

Interlinked Terms and Conditions

Version 3 - Last Updated: 17/07/2019

A copy of **IPS Terms & Conditions** can also be found on our website at: [www: interlinkedproperty.com.au](http://www.interlinkedproperty.com.au)

Interlinked Property Solutions Terms & Conditions

1. Definitions and Interpretation

In these Conditions:

"Agreed Price" means any specified Price and associated charges and GST agreed in writing between a Client and IPS for a contract or arrangement between them, or between the Client and a third-party, from time to time, and to the extent they are or become unspecified or are not so agreed, include the Price;

"IPS" or **"Interlinked Property Solutions"** means IPS Operations and/or IPS Consultancy and/or IPS Valuations as may be applicable to the relevant service;

"IPS Operations" means Interlinked Property Solutions Operations Pty Ltd ACN 120 432 180 and its heirs, successors and assigns;

"IPS Consultancy" means Interlinked Property Solutions Consultancy Pty Ltd ACN 126 271 547 and its heirs, successors and assigns;

IPV" means Interlinked Property Valuations Pty Ltd ACN 628 533 871 and its heirs, successors and assign;

"IPS Related Companies" means Interlinked Property Solutions Operations Pty Ltd ACN 120 432 180; Interlinked Property Solutions Pty Ltd ACN 622 621 612 and Interlinked Property Solutions Consultancy Pty Ltd ACN 126 271 547 and Interlinked Property Valuations Pty Ltd ACN 628 533 871 and any other company that may from time to time be a related corporation (within the meaning of the Corporations Act 2001) of any of them;

"Conditions" means these terms and conditions;

"Client" means a person who seeks or obtains a quote for, or who orders, Goods or Services from IPS or as arranged by IPS, and includes both a person whose name is on the order or on an email attached to which is an Order, a person who places an Order, and a person on whose behalf an Order is placed or on whose behalf it appears an Order is placed, and in any case, each of their heirs, successors and assigns;

"Goods" means any goods and/or services sourced by IPS or provided by IPS in connection with any such goods and/or services and any goods or services provided in connection with any of these things;

"Order" means any order provided to IPS for Goods or Services;

"Quote" means a fee estimate or quote provided by IPS whether for services provided by IPS or as may be arranged by IPS from a third-party provider on behalf of a Client;

"Price" means charges for services (including any Cancellation/Refund fees) set out in the Price Schedule provided to the Client about the time of the provision of these Conditions or from time to time;

"Price Schedule" means the schedule of Prices set by IPS from time to time including (without limitation, Table "A");

"Cancellation Fee" means a fee charged pursuant to clause 5.d);

"Services" means the provision of any services by IPS including Work, advice and recommendations;

"Work" means any services IPS may provide, customise, produce or acquire on behalf of or for the Client; and

"Working Hours" means Monday to Friday from 08:30 to 17:00 hours excluding Public Holidays.

Unless the contrary intention appears:

- a) Words denoting the singular number only shall include the plural number and vice versa;
- b) Reference to any gender shall include every other gender and words denoting individuals shall include corporations and vice versa;
- c) Reference to any Act of Parliament, Statute or Regulation shall include any amendment currently in force at the relevant time and any Act of Parliament, Statute or Regulation enacted or passed in substitution therefore;
- d) Headings are for convenience of reference only and do not affect the interpretation or construction of these Conditions;
- e) All references to dollars (\$) are to Australian currency;
- f) A reference to time is to Sydney, Australia time;
- g) A reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa;
- h) A reference to a recital, clause, schedule, annexure or exhibit is to a recital, clause, schedule, annexure or exhibit of or to these Conditions;
- i) A recital, schedule, annexure or description of the parties' forms part of these Conditions;
- j) A reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions), as amended, novated, supplemented or replaced from time to time;
- k) Where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- l) A reference to a "includes" means includes without limitation;
- m) A reference to "will" imports a condition not a warranty;
- n) A reference to bankruptcy or winding up includes bankruptcy, winding up, liquidation, dissolution, becoming an insolvent under administration (as defined in section 9 of the Corporations Act), being subject to administration and

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the occurrence of anything analogous or having a substantially similar effect to any of those conditions or matters under the law of any applicable jurisdiction and to the procedures, circumstances and events which constitute any of those conditions or matters.

2. Application of these Conditions

- a) Unless otherwise agreed by IPS in writing, these Conditions are deemed incorporated in and are applicable to (and to the extent of any inconsistency will prevail over) the terms of every Quote, Order, contract, or other arrangement in connection with the supply of Goods or Services by IPS, or arranged by IPS, to the Client.
- b) The terms of any Agreed Price prevail over the Price to the extent of any inconsistency.

