

STANDARD TERMS AND CONDITIONS



Realfeel ABN 28 695 408 295 provides a range of architectural visualisation services. These Standard Terms and Conditions apply to all services provided by Realfeel to the Customer to the exclusion of any purchase order or other document submitted by the Customer to Realfeel.

1. TERM

The Agreement commences on the Commencement Date and will continue until the earlier of the parties having completed the performance of their obligations, or this Agreement is terminated in accordance with clause 11.

2. REALFEEL'S OBLIGATIONS

2.1. PROVISION OF SERVICES

Subject to this Agreement, Realfeel will provide the Services:

- (a) in a timely and professional manner, with due care and skill;
- (b) utilising appropriately qualified and skilled personnel;
- (c) cooperatively with the Customer and its personnel; and
- (d) in accordance with the specifications or descriptions referred to in the Statement of Work and variations.

2.2. CONDITIONS

Nothing in this Agreement requires Realfeel to provide any Services to the Customer at any time when the Customer has not paid for Services previously provided by Realfeel for which payment is then due, or the Customer has breached this Agreement and that breach has not been duly remedied.

3. CUSTOMER'S OBLIGATIONS

3.1. SUPPLY OF MATERIALS

The Customer must fully and accurately supply all Customer's Materials required by Realfeel to perform its obligations under this Agreement.

3.2. WARRANTY OF INTELLECTUAL PROPERTY

- (a) The Customer warrants that it has the ownership or has all necessary permissions and authorities in respect of the use of Customer Materials.
- (b) The Customer grants Realfeel a non-exclusive, royalty-free, irrevocable licence to use or allow the use of the Customer Material for the purposes of provision of the Services and Deliverables.
- (c) To the extent any personnel of the Customer have any Moral Rights in respect of any Contract Material, the Customer must procure that such personnel give a Moral Rights consent to Realfeel, and its successors and nominees, doing or omitting to do anything which, but for that Moral Rights consent would constitute a breach of that person's Moral Rights.

3.3. PERSONNEL AND FACILITIES

- (a) The Customer will work cooperatively with Realfeel and its personnel and commit adequate resources to the work to enable the Realfeel to perform the Services properly and in a timely manner. If requested by Realfeel, the Customer will appoint a single point of contact and make the contact available on a daily basis in order to expediate the feedback process.
- (b) The Customer will provide Realfeel with access to the equipment, facilities and sites that Realfeel reasonably requires to perform the Services.

4. FEES AND PAYMENT

4.1. PAYMENT OBLIGATIONS

- (a) The Customer must pay Realfeel the Fees in accordance with this Agreement and the Statement of Work, including the following Fees and payment terms:
 - (i) The Customer will pay a 50% deposit of the fee payable under the Statement of Work (Deposit) immediately upon instructing Realfeel to proceed with the Services. Realfeel may not commence any Services until the deposit has been paid in full;
 - (ii) The Customer will pay the remaining 50% of the fee payable under the Statement of Work when the Services are completed to the Customer's reasonable satisfaction in accordance with clause 4.4.
 - (iii) The Customer will pay the fees for the additional Services under clause 4.3 and reimbursement under 4.5 in accordance with Realfeel's invoice.
- (b) The Deposit is only refundable if Realfeel has not fulfilled

its obligations to deliver the Services required under the agreement. A Deposit amount of thirty (30) percent of the fee payable is not refundable if the Services have been started and the Customer terminates the Agreement through no fault of Realfeel. The Customer agrees that the Deposit is a genuine estimate of the Services that Realfeel is to provide and does not constitute a penalty.

4.2. INVOICE

- (a) Realfeel will invoice the Customer for the Fees by providing the Customer with a valid tax invoice (Invoice) and the Customer must pay Realfeel the amount and in the payment method and term in accordance with the Invoice.

4.3. CONSIDERATION IS GST EXCLUSIVE

Unless otherwise expressly stated, all prices or other sums payable or Consideration to be provided under or in accordance with this Agreement are exclusive of GST.

