

# August.

MAKING DREAM HOMES — HOME

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## Special Conditions

**Annexure A to White Label Group Design Fee –**

**Preliminary Agreement and Site Investigation - Preliminary Agreement**

# Special Conditions – Contents

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# 1. Definitions and purpose of this Document

## 1.1 Definitions

**White Label Group** means White Label Group Pty Ltd ACN 145 282 720.

**White Label Group of Companies** means White Label Group and each of its related bodies corporate (as that term is defined in the *Corporations Act 2001* (Cth)).

**Building Contract** means a Queensland New Home Construction Contract (QC1 2017) (as amended or replaced from time to time).

**Business Day** means a day (other than Saturday or Sunday) on which registered banks are open for business in Gold Coast City, Queensland.

**Business Hours** means the hours between 9:00 am to 5:00 pm inclusive on a Business Day.

**Consequential Loss** means, in respect of a breach of the Preliminary Agreement or any event, fact, matter or circumstance giving rise to a claim in connection with the Preliminary Agreement:

- (a) any liabilities suffered or incurred by a party that cannot reasonably be considered to arise naturally from that breach or event, fact, matter or circumstance;
- (b) any and all exemplary or punitive liabilities in relation to that breach or event, fact, matter or circumstance, even if such loss could reasonably be considered to arise naturally from that breach or event, fact, matter or circumstance; and
- (c) economic loss, loss of profit, loss of revenue, loss of goodwill, loss of opportunity, loss of contract (other than this Agreement), loss of savings, loss of production, production stoppage and loss of data even if such loss could reasonably be considered to arise naturally from that breach or event, fact, matter or circumstance,

whether arising in contract, tort (including negligence) or equity or under statute.

**Contaminant** means a solid, liquid or gaseous substance, odour, heat, sound, vibration or radiation which is or may be:

- (a) noxious or poisonous or offensive to the senses of human beings; or
- (b) harmful or potentially harmful to the health, welfare, safety or property of human beings; or
- (c) poisonous, harmful, or potentially harmful to animals or plants; or
- (d) detrimental to any beneficial use made of the Environment.

**Copyright Work** means all, or any substantial or essential part of, the building, structural and architectural plans, models, drawings, sketches, diagrams, designs, or renderings, or any other architectural work or endeavour provided to the Client by White Label Group or any member of the White Label Group of Companies in connection with the Preliminary Agreement or otherwise and whether provided to the Client before, on or after the date of this Document.

**Client** means you, being the person(s) identified as the client(s) in the Preliminary Agreement.

**Declaration Notice** means the declaration notice signed by the Client, and delivered to White Label Group, contemporaneously upon entering into the Preliminary Agreement.

**Designs** means all, or any substantial or essential part of, the three-dimensional shape, configuration of a building or structure designed by White Label Group or any member of the White Label Group of Companies in connection with the Preliminary Agreement or otherwise and provided in two-dimensional form to the Client before, on or after the date of this Document.

**Document** means these special conditions.

**Environment** means the physical factors of the surrounds of human beings including the land, waters, atmosphere, climate, sound, odours, place, the biological factors of animal and plant and the social factors of aesthetics.

**Force Majeure Event** means an event or circumstance beyond the reasonable control of White Label Group or the Client (as the case may be), which results in or causes the failure of White Label Group or the Client respectively to perform any of its obligations under the Preliminary Agreement, including but not limited to:

- (a) any act of omission of a third party that is beyond the reasonable control of a party;
- (b) acts of God;
- (c) strike, lockout, or other industrial disturbance by persons other than the affected party or its personnel;
- (d) acts of a public enemy, declared or undeclared war, threat of war, terrorist act, blockade, revolution, riot, insurrection, civil commotion, public demonstration, sabotage, acts of vandalism, epidemics or disease; and
- (e) acts of animals, lack of adequate fuel resources, accidental collisions, explosion, acts of aircraft, motor vehicles or trains, fault or failure of any plant, apparatus or equipment,

provided that a lack of funds, or unavailability of funds, will not be considered a Force Majeure Event.

**Indemnified Parties** means:

- (a) White Label Group;
- (b) each other company in the White Label Group of Companies; and
- (c) all of the Personnel of the White Label Group of Companies.

**Intellectual Property** means the:

- (a) Copyright Works; and
- (b) Designs.

