged at an hourly rate, on a fixed-fee basis, or as agreed. Where an

hourly rate is the agreed basis of charging, the rates will be applicable to the work and the person carrying out the work.

- (c) The amounts outlined in the **Design Proposal**, unless specified as a fixed cost, are estimates only and may differ from the final amount invoiced to the Client. If further services or further time is required to complete the Services, NNC will notify the Client and provide them with an update of the Fees.
- (d) The Client will pay the expenses properly incurred by NNC in carrying out the Services provided that NNC obtains the prior consent of the Client for expenses in excess of two hundred dollars (\$200).

## 2. GST

- (a) Unless otherwise specified, the Fees, trade commissions, and any other ancillary expenses are exclusive of GST.
- (b) If GST is payable in respect of a service or product provided under or in relation to this Agreement, the Client must pay to NNC an amount equal to the GST payable on the service or product (GST Amount). The GST Amount is payable by the Client in addition to and at the same time as any consideration for the service or product.

## 3. Invoices

- (a) The Client agrees to pay all correctly rendered invoices issued by NNC within seven (7) days of receipt, inclusive of GST, where applicable.
- (b) NNC will issue the subsequent invoices in accordance with the due dates and will include any trade commission due or expenses incurred at that stage.
- (c) The Client acknowledges and agrees, where the Client has failed to pay an invoice after seven (7) days, upon the issue of a further invoice, NNC may, at their sole discretion, immediately cease work until all outstanding invoices are paid, with no liability for any consequences that result from ceasing work in these circumstances.
- (d) If the Client disputes any invoice issued under this **clause 6.3**, the Client must notify NNC of the amount in dispute and the reason for the dispute by the invoice due date and pay any amounts not in dispute until the dispute is resolved.
- (e) NNC is entitled to charge interest equivalent to the reference rate charged by NNC's principal bank, accruing daily, for any amount not paid by the invoice due date.

## 4. Returns and Refunds

NNC reserves the right to refuse or grant refunds for the Services, pursuant to the *Competition and Consumer Act 2010* (Cth). Any requests by the Client for refunds must be detailed in writing and will only be considered when options for remedies or replacements have been exhausted.

## 7. CONFIDENTIAL INFORMATION AND PRIVACY

### 1. Obligations with Respect to Confidential Information

A Recipient:

- (a) may use Confidential Information of the Discloser only for the purposes of this Agreement;
- (b) must keep confidential all Confidential Information of the Discloser except:
  - (i) for disclosure permitted under this **clause 7**; and
  - (ii) to the extent (if any) the Recipient is required by law to disclose such Confidential Information; and
- (c) destroy or return all Confidential Information immediately upon request.

## 2. Privacy

NNC agrees to comply with the *Privacy Act 1988* (Cth) and all other applicable privacy laws and such other data protection laws as may be in force from time to time which regulate the collection, storage, use, and disclosure of information about identifiable individuals ("**Personal Information**") held by or on behalf of the Client to the extent that they are legally obligated to comply with these laws.

## 8. INTELLECTUAL PROPERTY

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### 8.1 Ownership

- (a) The Client acknowledges NNC owns all Intellectual Property rights in and to the Design Material.
- (b) The Client agrees The Design Material cannot be used by the Client for any purpose other than the Approved Purpose and shall not share or use the Design Material for additions to the Project or any other project without explicit written permission of NNC.
- (c) NNC grants the Client a royalty-free, revocable, worldwide, non-exclusive licence to use the Design Material strictly for the Approved Purpose and Project, and without the right to grant a sub-licence or assign the licence or re-sell, share or commercially exploit the Design Material.
- (d) The Client agrees the ownership of the copyright in the Design Materials will only pass upon full payment and completion of the Project.
- (e) The Client will attribute NNC as the correct e as the author of the Design Material.

### 8.2 Media Consent and Releases

The Client hereby acknowledges and agrees:

- (a) to authorise access to the premises, upon completion of the Project, to NNC, for the purpose of documenting the Design Work;
- (b) to authorise NNC to publish photographs or reviews of the Design Work, for use in print, online and digital, publications, platforms and mediums for the purpose of marketing and promotion, and to release and hold harmless NNC from any reasonable expectation of privacy or confidentiality (regardless if names and locations have been withheld) or from liability for any claims in connection with the above said and agree they are not entitled to financial compensation of any type; and
- (c) NNC have the right to post images of the Design Work on social media and their website, unless the client states otherwise.