- (a) If GST is imposed on any Supply made under or in accordance with this Agreement, the Recipient of the Taxable Supply must pay to Realfeel an additional amount equal to the GST payable on or for the Taxable Supply, subject to the Recipient receiving a valid Tax Invoice in respect of the Supply at or before the time of payment.

- (b) Payment of the additional amount must be made at the same time and in the same way as payment for the Taxable Supply is required to be made in accordance with this Agreement.

4.4. REVISIONS AND VARIATION

- (a) Realfeel will offer the Customer the opportunity to provide feedback to any draft or revision versions of Deliverables delivered to the Customer, and the Customer will promptly and carefully check and approve any draft or revision versions of Deliverables delivered by Realfeel.
- (b) Realfeel may charge and the Client must pay for Realfeel's provision of additional Services at Realfeel's standard hourly rate if:
 - (i) the Client requires more than three reviews or revisions of a Deliverable; or
 - (ii) the Client's request or instruction constitutes a major deviation from the original Statement of Work or is beyond the scope of the original Statement of Work.
- (c) Realfeel's standard hourly rate is AU\$150 per hour, which may be amended by Realfeel from time to time and notified to the Customer, or which may otherwise be set out in a Statement of Work.

4.5. COMPLETION OF SERVICES

- (a) Realfeel will deliver the Deliverables to the Customer upon completion of the Services.
- (b) Following the receipt of Deliverables, the Customer will within 14 days of delivery examine the Deliverables and give Realfeel a notice of acceptance or a notice advising the revisions which the Customer requires to be made. The revisions are subject to charges under clause 4.3.
- (c) If the Customer does not give a notice under paragraph (b), it will be deemed that the Customer accepts the Deliverables.

4.6. REIMBURSEMENT

The Customer will reimburse Realfeel for out-of-pocket expenses it incurs in the course of providing the Services. Such out-of-pocket expenses include the purchase of 3d and 2d assets, third party software, stock photographs and videos, audio files or comparable expenses.

4.7. DEFAULT IN PAYMENT

If the Customer fails to pay any Fees by the due date, Mogamma may (without prejudice to any other remedies to which it is entitled):

- (a) charge the Customer interest on the amount due and not paid, for the duration that the payment is outstanding by the Customer, at the rate of 2% per month calculated daily and recover all the reasonable expenses (including debt collection commission) and legal costs incurred by Realfeel in the enforcement of the Client's obligations and the recovery of monies due from the Client to Realfeel.

