



ACA Short Form Architect Client Contract

Christopher Larcos

Sydney ▲ Melbourne ▲ Brisbane ▲ Canberra ▲ Newcastle ▲ Perth

Agenda



- ▲ The structure of the new ACA contract
- ▲ Key differences with the RAIA contract
 - ▲ Time
 - ▲ Delay
 - ▲ Variations to the scope of services
 - ▲ Intellectual property
 - ▲ Limitation of liability
 - ▲ Client obligations
 - ▲ Termination for the client's unethical conduct

Structure of the new contract



- ▲ Three components of the ACA contract
 - ▲ Cover letter
 - ▲ The services schedule
 - ▲ General terms

Cover letter structure – 1



▲ The Project

[Date]

[Client Name]
[Street Address]
[SUBURB] [NSW] [Postcode]

Attention: [Name]
Email: [Email address]

Dear [Client Name(s)]

[Project Address and type of Project] – Proposal for architectural services

Thank you for inviting me to [provide a quotation to] carry out and complete architectural services on [description of the project, including address] (the **Project**).

[The Architect may add a personalised paragraph or two to mitigate the feel of the balance of the letter, which may come across as too detached or business-like. It is an opportunity, for instance, to explain the Architect's enthusiasm for the Project and what challenges the Architect sees.]

Cover letter structure – 2



▲ The Services

The scope of the **Services** is set out in the attached **Services Schedule**. It shows:

- the **Services** I (the **Architect**) will carry out and complete for you (the **Client**) in respect of the Project;
- the estimated cost of the building works (**Cost of Works**);
- how my **Fees** are calculated, whether as a percentage of the Cost of Works, a lump sum, on the basis of hourly rates, or a combination of some or all of these; and
- the **Reimbursable Expenses** I may reasonably incur in the performance of the Services and in respect of which I am entitled to be reimbursed.

▲ Acceptance

This offer to carry out and complete the Services is subject to my standard terms, a copy of which is **attached**. You may accept this offer within 30 days after the date of this letter by:

- giving me a written notice that you accept my offer;
- returning a signed copy of this letter to me by email or otherwise; or
- directing me verbally to proceed with the Services, in which case I will promptly confirm your direction in writing.

Please contact me on **[telephone number]** if you would like to discuss any aspect of this offer.

Services Schedule – 1



▲ Cost of Works and Fees

Cost of Works	Lump Sum (ex GST):		
Services and Fees	Stages of Service	Percentage of Cost of Works	Lump Sum (ex GST)
	<input type="checkbox"/> 1. Concept Design	% / LS / HR	
	<input type="checkbox"/> 2. Design Development	% / LS / HR	
	<input type="checkbox"/> 3. Construction Documentation	% / LS / HR	
	<input type="checkbox"/> 4. Contractor Selection	% / LS / HR	
	<input type="checkbox"/> 5. Contract Administration	% / LS / HR	
	Totals		
Legend: '%' means percentage of the Cost of Works; 'LS' means lump sum; 'HR' means hourly rates.			
Hourly Rates	Personnel		
	Principal / Director (\$ / hr, ex GST):		
	Senior Architect (\$ / hr, ex GST):		
	Graduate (\$ / hr, ex GST):		
	Assistant (\$ / hr, ex GST):		

Services Schedule – 2



▲ Reimbursable Expenses

Reimbursable Expenses	Item
	Fees, taxes, levies, and other charges paid to authorities
	Models, perspectives
	Couriers
	Building contracts
	Administration fee for Reimbursable Expenses 5%

▲ Payment

Payment	Time for Architect to provide tax invoices (CI 5.2):	Last business day of each month
	Time for Client to pay tax invoices (CI 5.3(a)):	10 business days after the date of the invoice
	Interest rate on overdue payments (CI 5.3(b)):	12% per annum

General Terms: Time – 1



D. Time

The client must inform the architect of their initial program for the project and from this, the client and the architect must agree an initial program for the architect's services.

The initial program may be revised during the project by mutual agreement in writing.