**Intellectual Property Rights** means all present intellectual and industrial property rights conferred by law, including:

- (a) designs, copyright, rights in circuit layouts, know how, formulae, specifications, recipes, plant breeder's rights drawings and sketches, collections, registered and unregistered trade marks, brand names, goodwill, reputation, patents, inventions, innovations, product names, trade secrets, the right to have confidential information kept confidential and other results of intellectual effort in the scientific, technological, bio-technological, industrial and commercial fields, whether or not registered or capable of registration;
- (b) any application or right to apply for registration of the rights described above; and
- (c) all renewals and extensions of the rights described above.

**Land** means the Client's land (whether a registered or unregistered lot) which is specified in the Preliminary Agreement.

**Loss** means any loss, damage (whether direct or indirect), liability, cost or expense including legal expenses on a solicitor and own client basis.

**Moral Rights** has the meaning given to it by the *Copyright Act 1968* (Cth).

**Personnel** means, in relation to the White Label Group of Companies, the respective directors, officers, employees, contractors, agents and professional advisors of each member of the White Label Group of Companies.

**Preliminary Agreement** means either the Design Fee – Preliminary Agreement or the Site Investigation Fee – Preliminary agreement entered into between White Label Group and the Client and all attachments, schedules and annexures to it (including, for the avoidance of doubt, this Document).

**Site Investigation Reports** means each of the following reports (whether in hardcopy or softcopy) prepared by or on behalf of White Label Group in connection with the Preliminary Agreement:

- (a) soil test;
- (b) contour survey;
- (c) preliminary assessment by a certifier; and
- (d) HTSP (if applicable).

**Use** means to:

- (a) use, reproduce, publish, copy, distribute, modify, amend, exploit, construct, communicate, dispose of or provide the Copyright Works, or any substantial or essential portion of the Copyright Works; and
- (b) cause, procure or assist (whether directly or indirectly) another person to use, reproduce, publish, copy, distribute, modify, amend, exploit, construct, communicate, dispose of or provide the Copyright Works, or any substantial or essential portion of the Copyright Works.

**Warranty** means each warranty set out in clause 9.

## **1.2 Purpose and effect of this Document**

These special conditions are attached to, and form part of, the Preliminary Agreement. To the extent of any inconsistency between the terms of the Preliminary Agreement and this Document, the terms of this Document prevail to the extent of such inconsistency.

## **2. Ownership of Intellectual Property**

### **2.1 Ownership of Intellectual Property**

The Client acknowledges and agrees that:

- (a) White Label Group or a member of the White Label Group of Companies is the absolute legal and beneficial owner of the Intellectual Property;
- (b) no part of the Preliminary Agreement, discussions or relationship between the Client and White Label Group or a member of the White Label Group of Companies gives the Client any proprietary rights to the Intellectual Property or assigns the Client ownership of the Intellectual Property;
- (c) the Client has not been granted, and nothing in this Document creates, a licence (implied or express) to Use the Intellectual Property;
- (d) Use of the Intellectual Property without White Label Group's express written consent is an infringement of White Label Group or a member of the White Label Group of Companies' Intellectual Property Rights;
- (e) White Label Group or a member of the White Label Group of Companies reserves the right to bring a claim against the Client for infringement of its Intellectual Property Rights if the Client Uses the Intellectual Property without the express written consent of White Label Group; and
- (f) any modification(s) or amendment(s) the Client requests to the Intellectual Property will not give rise to or vest any proprietary rights in the Client in respect of the Intellectual Property.

### **2.2 Undertakings by the Client**

The Client must not, and must procure that none of its related bodies corporate or affiliates will:

- (a) Use the Intellectual Property for any purpose without White Label Group's express written consent, including to build, or engage a third party to build, any building or structure;
- (b) provide (in any form or media) the Intellectual Property to any third party without the express written consent of White Label Group;
- (c) Use the Intellectual Property in any way that infringes White Label Group or any member of White Label Group of Companies' Intellectual Property Rights;
- (d) Use the Intellectual Property as inspiration for creating other copyright works or designs;
- (e) create copyright works using a substantial or essential portion of the Copyright Works;
- (f) create a design which is substantially similar in overall impression to the Designs; and
- (g) Use the Copyright Works in any way that does or may infringe the Moral Rights of the creator of the Copyright Works.

### **2.3 Survival**

This clause 2 is intended to, and does, survive the termination or expiry of the Preliminary Agreement.

## **3. White Label Group's obligations are conditional**

White Label Group's obligations under the Preliminary Agreement are subject to, and conditional on, the Client complying with each of its obligations under the Preliminary Agreement including, without limitation, all obligations relating to the payment of money to White Label Group.