- 4.8. NO SET-OFF
- The Client may not deduct, reduce or withhold any payments due to Realfeel under this Agreement by reason of claims or alleged claims against Realfeel.
5. INTELLECTUAL PROPERTY
- (a) Unless expressly specified otherwise in the Statement of Work, Realfeel will own all Intellectual Property Rights in all Deliverables and all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials and any other materials created or provided by Realfeel in connection with the Services. Without limiting its general rights, Realfeel retains the right to reproduce, publish and display the Deliverables in Realfeel's portfolio and website, and in galleries, media or exhibits for the purposes of promotion of its business and/or recognition of creative excellence or professional advancement.
- (b) Realfeel grants to the Customer (subject to payment of all Fees) a royalty-free and non-transferrable licence to use the Deliverables for the purposes of the project or business activity to which the Services relate.
- (c) Realfeel shall retain all masters, rushes and other preparatory material and the Customer will not be entitled to such originals. The Customer may request duplicates of these materials at additional cost.
- (d) The Customer appoints Realfeel as agent to procure any use of any third-party intellectual property required for the performance of this Agreement.
- (e) If Realfeel rightfully terminates the Agreement for causes as specified in clause 11.1, the licence granted under paragraph (b) will be revoked.
6. PUBLICITY
- (a) The Customer shall, where required by Realfeel in any publicity and promotional materials (including website) for the project or business activity to which the Services relate, give full credit to Realfeel for its Services related to the project.
- (b) If Realfeel is required to communicate the brands of the Customer, the Customer hereby consents to the use of the Customer's name and logo for Realfeel's marketing collateral including website, social media, corporate profile and printed materials. (publication, advertising, public relations, brochures, websites, or other marketing media).
7. CONFIDENTIAL INFORMATION
- 7.1. ACKNOWLEDGEMENT OF CONFIDENTIALITY
- Each party (Recipient) acknowledges that all Confidential Information of the other party (Discloser) is confidential to the Discloser and any unauthorised use, reproduction or disclosure of the Confidential Information may cause loss, damage or expense to the Discloser.
- 7.2. OBLIGATION OF CONFIDENTIALITY
- The Recipient must (except as may be required by law or with the Discloser's prior written consent):
- (a) maintain the confidentiality of the Confidential Information;
- (b) not divulge or disclose any of the Discloser's Confidential Information to any other person, firm, corporation or entity;
- (c) only use the Discloser's Confidential Information where it is necessary to do so to enable the supply or use of the Services;
- (d) refrain from copying any of the Discloser's Confidential Information, or attempting to do the same, except where necessary to do so to enable the supply or use of the Services; and
- (e) immediately notify the Discloser of any actual or suspected unauthorised use, reproduction or disclosure of the Discloser's Confidential Information.
- 7.3. DISCLOSURE REQUIRED BY LAW
- If the Recipient is required by law to disclose the Discloser's Confidential Information:
- (a) the Recipient will promptly give the Discloser written notice specifying the legal requirement and the Confidential Information to be disclosed; and
- (b) the Recipient will use best endeavours to arrange for disclosure of the relevant Confidential Information in a manner which safeguards the confidentiality of the information disclosed.
- 7.4. INJUNCTIONS
- The Recipient acknowledges and agrees that a breach of this Agreement may cause the Discloser to suffer loss, damage and expense for which damages may not be adequate compensation and may be difficult to ascertain and that the Discloser may immediately seek to restrain any actual or threatened breach of this Agreement by injunction or any similar remedy.
8. IMPLIED TERMS
- 8.1. EXCLUSION OF IMPLIED TERMS
- Any representation, warranty, condition, guarantee or undertaking that would be implied in this Agreement by legislation, common law, equity, trade, custom or usage is excluded to the maximum extent permitted by law.
- 8.2. NON-EXCLUDABLE RIGHTS IMPLIED BY STATUTE
- Nothing in this Agreement excludes, restricts or modifies any consumer guarantee, right or remedy conferred on the Customer by the Australian Consumer Law, Schedule 2 of the Competition and Consumer Act 2010 (Cth) or any other applicable law that cannot be excluded, restricted or modified by agreement
- 8.3. LIABILITY FOR BREACH OF NON-EXCLUDABLE RIGHTS
- To the fullest extent permitted by law, the liability of Realfeel for a breach of a non-excludable guarantee referred to in clause 9.2 is limited, at Realfeel's option, to:
- (a) the supplying of the services again; or
- (b) the payment of the cost of having the services supplied again.
9. LIABILITY
- 9.1. LIMITATION OF LIABILITY
- Realfeel will be under no liability to the Customer or any other person in respect of:
- (a) any loss or damage of any kind that is directly or indirectly caused by or results from any wrongful, wilful or negligent act or omission, breach of contract or statute by the Customer or any of its officers, employees, agents or contractors; or
- (b) any indirect, incidental, special or consequential loss or damage, loss of profits or anticipated profits, economic loss, loss of business opportunity, loss or corruption of data or loss or damage resulting from wasted management time irrespective of whether:
- (i) the loss or damage is caused by or relates to breach of contract, statute, tort (including negligence) or otherwise; or
- (ii) the Customer or any other person was previously notified of the possibility of the loss or damage.
- 9.2. MAXIMUM LIABILITY
- The maximum aggregate liability of Realfeel for all proven losses, damages and claims arising out of this Agreement, including liability for breach, in negligence or in tort or for any other common law or statutory action, is limited to the sum paid by the Customer to Realfeel under the Statement of Work in relation to the particular Service which was responsible for or connected with the relevant loss, damage or claim.
- 9.3. NO RELIANCE ON REPRESENTATIONS
- (a) The Customer warrants that it has not relied on any representation made by Realfeel which has not been stated expressly in this Agreement, or relied upon any descriptions, illustrations or specifications contained in any document including websites or publicity material produced or provided by Realfeel.
- (b) The Customer acknowledges that to the extent Realfeel has made any representation which is not otherwise expressly stated in this Agreement, the Customer has been provided with an opportunity to independently verify the accuracy of that representation.
- 9.4. INDEMNITY
- The Customer will at all times indemnify and hold harmless Realfeel and its officers, employees and agents ('those indemnified') from and against any loss, (including reasonable legal costs and expenses) or liability reasonably incurred or suffered by any of those indemnified arising from any claims proceedings against those indemnified where such loss or liability was caused by:
- (a) the Customer's Materials, including where the Customer's Materials infringe a third party's Intellectual Property Rights;
- (b) the Customer's alterations to the Deliverables without Mogamma's prior written consent;
- (c) a breach by the Customer of its obligations under this Agreement;
- (d) any wilful, unlawful or negligent act or omission of the Customer;