▲ RAIA: Agreement to agree is not an agreement

General Terms: Time – 2



1.1 Responsibility

The Architect must:

- (a) perform the Services with the professional skill, care and diligence that would be expected of a professional architect experienced in providing services for projects similar to the Project;
- (b) promptly notify the Client of each matter of which the Architect becomes aware that could have a material impact on the Services or the Architect's ability to perform them;
- (c) report to the Client, at least monthly, as to the progress of the Services; and

General Terms: Delay – 1



D.1 Protracted Services

If the architect's services are protracted by any cause beyond the architect's control:

- a the architect must notify the client in writing of the cause and anticipated extent of the protraction, and
- b the architect is entitled to additional fees and to a reasonable extension of the agreed program.

- ▲ RAIA: How will fees and time be determined and what if the parties can't agree?

General Terms: Delay – 2



3.4 Deemed Variations

It will be a deemed variation to the scope of the Services if the Architect is delayed in the performance of the Services for any reason beyond the Architect's reasonable control, including any failure by the Client to comply with its obligations under clause 1.2.

3.5 Valuation of Deemed Variations

If there is a deemed variation under clause 3.4, the Architect must promptly provide a written notice to the Client:

- (a) identifying the delay; and
- (b) advising the Client:
 - (i) of the Fees for the deemed variation; or
 - (ii) if the Fees cannot reasonably be determined in advance, the mechanism the Architect will use for valuing the deemed variation once it is completed.

General Terms: Variations – 1



E. Fees

Additional services required by the client after this agreement is signed will be assessed at an agreed hourly rate, or as otherwise agreed in writing.

- ▲ RAIA: How will the rate be agreed, and what happens if it can't be agreed?

General Terms: Variations – 2



3.1 Agreement to Vary

The Client may vary the scope of the Services only by agreement with the Architect and confirmed by the Architect in writing detailing:

- (a) the scope of the variation; and
- (b) the:
 - (i) Fees for the variation;
 - (ii) rates to apply to the variation; or
 - (iii) some other mechanism for valuing the variation.

3.2 No Prior Agreement to Vary

If, in the Architect's reasonable opinion, the Client has given the Architect a direction:

- (a) that will result in a variation to the scope of the Services; and
- (b) without the matters referred to in clause 3.1 first having been agreed upon in writing,

the Architect must, before complying with the direction, provide a written notice to the Client:

- (c) identifying the direction;
- (d) advising the Client:
 - (i) of the Fees for the variation; or
 - (ii) if the Fees cannot reasonably be determined in advance, the mechanism the Architect will use for valuing the variation once it is completed.

3.3 Client Confirmation

If the Client receives a written notice from the Architect under clause 3.2, the Client may, within three business days after the date of the notice:

- (a) direct the Architect in writing:
 - (i) to proceed with the direction; or
 - (ii) not to proceed with the variation; or
- (b) give no direction, in which case the Architect must (at the Architect's discretion) advise the Client in writing that the Architect will:
 - (i) proceed with the variation; or
 - (ii) not proceed with the variation.
- (c) If the Architect proceeds with a variation under clauses 3.3(a)(i) or 3.3(b)(i), the Client will be liable for the additional Fees referred to in the written notice from the Architect under clause 3.2.

General Terms: IP – 1



▲ The common law with respect to IP

G.1 Copyright

The architect retains copyright in *The Design*. *The Design* means, design concepts, drawings and documents provided under this agreement.

The architect grants the client an express but revocable licence to use *The Design* for the project on the site for which it was intended, subject to the conditions that:

- a no licence is granted or implied under this agreement other than the express licence;
- b the licence may be revoked by the architect in writing if any invoice that the architect is entitled to submit under this agreement is overdue, in which case the licence is automatically reinstated on the architect's receipt of all overdue amounts, and
- c the licence is automatically revoked by any event or action by the client or a third party that changes the client's ownership or legal interest in the site in any way, in which case the client may request in writing the architect's consent to reinstate the licence and such consent must not be unreasonably withheld.