## 4. Amounts paid by Client are non-refundable

- (a) All amounts paid by the Client to White Label Group, or to another member of the White Label Group of Companies, pursuant to the Preliminary Agreement are non-refundable once paid. For the avoidance of doubt, if the Preliminary Agreement is terminated or otherwise expires for any reason specified in clause 8.1 (whether before or after the Site Investigation Reports have been commissioned), no amounts paid by the Client to White Label Group, or to another member of the White Label Group of Companies, pursuant to the Preliminary Agreement are refundable to the Client.
- (b) If the Client enters into a Building Contract with White Label Group, or another member of the White Label Group of Companies, then the Interiors and Contract Fees paid by the Client to White Label Group, or to another member of the White Label Group of Companies, pursuant to the Preliminary Agreement will be credited towards the payment of or otherwise deducted from the total contract price payable by the Client under the Building Contract unless White Label Group notifies the Client that such payment is for another purpose.

## 5. Remediation and other costs

- (a) The Client acknowledges and agrees that it is solely responsible for all remediation costs, clean-up costs, hazardous materials and Contaminants (including asbestos) removal and disposal costs and other similar costs (**Remediation Costs**) which are incurred by White Label Group in connection with any soil testing or other physical site inspection, survey or testing performed by or on behalf of White Label Group on the Client's Land.
- (b) The Client acknowledges and agrees that it will pay to White Label Group, or to such other person as directed by White Label Group, on demand (on a full indemnity basis) the amount of all Remediation Costs.
- (c) Clause 5(a) does not apply to any Remediation Costs which are directly caused or substantially contributed to by White Label Group's negligence or unlawful act or omission.

## 6. Indemnity

The Client indemnifies, and must keep indemnified at all times, the Indemnified Parties from all Losses that are suffered or incurred by the Indemnified Parties arising directly or indirectly from:

- (a) a breach of the Preliminary Agreement by the Client;
- (b) any negligent, wilful or unlawful act or omission by the Client;
- (c) any illness, injury or death of any person (including to the White Label Group of Companies' Personnel), or any loss, damage or destruction caused to any property which is caused or contributed to by any act or omission of the Client in connection with the performance of the Client's obligations under the Preliminary Agreement;
- (d) any fine, penalty or other liability imposed on any member of the White Label Group of Companies arising from any breach by the Client of any applicable law; and
- (e) a breach of any Warranty.

## 7. Force Majeure

### 7.1 Obligations suspended

Where either White Label Group or the Client (the relevant party being the **affected party**) is unable, wholly or in part, by reason of a Force Majeure Event, to carry out any obligations under the Preliminary Agreement and:

- (a) the affected party gives the other party immediate written notice of the nature and expected duration of, and the obligation(s) affected by, the Force Majeure Event; and
- (b) the affected party uses all reasonable endeavours to:
  - (i) mitigate the effects of the Force Majeure Event on the affected party's obligations under the Preliminary Agreement; and

- (ii) perform the affected party's obligations under the Preliminary Agreement despite the Force Majeure Event,

that obligation is suspended so far as it is affected by the Force Majeure Event during its continuance.

## **7.2 Termination for continuing Force Majeure Event**

If by reason of a Force Majeure Event, the delay or non-performance of the affected party's obligations will continue for more than an aggregate of 30 days in a 12 month period, the party that is not the affected party may terminate the Preliminary Agreement by written notice to the affected party and the provisions of clause 8.4 will apply.

# **8. Termination of the Preliminary Agreement**

## **8.1 Term of the Preliminary Agreement**

The Preliminary Agreement commences on the date that it is signed by White Label Group and the Client and expires on the earlier of:

- (a) the date on which the Preliminary Agreement is terminated in accordance with clauses 7.2, 8.2 or 8.3; or
- (b) the date which is one calendar month after White Label Group and the Client have each fulfilled or satisfied (as at the case may be) all of their respective obligations under the Preliminary Agreement; or
- (c) the date on which the Client enters into a binding Building Contract with White Label Group or a member of the White Label Group of Companies.

## **8.2 General termination rights – White Label Group**

Without prejudice to any other right or remedy it may have at law, White Label Group may terminate the Preliminary Agreement by written notice to the Client if:

- (a) the Client breaches any of its material obligations under the Preliminary Agreement and:
  - (i) the breach is not capable of being remedied; or
  - (ii) the breach is capable of being remedied but the Client fails to remedy the breach to White Label Group's satisfaction within 10 days after notice in writing has been given to the Client requiring such breach to be remedied; or
- (b) the Client becomes subject to a bankruptcy or other insolvency event.