10. TERMINATION

10.1. TERMINATION BY REALFEEL

Realfeel may suspend or terminate its provision of all or any of the Services under any Statement of Work and this Agreement immediately by notice in writing if:

- (a) the Customer fails to pay an amount owing under this Agreement within 14 days of a written reminder that it is overdue;
- (b) the Customer is in breach of any term of this Agreement not relating to the payment of money and that breach is not remedied within 14 days of notification by Realfeel;
- (c) the Customer suffers, experiences or commits an Insolvency Event;

10.2. TERMINATION BY CUSTOMER

The Customer may terminate this Agreement immediately by notice in writing if:

- (a) Realfeel is in breach of any term of this Agreement and that breach is not remedied within 14 days of notification by Mogamma; or
- (b) Realfeel suffers or commits an Insolvency Event.

10.3. CONSEQUENCES OF TERMINATION

If a notice of termination is given under clause 11.1 or clause 11.2, all monies payable to Realfeel under this Agreement or which would have become payable but for that termination will, to the extent permitted by law, become immediately due and payable, and:

- (a) each party may repossess any of its property in the possession, custody or control of the other party;
- (b) Realfeel may retain any monies paid;
- (c) Realfeel may charge for all Services performed in respect of which no fee has been previously charged;
- (d) Realfeel may charge for all costs, disbursements and expenses, incurred in expectation of performing all of the requirements of the Statement of Work including the cost of any products or services purchased on behalf of or for on-supply to the Customer prior to the termination date (except to the extent the Customer has already paid the applicable price for those items);
- (e) each party may require the other party to deliver to it or erase or destroy, or procure the delivery, erasure or destruction (as applicable), all materials containing its Confidential Information and certify its compliance with these obligations; and
- (f) each party may pursue any additional or alternative remedies provided by law.

11. FORCE MAJEURE

- (a) Realfeel will not be liable for any delay or failure to perform its obligations under a Statement of Work or this Agreement if that delay is due to Force Majeure.
- (b) If a delay or failure of Realfeel to perform its obligations is caused or anticipated due to Force Majeure, the performance of Realfeel's obligations will be suspended.
- (c) If a delay or failure by Realfeel to perform its obligations due to Force Majeure exceeds 60 days, either party may immediately terminate the Agreement on providing notice in writing to the other party, in which event Realfeel will not be deemed to have breached this Agreement.
- (d) If this Agreement is terminated pursuant to clause 12(c), Realfeel will refund monies previously paid by the Customer under this Agreement for the Services which were not provided due to Force Majeure.