3. Quotes

- a) **Term and effect:** IPS may arrange to give a Client a written quote for the supply of Services. Quotes will only be valid for 30 days unless otherwise specified in the Quote. A Quote is merely an invitation to the Client to place an Order with IPS and the acceptance of a Quote by a Client will not create a binding contract between the Client and IPS or the relevant third-party provider.
- b) **Varying or withdrawing Quotes:** IPS or a third-party provider may vary or withdraw a Quote at any time in its absolute discretion and without prior notice to a Client. It may do so for any reason it considers fit, including, for example, where the Services become unavailable or the cost price of Services increases after the date of the Quote.

4. Orders

- a) **Orders:** A Client may place an Order for Goods and/or Services with IPS or a third-party provider. Normally, IPS will require that an Order be confirmed in writing or as a consequence of providing ongoing instructions consistent with the contemplated Order.
- b) **Approval of Orders & Electronic Signatures:** Normally, a Client will need to sign the Order, or have it duly executed on its behalf, unless the Order is sent by email, in which case the parties agree it the Order will be deemed signed by the person whose name appears as the sender of the email. The parties agree that all documents between them may be signed electronically, including (without limitation) by email in this way.
- c) **Reliance on appearance of validity:** Absent actual knowledge to the contrary, IPS may rely upon the apparent validity of an Order. If any Order is signed or sent by email by a named person, it is deemed in favour of IPS to be:
 - a. signed by, and duly authorised by the person who signed it or who sent the email; and
 - b. duly authorised by the person or organisation on whose behalf the Order is apparently placed.
- d) **No obligation to deliver:** IPS is not obliged to fulfil any Order until IPS has received from the Client payment in clear funds for the Order.

- e) **Cancellation of Orders:** A Client will not cancel an Order unless IPS agrees to do so in writing in its absolute discretion. The Client acknowledges that, amongst other things, IPS cannot cancel an Order once the provider has provided the relevant Goods or Services and that this may occur the same day of the Order.

5. Price

- a) **Prices applicable to particular services:** Where a Client chooses a particular service the Prices applicable to that service as set out in the Price Schedule will apply.
- b) **Price for related or other services:** In other circumstances, the Client must pay for Goods and Services at the prices normally applicable from time to time during the provision of the Goods or Services.
- c) **Vary Price Schedule:** IPS reserves the right to vary the Prices and/or the Price Schedule from time to time in its absolute discretion without notice to the Client.
- d) **Cancellation Fee:** Where IPS arranges a refund on behalf of a Client, or where an Order is cancelled by a Client after acceptance by IPS (or a third-party provider arranged on behalf of the Client by IPS), IPS (and any relevant third-party provider) may charge the Client a Cancellation fee to cover the administration costs of IPS in processing the cancellation and any refund. IPS may deduct the Cancellation fee out of any moneys otherwise due to be refunded to the Client.
- e) **Expenses:** The Client must pay all expenses incurred by IPS in providing, or arranging for any third-party providers to provide, the Services to a Client, in addition to the Prices and/or the Price Schedule.
- f) **Third Party arrangements:** Where the Client requests Services in relation to property matters that IPS does not provide internally, and those services may be provided to the Client by a third party, the Client agrees that IPS may do all things and enter all contracts as the duly authorised agent of the Client for the provision of the Services, with the result that the Client will have a direct contract with the third-party for the provision of those services. The Client will pay upon request all related third-party costs and expenses. The Client agrees to hold IPS harmless and indemnify IPS in relation to all liability under or in connection with, and the performance or otherwise of, those contracts.
- g) **Copy of contracts:** Where requested by the Client, IPS will make available to the Client any contract or arrangement entered, or to be entered, into on behalf of the Client under this Agreement.

