



## CONSULTING TERMS AND CONDITIONS

### PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY BEFORE ENGAGING OUR SERVICES.

If You engage our Services, You are agreeing to comply with and be bound by the Consulting Terms and Conditions which appear below. Together with our privacy policy and Website Disclaimer, our Consulting Terms and Conditions will govern Your legal relationship with Kiclive Services Pty Ltd [ABN: 83 614 777 632] (**Paintspection**).

For the purposes of these terms and conditions:

'Agreement' means the agreement constituted by Your instruction and these Consulting Terms and Conditions.

'Confidential Information' means any written or oral information that is provided by one party to the other party (in whatever format or medium used, provided directly or indirectly) that is not Excluded Information and that:

- is about the party's affairs or the affairs of any customer of the party, including information about business structures, methods, procedures, financial information, sales, marketing or promotional information;
- information the one party identifies or makes the other party aware is considered to be 'confidential and proprietary' identified as, 'confidential' or 'commercial-in-Confidence';
- may include ideas, code, script, indicators or algorithms or similar; or
- is personal information for the purposes of the Privacy Act 1988 (Cth).

'Excluded Information' means information that a party can establish:

- was already in the public domain when it was given to that party;
- becomes, after being given to that party, part of the public domain, except through disclosure contrary to this Agreement;
- was already in the possession that party when it was delivered by the other party and it had not been acquired in some other way (directly or indirectly) from the other party; or
- was lawfully received by that party from another person who had the unrestricted legal right to disclose that information free from any obligation to keep it confidential.

'Consultant' means a Paintspection consultant who will perform the Services including any contractor or employee of Paintspection.

'Intellectual Property Rights' means all current and future registered and unregistered rights in respect of copyrights, designs, trade-marks, know-how, material, documents, methods, confidential information, patents, inventions and discoveries and all intellectual property as defined in article 2 of the Convention Establishing the World Intellectual Organization 1967 (as amended and revised from time to time).

'Services' means our paint inspection, analysis and consulting services which includes without limitation testing, evaluation and recommendation reporting for industrial and commercial structures.

'Us', 'Our', 'We', and 'Paintspection' refers to Kiclive Services Pty Ltd trading as Paintspection, including directors, employees, contractors and any affiliates.



'You' and 'Your', 'Client' refers to you.

#### **PROVISION OF CONSULTING SERVICES**

The Services will be performed by the Consultant or any appropriately qualified and skilled contractors, agents or representatives that the Consultant may employ from time to time.

The Consultant will provide the Services using reasonable care and skill and in accordance with the Client's specific instructions, or, in the absence of instructions, using methods the Consultant may consider appropriate taking into consideration the relevant operational, financial or technical requirements.

#### **PAYMENT TERMS FOR SERVICES**

We are entitled to invoice You on and from the last day of the month in which any of the Services are performed and upon completion of the Services. All invoices are payable in full without set off or deduction within seven (7) days after the invoice date.

Interest on late payments shall be payable at the prescribed rate for the purpose of section 101 of the Civil Procedure Act 2005 (NSW).

The Client indemnifies and shall keep indemnified Paintspection from and against any costs (including, without limitation, any legal costs and enforcement costs on a full indemnity basis) of and in relation to recovery of any moneys outstanding from the Client to Paintspection under these terms and conditions.

#### **WARRANTIES**

The Client acknowledges and agrees that:

- (a) The Client will supply the outline for the Services and any materials that the Consultant may require to complete the Services. All work is completed based on and in accordance with their instructions;
- (b) The Client will provide all relevant information required for the Consultant to carry out the Services in a timely manner;
- (c) The Client will ensure the Consultant or any representatives have all necessary accesses to the premises and will take all steps necessary to ensure the premises and area where the Services are to be performed are a safe and secure environment and working conditions;
- (d) The Client warrants there are appropriate, adequate and up-to-date current insurance policies to cover onsite attendance by both the Consultant and any representatives of the Consultant or third parties who may be necessary to perform the Services; and
- (e) The Consultant provides no insurance or guarantee services and accepts no liability in this capacity.



## **DISPUTES**

In the event of any dispute on the work, quality or ownership that cannot be resolved, both parties agree to obtain an independent professional arbitrator/dispute resolution specialist to make a determination on the dispute and each of party agrees to pay their own costs.

## **PRIVACY**

We are committed to complying with the Australian Privacy Principles (**APPs**) described in the Privacy Act 1988 (Cth). Any personal information received by Paintspection during the course providing the Services will be stored, managed and secured in accordance with the APPs and our Privacy Policy.

## **LIMITATION OF LIABILITY**

Our liability is governed solely by the Australian Consumer Law (to the extent that it applies) and these Terms. To the extent permissible at law, all conditions and warranties implied by custom, law, statute or in equity are excluded.