12. DELAY

- (a) Without limiting clause 11, Realfeel will not be responsible for any delays (or costs and losses arising from delays) which occur during the course of the Services and which arise from any non-compliance by the Customer with this Agreement, an applicable Statement of Work, the late supply or provision of instructions, approvals, information or Customer's Materials by the Customer, delays in obtaining access to the Customer's personnel and/or facilities or any delays caused by the Customer's third party suppliers and contractors.
- (b) Realfeel will be entitled to extension of time in respect of any schedule, deadline or milestone equal to the duration of any delay caused by Force Majeure or a cause specified in clause 12(a).

13. DISPUTE RESOLUTION

- (a) The parties must endeavour to settle any dispute in connection with the contract by mediation. Such mediation is to be

conducted by a mediator who is independent of the parties and appointed by agreement of the parties or, failing agreement within 7 days of receiving any party's notice of dispute, by a person appointed by the Chair of Resolution Institute, (ACN 008 651 232, Level 2, 13-15 Bridge Street, Sydney NSW 2000; telephone: 02 9251 3366, email: infoaus@resolution.institute) or the Chair's designated representative. The Resolution Institute Mediation Rules shall apply to the mediation. It is a condition precedent to the right of either party to commence arbitration or litigation other than for interlocutory relief that it has first offered to submit the dispute to mediation.

- (b) This clause does not limit a party's right to seek injunctive relief.

14. GENERAL

14.1. SUB-CONTRACTS

Realfeel may sub-contract the performance of all or part of its obligations under this Agreement.

14.2. ENTIRE AGREEMENT

- (a) This Agreement conditions and the Statement of Work constitute this Agreement which is the entire agreement between the parties for the supply of the Services and supersedes all prior representations, statements and understandings or undertakings, whether verbal or in writing.
- (b) No modification or alteration of any provision of this Agreement will be valid except those in writing signed by each party as set out in clause 25.

14.3. WAIVER

- (a) No right under this Agreement will be deemed to be waived except by notice in writing signed by each party.
- (b) A waiver by Realfeel under paragraph (a) will not prejudice its rights in respect of any subsequent breach of this Agreement by the Customer.
- (c) Subject to paragraph (a), any failure by Realfeel to enforce any clause of this Agreement, or any forbearance, delay or indulgence granted by Realfeel to the Customer, will not be construed as a waiver of Realfeel's rights under this Agreement.

14.4. A PARTY'S RIGHTS

Any express statement of a right of a party under this Agreement is without prejudice to any other right of the party expressly stated in this Agreement or existing at law.

14.5. SURVIVAL

The covenants, conditions and provisions of this Agreement which are capable of having effect after the expiration of the term or termination will remain in full force and effect following the expiration of the Term or termination. Without limiting the generality of this clause 15.5, clauses 5, 6, 7, 9, 10 and 14 survive the expiration or termination of this Agreement.

14.6. GOVERNING LAW

This Agreement will be governed by the laws of New South Wales, and the parties submit to the exclusive jurisdiction of the Courts of that State.

14.7. NOTICES

- (a) Notices under this Agreement may be delivered by hand, by mail, or by e-mail to the addresses specified in the Statement of Work.
- (b) Notices will be deemed given:
 - (i) in the case of hand delivery, upon delivery;
 - (ii) in the case of post, 3 days after posting;
 - (iii) in the case of e-mail, upon sending unless the sender receives a undeliverable message from the recipient's email system.

14.8. VARIATION

These terms may not be varied, except by agreement in writing signed by the parties.

14.9. SEVERABILITY

Any provision of this Agreement which is invalid in any jurisdiction must, in relation to that jurisdiction be read down to the minimum extent necessary to achieve its validity, if applicable; and be severed from this Agreement in any other case, without invalidating or affecting the remaining provisions of this Agreement or the validity of that provision in any other jurisdiction.