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- h) **Method of entering contracts:** IPS or its servants may make a request for services on account of, or for and on behalf of, a Client as the Client's duly authorised agent and may sign any contract or record of the arrangement between a Client and a third-party provider for and on behalf of the Client. IPS may sign the contract or arrangement (whether in the form of a formal contract or by the exchange of documents or emails) either by hand or by virtue of the electronic signature of IPS or its servants or officers).
- i) **Contract management services:** IPS may provide contract management services or assistance to the Client as its agent in relation to contracts between the Client and third parties (including as may be arranged by IPS as the agent of the Client). The provision of such contract management services by IPS will not affect the rights and responsibilities of the Client and the third-party under the contract between them, nor will it extend recourse under the contract being managed to include IPS.
- j) **Change in underlying costs:** Without prejudice to any other rights of IPS under these Conditions, where there is any increase in the underlying costs incurred by IPS or a third-party provider in connection with the supply of Goods or Services to a Client, IPS or the third-party provider may, in its absolute discretion, vary its pricing so as to pass on that increase to the Client.
- ## 6. Services, Plans and Conditions
- a) **Service Variations:** Currently, IPS offers the Services as listed in the Price Schedule. IPS may withdraw the provision of, or vary the scope or terms of, or add to or change, the Services without notice to the Client, from time to time in its absolute discretion.
- b) **Copies on Request:** IPS will provide the Client with a copy of the current Price Schedule upon request.
- c) **Recommending third party goods or services:** While IPS will use its reasonable endeavours to recommend suitable and appropriate Goods and Services provided by third parties, the Client acknowledges that such Goods and Services may fail to meet expectations and that while IPS will verify the due registration and licencing of such service providers, IPS does not have control over such third parties or their day to day actions and decisions. The Client will accept sole responsibility for its own decisions as to whether or not to follow recommendations by IPS and indemnifies and holds harmless IPS in respect of any failure on the part of any third-party to provide Goods or Services to the Client's satisfaction.
- ## 7. Risk
- a) **Delivery liability:** IPS will use all reasonable endeavours to provide Goods or Services by the due date but does not accept any liability for failure to deliver on time where this is caused by circumstances beyond the reasonable control of IPS, including, for example, due to failures in supply to IPS or delays caused by third parties.
- b) **Duty to inspect:** The Client will inspect any Goods or Services (including documents and reports) immediately upon their delivery. Within 7 days of such delivery a Client may give written notice to IPS or the relevant third-party provider of any matter or thing, by reason of which the Client might wish to ask for a refund or make a claim. If no such notice is given on time, the Client will accept the Goods or Services without any such refund or claim.
- c) **Customised Services:** Where Goods or Services have some element of customisation for the Client, are supplied pursuant to an Order for Goods or Services that is in the opinion of IPS special or unusual, the Client will not seek a refund for the Goods or Services.
- d) **Consequences of use, customisation or sale:** The Client will indemnify and hold harmless IPS in respect of all allegations and claims in respect of Goods or Services once such Goods or Services have been used, customised or re-sold by the Client.
- e) **Not fit for purpose:** Unless the Client confirms the specific purpose for which the Goods or Services will be used in writing in the Order for the Goods or Services (as accepted by IPS) the Client indemnifies and holds harmless IPS if the Goods or Services are not suitable for the purpose for which the Client wants to use them. No warranty is made in relation to Goods or Services provided by third-parties to the Client.
- f) **General Limit on liability:** Where IPS is liable to the Client under these Conditions, the liability of IPS to the Client is, in any event, limited to the amount paid for Services it provides to the Client or, in relation to arrangements with third-party providers, the Standard Commission; and the Client indemnifies and holds IPS harmless in connection with any higher or other amount.
- ## 8. Payment, Late Payment and Default
- a) **Payment must be made on time:** Clients must pay all invoices of IPS and any third-party provider upon the due date, or absent an agreement as to a due date, within seven (7) days from the date of the invoice (by cash, cheque or direct deposit in accordance with these Conditions and in the way set out in the invoice).
- b) **Late payment:** Where a Client fails to pay an invoice on time, IPS may, and any third-party provider may, in its or their absolute discretion and without prior notice, suspend or discontinue the supply of Goods and Services to that Client.

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- c) **Recoveries:** All legal and other costs and expenses incurred in connection with the recovery of late payments will be added to the amount due by the Client to IPS or any relevant third-party provider and will be recoverable from the Client, in addition to the original invoice cost. If the Client defaults in payment of any invoice on time, moneys which would have become due by the Client at a later date shall be immediately due and payable without any further notice to the Client. Collectively, all of these moneys are referred to in these Conditions as a "Sum Due".
- d) **Interest:** If payment of any Sum Due not made on time, IPS will charge interest daily on the Sum Due at the Pricing of ten (10) per centum per annum calculated and charged daily on and from the due date until the Sum Due is paid in full.
- e) **Application of funds:** All payments of the Sum Due made by the Client to IPS will be applied as follows:
 - i. first in or towards payment of any costs (including legal costs), charges, expenses or outgoings paid by IPS in relation to and dishonoured cheques fees, collection costs or any other action taken by IPS for the recovery of any amounts owing by the Client to IPS;
 - ii. secondly, in or towards payment of any interest due or payable hereunder;
 - iii. thirdly, in or towards payment of the Client's oldest debt to IPS, and
 - iv. fourthly, in or towards payment of any third-party provider owed money by the Client, that IPS has introduced to the Client under or in connection with this Agreement.
- f) **Security:** IPS reserves the right to require the Client to provide further security as a condition precedent to the continuation of supply of Goods or Services by IPS or any third-party provider to the Client.
- d) **Further Suspensions:** In the event that a repayment arrangement is made in relation to any Sum Due and the supply of Goods or Services is resumed, but then a repayment due under that arrangement is not made on time, IPS may, in its absolute discretion and without prior notice, further suspend or discontinue the supply of Goods or Services to that Client.
- e) **Power of Attorney:** The Client hereby irrevocably appoints IPS as its attorney to do anything IPS considers fit for the recovery of the Sum Due.
- f) **Other remedies:** IPS may exercise any of its rights and remedies including taking legal action against the Client for the recovery of any moneys due to IPS, notwithstanding it may have exercised any other rights under these Conditions.