▲ RAIA: Linking of the licence to payment

General Terms: IP – 2



- ▲ What obligations do you have to provide electronic files, and in what format?
- ▲ What rights to you have to come back and take photos?

9. COPYRIGHT

- (a) All copyrights coming into existence in connection with the performance of the Services vest in and are owned by the Architect.
- (b) Subject to clause 4.4(b), the Architect grants to the Client a revocable, non-transferrable licence to use the documents created by the Architect once only for the construction of the Project.
- (c) The Architect (or any nominee) may:
 - (i) after giving reasonable notice, take such records, including photographic records; and
 - (ii) publish such materials, in respect of the Project as the Architect considers desirable.
- (d) The Services exclude the provision of any documents in digital formats other than Portable Document Format.

- ▲ ACA: Clauses 9(c) and (d) change the position

General Terms: Limit of Liability – 1



H.2 Limited Liability

To the maximum extent permitted by law:

- a subject to b, c and d below, the architect's liability to the client under this agreement (including the performance or non-performance of the architect's services), whether under the law of contract, in tort, in equity, under statute or otherwise, is limited to the amount specified in Schedule H;
- b the architect has no liability to the client in respect of any indirect, consequential or special losses, (including loss of profit, loss of business opportunity and payment of liquidated sums or damages under any other agreement);
- c the architect has no liability in respect of the architect's services after the expiration of 3 years from the completion of the architect's services, and

- ▲ RAlA: How should you fill out Schedule H?
- ▲ What is the link between the limit of your liability and your insurance cover?
- ▲ What if the insurer doesn't respond?

General Terms: Limit of Liability – 2



8. LIMIT OF LIABILITY

- (a) The Architect's maximum aggregate liability to the Client (or anyone claiming through the Client) arising out of or in connection with this agreement (including liability for breach of contract, for tort including negligence, or on any other legal basis) is limited to the greater of:
- (i) \$1,000; or
 - (ii) insurance proceeds actually recovered (if any).

- ▲ ACA: There is no need to limit your liability to align with your insurance cover

General Terms: Client Obligations – 1



I. Client Obligations

The client must:

- c provide all information required by the architect to complete the services described in this Agreement;
- d cooperate fully with the architect to ensure efficient and satisfactory progress through all stages of the project;

- ▲ RAIA: What happens if the client is tardy in providing information or otherwise co-operating?

General Terms: Client Obligations – 2



1.2 Client's Responsibility

The Client must:

- (b) in a timely manner:
 - (i) provide all information and documents required by the Architect to perform and complete the Services; and
 - (ii) co-operate fully with the Architect to ensure the efficient performance of the Services;

3.4 Deemed Variations

It will be a deemed variation to the scope of the Services if the Architect is delayed in the performance of the Services for any reason beyond the Architect's reasonable control, including any failure by the Client to comply with its obligations under clause 1.2.

- ▲ ACA: Tardiness by the Client, or the updating of information already provided, will result in a deemed variation

General Terms: Termination – 1



M. Termination

Either party may terminate this agreement after giving the other party 30 days notice in writing without being required to give any reason.

On Termination of this agreement, unless otherwise agreed in writing:

- a the client must:
 - pay the outstanding balance of all properly submitted invoices delivered prior to the notice, and
 - pay the architect for all services reasonably undertaken and any reimbursable expenses, including those shown in Schedule E3, reasonably incurred by the architect since the delivery of the notice, and
- b the architect must, on receipt of payment, issue to the client a copy of *The Design* as it exists up to the date of termination.

- ▲ RAIA: Does this permit immediate termination?

General Terms: Termination – 2



10. TERMINATION

10.1 Generally

This agreement may be terminated:

- (a) at any time by mutual agreement of the parties in writing;
- (b) by either party at its sole discretion (without giving reasons) by giving no less than 15 business days' written notice to the other party; or
- (c) immediately by the Architect in writing if, in the Architect's professional judgment, the provision of the Services (or any part of the Services) requires the Architect to act:
 - (i) in a manner the Architect considers unethical; or
 - (ii) in contravention of the law.

- ▲ ACA: Clause 10.1(c) allows for immediate termination



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