To the extent permissible at law:

- (a) Paintspection's total aggregate liability to You under, arising out of or in connection with the this Agreement and the Services, whether in contract (for breach, indemnity or otherwise), in restitution, in equity, under statute or in tort (for negligence or otherwise) is limited to an amount equivalent to the Fee under this , except for liabilities in respect of which Paintspection is entitled to be indemnified and receives full payment under a contract of insurance (in which case, Paintspection's liability is limited to the amount of that payment);
- (b) all liability of Paintspection whether in contract (for breach, indemnity or otherwise), in restitution, in equity, under statute or in tort (for negligence or otherwise) is excluded for indirect, incidental, special or consequential damages including (without limitation) damages for loss of profits, savings, revenue (actual or anticipated), durability, goodwill, reputation, market, contract, business or use; and losses (whether actual or contingent) suffered by You due to claims by third parties, whether or not Paintspection knew or should reasonably have known of the possibility of such loss or damage or such loss or damage was otherwise foreseeable; and
- (c) where the provision of Services depends on Your response or Your provision of information or access, we have no liability whether in contract (for breach, indemnity or otherwise), in restitution, in equity, under statute or in tort (for negligence or otherwise) for any delay in performing the Services due (whether solely or otherwise) to by Your delay in response or by incomplete or incorrect information.

This clause survives the expiry or termination of this Agreement.

## **PRIVACY AND USE OF INFORMATION**

Our Privacy Policy forms a part of this Agreement. Please read our Privacy Policy carefully. You may change Your details at any time by advising us in writing via email.

Paintspection will not sell or deal in personal or customer information. You consent to Paintspection's use in a general sense without any reference to Your name, Your information to create marketing statistics, identify user demands and to assist it in meeting customer needs generally. In addition, we may use the information that You provide to improve our website and our services but not for any other use.



Paintspection may be required to disclose Your information by law, by a court or tribunal or in order to enforce the terms of any of this Agreement. Nothing in this Agreement is intended to prevent Paintspection from doing so.

#### **INTELLECTUAL PROPERTY**

All Intellectual Property Rights in documentation prepared by or on behalf of Paintspection vest in Paintspection upon creation. Paintspection gives You an irrevocable licence to use the documentation for the purpose of this Agreement.

You warrant that the use of documents that You provide to Paintspection (whether directly or through an agent or third party) in connection with this Agreement will not infringe any Intellectual Property Rights of any third party.

You give Paintspection an irrevocable licence to use those documents for the purpose of this Agreement and You indemnify and shall keep indemnified Paintspection against any claim (including by a third party) for breach of any Intellectual Property Rights and for breach of any duty of confidence in connection with those documents.

#### **AMENDMENT OF TERMS**

We reserve the right to change, modify, add or remove portions of these Consulting Terms and Conditions at any time. You must check these terms regularly prior to using our website or re-engaging our Services to ensure You are aware of any changes.

#### **ENTIRE AGREEMENT**

These Consulting Terms and Conditions together with Your instruction constitute the whole agreement between You and Paintspection in relation to the Services. All previous negotiations, representations and warranties merge in this Agreement. All other terms or conditions that you have proffered or may proffer to the extent that they are inconsistent with these Consulting Terms and Conditions are expressly excluded and on no account shall the performance of the Services constitute an acceptance of such terms and conditions.

#### **JURISDICTION**

This Agreement is subject to the laws of New South Wales. In the event of any dispute between You and Paintspection, You submit to the jurisdiction of the courts and tribunals within New South Wales.

#### **PRIVACY POLICY**

We receive and store information You enter on our website or give us in any other way from time to time. You may provide basic contact information such as Your name, phone number, address, and email address to enable us to send information or process Your instruction and we may also collect additional information at other times, including but not limited to, when You provide feedback, change Your content or email preferences, respond to a survey, or communicate with our customer support.

You consent to our use of personal information collected from You for the purpose of providing You with direct marketing material, updates regarding our website and information in the form of a newsletter. This will only apply if You have registered or subscribed to such publications by registering Your details



with us. However, if You wish to cease receiving any such information You may let us know either by email or unsubscribing at any time and Your request will be actioned immediately.

We may collect information on or through this website that can personally identify You. For example, we collect personally identifiable information which You volunteer to us to respond to visitor questions and comments about us and our products and services, and to mail e-newsletters ("Personal Data").

We will not knowingly share any of Your Personal Data with any third party other than our service providers who assist us in providing the information and/or services we are providing to You. To the extent that we do share Your personal information with a service provider, we would only do so if that party has agreed to comply with our privacy standards as described in this privacy policy. Some of our service providers may be overseas and may not be subject to Australian Privacy Laws. Please contact us if You require specific details.

Any non-personal information, communications and material You send to this website or to us by email, or which we obtain from third parties without promises of confidentiality, may be kept, used and disclosed by us on a non-confidential basis. We are free to use and reproduce any such information freely, and for any purpose whatsoever. Specifically, we will be free to use any ideas, concepts, know-how or techniques contained in such information for any purpose, including developing, manufacturing or marketing products.

We may from time to time need to disclose certain information, which may include Your personal information, to comply with a legal requirement, such as a law, regulation, court order, subpoena, warrant, in the course of a legal proceeding or in response to a law enforcement agency request. Also, we may use Your personal information to protect the rights, property or safety of Paintspection, our customers or third parties.

We may use in a general sense without any reference to Your name, Your personal information to create marketing statistics, identify user demands and to assist it in meeting customer needs generally. In addition, we may use the information that You provide to improve our website and services but not for any other use.

This policy is subject to change. We may modify this policy at any time, in our sole discretion and all modifications will be effective immediately upon our posting of the modifications on this website. You must return periodically to our website review our privacy policy.

If You have any questions or concerns at any time about our privacy policy or the use of Your personal information, please contact us at [ian@paintspection.com](mailto:ian@paintspection.com).