## 9. LIABILITY

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### 9.1 Total Liability

To the fullest extent permitted by law (and to the extent permitted under Australian Consumer Law), the total liability of NNC under or in connection with this Agreement in respect of all Claims (if any) is limited to the Fees paid or payable for the Services and in any event, will never exceed the available proceeds of the professional indemnity and/or public liability insurance coverage of NNC (as varied from time to time). Notwithstanding, nothing in this Agreement is intended to limit any Australian Consumer Law guarantees or warranties that may apply to the Services and that cannot be excluded.

### 9.2 Consequential Loss

In no case shall NNC, its officers, employees, affiliates, agents, contractors, or licensors be

liable for any Consequential Loss arising from the Client's failure to provide Client Content or approve the Design Materials within a reasonable time, failing the use of any of the Services or for any other Claim related in any way to the Client's use of, or reliance on, the Services, the Material provided as part of NNC's consultation package, website, platforms and/or content or designs or drawings including, but not limited to any errors or omissions in any content, or any loss or damage of any kind incurred as a result of the use of any content posted, transmitted, or otherwise made available via the Services, even if advised of their possibility.

### **9.3 Indemnity**

The Client indemnifies and must keep indemnified NNC against all Claims and Losses suffered by NNC arising out of any breach of this Agreement by the Client; any act or omission of the Client; and any breach of a law by the Client, except to the extent the Claim or Loss is directly caused or contributed to by a reckless or negligent act or omission of NNC.

### **9.4 Warranty and Guaranty**

The Client represents and warrants that all the information, instructions and representations it has provided for the purposes of this Agreement are true, correct, accurate, current and complete.

## **10. TERMINATION**

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### **10.1 Termination on Notice**

- (a) Either Party may terminate this Agreement at any time by giving thirty (30) days written notice of termination. Where the Project is thirty (30) days or less, only fourteen (14) days' notice will be required.
- (a) If the Client gives notice under this **clause 10.1**, prior to the commencement of any work, NNC may refund the Fees at its full discretion, with 10% of the Fees being retained by SBS as administrative costs.
- (b) If the client gives notice under this **clause 10.1**, after commencement of the Project, the Client agrees that NNC will retain the Deposit paid, and the Client will pay NNC the Consultation Fees (in the event they have been waived), for the professional time spent on the Project and for any fees or expenses not covered by the Deposit.
- (c) If NNC terminates this Agreement, NNC will only retain any outstanding fees or expenses owing for the work completed up and to and including the date of termination.

### **3. Termination on Default**

A party may terminate this Agreement, effective immediately with written notice if:

- (a) the other party commits a material breach of this Agreement, and does not rectify that breach within seven (7) days;
- (b) the other party commits a material breach of this Agreement that it is incapable of rectification or remedy within seven (7) days;



- (c) the other party is charged or is convicted of a serious criminal offence, or any offence connected with theft, fraud or deception; or
- (d) a party is in jeopardy of becoming subject to any form of insolvency administration or ceases to carry on business.

#### **4. Consequence of Termination**

- (a) The Client and NNC will use their best endeavour to reach a settlement to the most appropriate and efficient way of concluding the remaining aspects of the Project.
- (b) NNC will not be liable for any losses, costs and/or expenses incurred or sustained by the other as a result of termination of this Agreement.
- (c) The termination or conclusion of this Agreement does not affect or effect any release of any accrued rights or remedies of a party in respect of events, acts, or omissions that occurred prior to the termination or conclusion of this Agreement.
- (d) Upon termination of this Agreement, for any reason, the Client must pay to any third party any amounts payable for the Services provided up to the date of termination within thirty (30) days and the parties must on request, immediately destroy or return to the other party all Confidential Information and Intellectual Property.

### **11. DISPUTE RESOLUTION**

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- (a) The parties must use reasonable endeavours to resolve all disputes through negotiation.
- (b) If the dispute cannot be resolved through negotiation between the parties within fourteen (14) days of the dispute arising, either party may commence proceedings.

### **12. GENERAL**

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#### **1. Severability**

If any provision or part of this Agreement is void or unenforceable for any reason, then that provision or part will be severed from this Agreement and the rest of this Agreement shall be read as far as possible as if the severed provision or part had never existed.

#### **2. Entire agreement and variation**

The parties agree that this Agreement is the entire agreement between NNC and the Client in respect of this arrangement and supersedes any other communication or understandings (whether written or oral) between NNC and the Client in that regard and any changes to this Agreement must be agreed in writing between NNC and the Client prior to the changes coming into effect

#### **3. Governing law**

This Agreement is governed by the laws applicable in the state of New South Wales, Australia, and the parties agree to irrevocably submit to the exclusive jurisdiction of the courts of New South Wales.

#### **4. Survivorship**

**Clauses 1, 2, 7, 8, 9** and this **clause 12.4** survive any expiration or termination of this Agreement and will have effect for the benefit of the parties.