9. Product specifications

- a) **Alterations to Specifications:** IPS makes every effort to supply the Goods and Services in accordance with the Order however it may supply alternate Goods and Services subject to minor variations in specifications where these are changed by the manufacturer or provider of the Goods or Services after the Order date and before delivery.

- b) **Substitute Goods:** If IPS cannot supply or the arrange the supply of the Goods or Services ordered by the Client, IPS may supply alternate Goods or Services of equal or superior quality provided however that the Client will not pay any extra cost.

10. Warranties

- a) **Reliance on Supplier's Warranty:** The Client will rely on warranties provided by third-party supplier of Goods or Services arranged for the Client by IPS and will deal direct with such supplier rather than IPS for all related claims.
- b) **No claim for Supplier's default:** The Client indemnifies and holds harmless IPS in respect of the performance or otherwise, by third-party provider of Goods or Services supplied to the Client. This includes any obligations of such provider arising under, or in connection with, any breach of any contract or warranty of the provider in respect of such Goods or Services.

11. Liability

- a) **Exclusion:** Except as specifically set out herein and so far as may be permitted by law, any term, condition or warranty in respect of the quality, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Goods or Services, whether implied by statute, common law, trade usage, custom or otherwise, is hereby expressly excluded.
- b) **Limit on liability to repair or replace:** Replacement or repair of the Goods or resupply of the Services is the absolute limit of IPS' liability howsoever arising under or in connection with the description, quality, condition, performance, assembly, manufacture, design, merchantability or fitness for purpose of the Goods or Services.
- c) **No liability for program or data loss:** The Client indemnifies and holds harmless IPS in respect of any allegation, claim, loss or expense of the Client or any third party for any program or data loss or damage suffered by the Client or that third party arising directly or indirectly from the supply of the Goods or Services by IPS or a third-party provider to the Client. The Client acknowledges it is solely responsible for backing up its programs and data in order to mitigate its own potential loss of programs and data.
- d) **Limit on consequential damage:** The Client indemnifies and holds harmless IPS in respect of any allegation or claim as to any indirect or consequential losses or expenses suffered by the Client or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to the Client or any third party.

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- e) **Indemnity re failure in supply:** The Client indemnifies and holds harmless IPS and any third-party providers in relation to any allegation or claim for loss or damage by the Client or a third party where IPS or a third-party provider has failed to meet any delivery date or cancels or suspends the supply of Goods or Services.
- f) **Laws still apply and severance of provisions:** Nothing in the Conditions is to be interpreted as excluding, restricting or modifying the application of any State or Federal legislation applicable to the supply of the Goods or Services which cannot be excluded, restricted or modified.

12. Commissions

- a) **Receipt of Commissions:** In addition to any amounts payable direct to IPS by the Client for its services, IPS may also receive commissions from third-party providers of Goods or Services to or on account of the Client, including (without limitation) providers arranged by IPS as agent for the Client.
- b) **No duty to account:** IPS may retain the benefit of such commissions without accounting to the Client for them.

13. Force Majeure

IPS will not be liable for any breach of contract due to any matter or thing beyond IPS' control, including failures by third parties to supply goods, services or transport, stoppages, transport breakdown, fire, flood, earthquake, acts of God, strikes, lock-outs, work stoppages, wars, riots or civil commotion, intervention or public authority, explosion or accident.