## **8.3 General termination rights – Client**

Without prejudice to any other right or remedy it may have at law, the Client may terminate the Preliminary Agreement by written notice to White Label Group if:

- (a) White Label Group breaches any of its material obligations under the Preliminary Agreement and:
  - (i) the breach is not capable of being remedied; or
  - (ii) the breach is capable of being remedied but White Label Group fails to remedy the breach to the Client's satisfaction within 10 days after notice in writing has been given to White Label Group requiring such breach to be remedied; or
- (b) White Label Group becomes subject to an insolvency event, or control of White Label Group passed to an external administrator, receiver or liquidator; or
- (c) the Client is not in default under the Preliminary Agreement and the Client elects not to enter into a Building Contract with White Label Group or a member of the White Label Group of Companies.

## **8.4 Consequences of termination**

On the termination or expiry of the Preliminary Agreement for whatever reason:

- (a) the Preliminary Agreement will end on the date of termination and:
  - (i) subject to clause 14.3, all rights granted to each party under the Preliminary Agreement shall immediately cease; and
  - (ii) subject to clause 8.5, no party will have any further or other liability to the other;

- (b) all amounts owed by the Client to White Label Group, or to another member of the White Label Group of Companies, become immediately due and payable as a liquidated debt; and
- (c) the Client must return to White Label Group all confidential and proprietary information and documentation (in whatever form), including all Intellectual Property, owned by White Label Group. For the avoidance of doubt, the Client is not required to return to White Label Group any Site Investigation Reports.

## **8.5 Termination does not affect accrued rights**

Termination of this agreement for any reason will be without prejudice to any existing liabilities, rights or claims that either party may have against the other, except as expressly set out in this agreement, and will not affect any right of action or remedy which has accrued or will accrue to either party nor will it relieve either party from fulfilling its obligations accrued but not performed as at the date of termination.

## **8.6 Site Investigation Reports**

On the termination or expiry of the of the Preliminary Agreement for whatever reason, White Label Group will provide to the Client a copy of all Site Investigation Reports prepared in connection with the Preliminary Agreement (in hardcopy or softcopy, as may be requested by the Client). To the extent that White Label Group has provided all Site Investigation Reports to the Client prior to the termination or expiry of the Preliminary Agreement, White Label Group acknowledges and agrees that the Client may retain (without further cost) all such Site Investigation Reports.

# **9. Warranties by Client**

## **9.1 Warranties**

The Client represents and warrants to White Label Group (at the date of the Preliminary Agreement, and repeats the representations and warranties on each day until all of the obligations under the Preliminary Agreement have been fulfilled or satisfied and the Preliminary Agreement is completed) that:

- (a) all information (whether in oral or otherwise) and documentation (whether in hardcopy or softcopy or a combination of both), including without limitation the Declaration Notice, provided by the Client to White Label Group, or to another member of the White Label Group of Companies, prior to, on or after the date of the Preliminary Agreement:
  - (i) is true, correct and complete in all material respects; and
  - (ii) does not omit to disclose any material fact, matter or circumstance to White Label Group which is relevant to the Land and the fulfilment by White Label Group of its obligations under the Preliminary Agreement;
- (b) there is no fact, matter or circumstance known to the Client which renders any of the information referred to in Warranty 9.1(a) misleading or deceptive;
- (c) it holds all consents, permits, licenses and approvals necessary to enable it to enter into and perform its obligations under the Preliminary Agreement;
- (d) it is not bankrupt or otherwise subject to any personal insolvency proceedings or actions and, as far as the Client is aware, no such action is threatened by any person;
- (e) it is the owner of the Land, or it has the right to become the registered proprietor of the Land; and
- (f) there are no Contaminants:
  - (i) present in, on or under the Land; and
  - (ii) emanating from the Land.

## **9.2 White Label Group's reliance**

The Client acknowledges that White Label Group enters into the Preliminary Agreement and will complete its obligations under the Preliminary Agreement in reliance on the Warranties.

# **10. Privacy**

The Client acknowledges that White Label Group may, from time to time, collect personal information about the Client. All personal information collected by White Label Group will be collected, stored and disclosed in accordance



with the White Label Group of Companies' privacy policy (which may be accessed here: <https://www.augusthomes.com.au/>).

## **11. Limitation of liability**

### **11.1 Exclusion of warranties**

Except for any conditions, warranties, guarantees, rights, remedies and liabilities which cannot be excluded by law, all other conditions, warranties, guarantees, rights, remedies, liabilities or other terms implied or conferred by law that impose any liability or obligation on White Label Group are expressly excluded under this agreement.