14.10. FURTHER ASSURANCES

A party, at its own cost and within a reasonable time of being requested by another party to do so, must do all things and execute all documents which are reasonably necessary to give full effect to this Agreement.

14.11. NO ADVERSE CONSTRUCTION

This Agreement is not to be construed to the disadvantage of a party because that party was responsible for its preparation.

14.12. COUNTERPARTS & ELECTRONIC EXECUTION

If this Agreement consists of a number of counterparts, each is an original and all of the counterparts together constitute the same document.

Notwithstanding the use of the words "writing," "execution," "signed," "signature," or other similar words, the Parties intend that the use of electronic signatures and the keeping of records in electronic form are granted the same legal effect, validity or enforceability as a signature affixed by hand or the use of a paper-based record keeping system (as the case might be) to the extent and as provided for in any applicable law.

15. DEFINITIONS AND INTERPRETATION

15.1. DEFINITIONS

AGREEMENT is comprised of the Statement of Work and these Standard Terms and Conditions, and may be amended by the parties

COMMENCEMENT DATE is the date the Customer signs a Statement of Work, or otherwise notifies Realfeel of its acceptance of the Statement of Work, or otherwise agreed by the parties.

CONFIDENTIAL INFORMATION means in the case of each party, all of that party's information which would reasonably be regarded as confidential, disclosed or made available to the other party before or after the Commencement Date, including information relating to its business, customers, suppliers, products, databases, services, strategies, or plans, but excluding information which:

- (a) the other party can prove it possessed before the relevant information was disclosed or made available to it by or on behalf of the disclosing party;
- (b) is lawfully acquired prior to the date of disclosure under this Agreement by the other party from a third person without restrictions as to its use or disclosure; or
- (c) is in or becomes part of the public domain other than as a result of the breach by the other party of this Agreement.

CUSTOMER means the company, person or other entity named as the customer in the Statement of Work.

CUSTOMER'S MATERIALS means the documents, information or other materials supplied by the Customer. Customer's Materials may include architectural plans, graphic images, drawings, surveys, photographs, material boards, written copy, names and trade marks, logos and other printed material and digital media content.

DELIVERABLES means the services and work products specified in the Statement of Work to be delivered by Realfeel to the Customer, in the form and media specified in the Statement of Claim. The Deliverables may be varied in accordance with this Agreement.

FEES means the fees payable by the Customer to Realfeel for provision of the Services as specified in the Statement of Work and includes any expenses or disbursements payable by the Customer as required by this Agreement.

FORCE MAJEURE means a circumstance beyond the reasonable control of a party which results in the party being unable to observe or perform on time an obligation under this Agreement.

GST means GST within the meaning of A New Tax System (Goods and Services Tax) Act 1999 and related legislation (as amended).

GST Act means of A New Tax System (Goods and Services Tax) Act 1999 and related legislation (as amended).

Insolvency Event means:

- (a) a party ceases to carry on business;
- (b) an order is made (and not set aside within 28 days) or a resolution passed for the winding-up or dissolution of a party; or
- (c) a liquidator, a provisional liquidator or other like person for the party's applicable place of incorporation is appointed over the whole or any part of the party's assets or business.

INTELLECTUAL PROPERTY RIGHTS means all statutory and other proprietary rights (including rights to require information be kept confidential) in respect of copyright, Moral Right, know-how, trade secrets, trade marks, designs, patents and all other rights as defined by Article 2 of the Convention establishing the World Intellectual Property Organisation of July 1967.

MORAL RIGHT means each and every 'moral right' as defined in the Copyright Act 1968 (Cth).

STATEMENT OF WORK means the written Statement of Work, including a quotation, scope of works or estimate, which has been provided to the Customer, which describes the Services to be supplied by Realfeel to the Customer under this Agreement.

SERVICE means any services which the Statement of Work requires Realfeel to provide to the Customer and any additional services the Customer requires as revisions or variations to the original services.