14. Errors and Omissions

IPS makes every effort to ensure that all prices and descriptions quoted are correct and accurate. In the case of an error or omission, IPS or a third-party provider may rescind the affected contract by written notice to the Client, notwithstanding that it has already accepted the Client's Order and/or received payment from the Client. In that event the liability of the third-party or, where IPS Operations is providing the Service, IPS Operations, will be limited to the return of any money the Client has paid in respect of the Order. IPS is not liable to refund moneys once paid over to third-parties and the Client's sole recourse is a refund from the relevant third-party.

15. General

- a) If any provision contained in the Conditions is unlawful, invalid or unenforceable, those provisions may be severed without prejudice to the validity and enforceability of the remaining provisions of the Conditions.
- b) No amendment, alteration, waiver or cancellation of any of these Conditions is binding on IPS or the Client unless agreed in writing between IPS and the Client.

- c) The Client acknowledges that no employee or agent of IPS nor any third-party has any right to make any representation, warranty or promise in relation to the supply of Goods or Services other than as contained in the Conditions.
- d) Any notices given under the Conditions shall be in writing and sent:
 - i. by mail to the last known address of the Client; or
 - ii. by facsimile to the last known facsimile number of the Client; or
 - iii. by e-mail to the last notified e-mail address of the Client.
- e) The Conditions shall be governed by and construed in accordance with the laws of New South Wales and the parties submit to the non-exclusive jurisdiction of the Courts of New South Wales.

16. Termination

- a) Either party may terminate this contract without prejudice to accrued rights on one month's notice to the other subject to the termination provisions of any contracts entered into by the Client (or by IPS as the agent of the Client) with any third party and accrued rights in relation to such contracts. The Client authorises IPS to terminate any such agreements on its behalf.
- b) IPS may charge for its time in winding up arrangements between the parties and any third-party providers.
- c) The Client must pay all amounts outstanding to IPS under this contract and to any third-party providers under the terms of their engagement and all legal and recovery costs associated with the recovery of such sums.
- d) The Client charges all of its property of whatever kind and wherever situated as security for the due and punctual payment of all amounts due to IPS and any such third-party providers. The Client agrees that IPS may lodge a caveat on the title of any of its properties to secure the payment of moneys due under this contract or any contract with third-party providers.
- e) The Client appoints IPS as its attorney to do all things to create, execute, deliver, register and enforce all and any such charges.

17. Software

- a) Any Software licences for software used by the Client in conjunction with the services provided or arranged by IPS are the responsibility of the Client and not that of IPS.
- b) It is the duty of the Client to store all licences for all Software used, so that that they can be reproduced if and when required. This includes all Software installed by IPS or any third-party provider arranged by IPS as the agent of the Client to install the same on the Client's system.

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- c) The Client indemnifies and holds harmless IPS against any claim, allegation, loss, damage or expense arising directly or indirectly from:
 - i. any unauthorised Software use by the Client;
 - ii. any breach of any Software licence in respect of Software provided to IPS by the Client to be installed on a Client's computer;
 - iii. otherwise as a result of IPS installing Software at the request of the Client where the Client is not authorised to use the Software; and
 - iv. any problem, defect or malfunction associated with any Software (or related services) supplied by third parties.
- d) All copyright in custom software remains the sole property of IPS or the relevant provider.

18. Copyright and Confidentiality

- a) **Warranty and breach:** The Client warrants that any confidential or copyright information or intellectual property (of any kind and in any form held) or provided by the Client to IPS belongs to the Client. In the event of any breach of this warranty, the Client will pay all sums due to IPS as if such warranty had not been breached (and regardless of any non-performance of any obligation by IPS on account of or in connection with the breach of such warranty). The Client indemnifies and holds harmless IPS in respect of any allegations, claims, loss, costs or expenses in connection with such breach of warranty by the Client.
- b) **Retention of title:** All copyright and other intellectual property rights in any Work created, commissioned or acquired by IPS in the course of the supply of Services by IPS to the Client will be the exclusive property of IPS unless otherwise agreed in writing by IPS and the Client.

19. Privacy

- a) IPS is collecting your personal information to assist you with the provision of services in relation to your property requirements. IPS may use your personal information to contact you in relation to your query and/or to provide IPS services and information.
- b) If you don't provide the personal information requested (excluding any fields marked optional), we may not be able to respond to your query or do these things.
- c) IPS's Privacy Policy is available at www.interlinkedproperty.com.au and provides information about access and correction of the personal information IPS holds, how to complain about a breach of privacy by IPS and how IPS will deal with privacy complaints. Any queries about IPS and privacy should be directed to IPS's Privacy Officer on +61 484 262 062 or by email at info@interlinkedproperty.com.au.

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Feel free to contact us on 1300 660 166 or visit our website www.interlinkedproperty.com.au