### **11.2 Limitation of White Label Group's liability**

White Label Group's liability to the Client arising directly or indirectly under or in connection with the Preliminary Agreement and whether arising under any indemnity, statute, in tort (for negligence or otherwise), or on any other basis at law is limited as follows:

- (a) White Label Group has no liability whatsoever to the Client or any other person for any Consequential Loss; and
- (b) the aggregate amount of White Label Group's liability to the Client for all claims arising under or in connection with the Preliminary Agreement is limited to the lesser of:
  - (i) the aggregate of all monetary amounts actually paid by the Client to White Label Group under the Preliminary Agreement as at the date of the relevant claim; and
  - (ii) \$10,000.

### **11.3 Personnel not liable**

The Client acknowledges and agrees that, to the maximum extent permitted by law, none of the White Label Group of Companies' Personnel will be liable to the Client for any claim arising directly or indirectly in connection with the Preliminary Agreement.

### **11.4 Client agrees not to make certain claims**

The Client covenants with White Label Group that it will not bring any claim, or allow any claim to be made, against White Label Group, or any member of the White Label Group of Companies, or Personnel to the extent such claim is inconsistent with clauses 11.1, 11.2 and 11.3.

## **12. GST**

### **12.1 Defined terms**

In this clause 12, a word or expression defined in the *A New Tax System (Goods and Services tax) Act 1999* (Cth) has the meaning given to it in that Act.

### **12.2 GST inclusive amounts**

For the purposes of this agreement, where the expression **GST inclusive** is used in relation to an amount payable or other consideration to be provided for a supply under this agreement, the amount or consideration will not be increased on account of any GST payable on that supply.

### **12.3 Consideration is GST exclusive**

Any consideration to be paid or provided to White Label Group for a supply made by White Label Group under or in connection with the Preliminary Agreement, unless specifically described in the Preliminary Agreement as GST inclusive, **does not** include an amount on account of GST.

### **12.4 Gross-up of consideration**

Despite any other provision in the Preliminary Agreement, if White Label Group makes a supply under or in connection with the Preliminary Agreement on which GST is imposed (not being a supply the consideration for which is specifically described in this agreement as GST inclusive):

- (a) the consideration payable or to be provided for that supply under the Preliminary Agreement but for the application of this clause (**GST exclusive consideration**) is increased by, and the Client must also pay to White Label Group, an amount equal to the GST payable by White Label Group on that supply; and
- (b) the amount by which the GST exclusive consideration is increased must be paid to White Label Group by the Client without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

## 12.5 Reimbursements (net down)

If a payment to a party under the Preliminary Agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.

## 13. Notices and other communications

### 13.1 Service of notices

A notice, demand, consent, approval or communication under this agreement (**Notice**) must be:

- (a) in writing, in English and signed by a person duly authorised by the sender; and
- (b) hand delivered or sent by prepaid post, facsimile or email to the following address:
  - (i) for Notices to White Label Group:

*Address:* Po Box 3080, Southport BC, QLD 4215

*Fax:* Not applicable

*Email:* admin@augusthomes.com.au
  - (ii) for Notice to the Client: the address and electronic communication details specified in the Preliminary Agreement.

### 13.2 Effective on receipt

A Notice given in accordance with clause 13.1 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, the second Business Days after the date of posting (or the seventh Business Day after the date of posting if posted to or from a place outside Australia);
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight Business Hours after the transmission, the recipient informs the sender that it has not received the entire Notice; and
- (d) if sent by email, when sent by the sender unless the sender receives a delivery failure notification indicating that the email has not been delivered to the addressee,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

## 14. Miscellaneous

### 14.1 Alterations

The Preliminary Agreement may be altered only in writing signed by each party.

### 14.2 Costs

Each party must pay its own costs of negotiating, preparing and executing the Preliminary Agreement.

### **14.3 Survival**

Any indemnity or any obligation of confidence under this agreement is independent and survives termination of the Preliminary Agreement. Any other term by its nature intended to survive termination of the Preliminary Agreement survives termination of the Preliminary Agreement.

### **14.4 Counterparts**

The Preliminary Agreement may be executed in any number of counterparts. All executed counterparts constitute one document.

### **14.5 Entire agreement**

The Preliminary Agreement constitutes the entire agreement between White Label Group and the Client in connection with the subject matter specified in the Preliminary Agreement and supersedes all previous agreements or understandings between the parties in connection with the subject matter specified in the Preliminary Agreement.

### **14.6 Governing law and jurisdiction**

The Preliminary Agreement is governed by the law of Queensland and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Queensland.