

Energy Rating Application



Energy Rating Application - Contact Details

Complete the form below and our Nationally accredited ABSA Assessor will Contact you regarding your assessment.

*Name of Property Owner:	
*Name of Applicant:	
*Name of Local Council:	
*Current Postal Address:	
*Phone:	
*Email:	
Fax:	
Mobile:	

CONDITIONS OF ENGAGEMENT

DEFINITIONS

Applicant means the property owner relating to this assessment or their approved representative.

Consultant means EnvironArc Design Pty Ltd

Quote means the fee provided by the Consultant to complete the required works

The Required Works means the completion of an energy rating assessment by a Registered Assessor using the First Rate 5 V2 software

1. DATE OF COMMENCEMENT

1.1 The date of commencement of this Agreement shall be upon acceptance of our Quote offer.

2. TERM

2.1 This Agreement starts on the Commencement Date specified in Clause 1 and will continue unless terminated until the services have been performed in accordance with this agreement.

2.2 The Applicant engages the Consultant during the term shall provide to the Applicant the services described quote together with such other services as may be agreed from time to time (the "services")

3. APPLICANT'S OBLIGATIONS

3.1 The Applicant acknowledges that should any of the features in the attached plans and specifications be omitted or altered, certificates awarded may be withdrawn.

3.2 The Applicant will provide the Consultant with all necessary and accurate information, documentation and instructions to enable the Consultant to complete the services listed in the Quote.

3.3 The Applicant will provide assistance to the Consultant, as reasonably required, so that the Consultant may competently perform it's the required works under this Agreement

3.4 The Applicant agrees that the Consultant is not responsible for the provision of documentation that does not meet the required Energy Star Rating, based on the documentation provided to the Consultant by the Applicant. Any additional works required by the Consultant as requested by the applicant, to provide advice which can change the Energy Star Rating report will be undertaken at a fee as determined by the Consultant from time to time.

4. DUE DILLIGENCE

4.1 The Consultant shall perform the services as is generally exercised by competent members of the consulting profession performing services of a similar nature, at the time the services are provided.



5. LOCATION OF SERVICES

5.1 The services will be performed at either or both the site of the project (the "Site") or at other places reasonably required by the Applicant. Where the locations of the Consultant's work are not under the Consultant's control (including the Site), the Applicant must provide reasonable access to allow the Consultant to fulfill its obligations (including to provide the Services.)

6. QUOTE

6.1 The Applicant shall pay to the Consultant:

(a) The Quote and the reimbursable expenses as set out in the Quote together with such other amounts in respect of other services agreed to be provided;

(b) reasonable adjustments to the Quote and the reimbursable expenses to reflect the additional costs, expenses, liabilities, losses to other amounts incurred or suffered by the Consultant in the performance of the services and arising out of or in connection with any event or matter beyond the Consultant's control;

6.2 Any additional works not identified in the Quote will be charged at an hourly rate as determined from time to time by the consultant and any disbursements incurred in respect to such additional works will be charged at cost plus 10% and such amounts plus applicable GST will be additional to the Quote and reimbursable expenses specified in the Quote;

6.3 The Consultant may charge additional fees, for additional work as a result of:

(i) A substantial alteration to the project timing as envisaged by the Consultant;

(ii) Additional reporting to the Applicant as envisaged by the Consultant;

(iii) Substantial delay in completing the project which was not caused by the Consultant.

6.4 To the extent that amounts payable under this Agreement are not expressed to be GST inclusive, an additional amount for the GST incurred by the Consultant in relation to the supply of the services will be payable by the Applicant;

6.5 The total amount as specified in the Quote will be fixed for a period of 30 days from the date of the Quote but after such time the Consultant reserves the right to increase the total Quote amount by up to 5% to proceed with the Scope of Works.

7. TIME FOR PAYMENT

7.1 No works will be proceeded with as outlined in the Quote, unless the Quote has been paid for in full.

7.2 The Applicant must pay to the Consultant, without set-off or deductions.

8. CONSULTANT'S LIABILITY

8.1 To the maximum extent permitted by law:

(a) Subject to sub-clauses (b), (c) and (d) below, the Consultant's liability to the Applicant arising out of or in connection with this Agreement (including the performance or non-performance of the services) whether under the law of contract, in tort, in equity, under statute or otherwise, shall be limited in aggregate to the amount specified in the Quote

(b) The Consultant is not liable to the Applicant 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 Consultant shall be deemed to have been discharged from all liability in respect of the services under contract, in tort, in equity, under statute or otherwise, at the expiration of the period specified in the Quote or if no date is specified, on the expiration of 90 days from the completion of the services;

(d) If, and the extent that, any of this clause is void as a result of Section 68 of the Trade Practices Act 1974 then the Consultant's liability for a breach of a condition or warrant is limited to:

(i) The supplying of the relevant services again; or

(ii) The payment of the cost of having the services supplied again.



9. INTELLECTUAL PROPERTY

9.1 Subject to the Applicant complying with its obligations under the Agreement, the Consultant grants to the Applicant a non-exclusive, royalty-free and irrevocable licence to use (and allow others to use) any intellectual property (including all drawings, reports, specifications, bills of quantity, calculations and other documents, including "works, as defined in the Copyright Act 1968 created or produced by the Consultant) arising out of provision of the services ("IP Rights") for the purposes of completing the project. As between the Applicant and the Consultant, the ownership of the IP Rights vests in the Consultant.

10. RESOLUTION OF DISPUTES

10.1 Any dispute or difference ("Dispute") between the Applicant and Consultant maybe notified by a party to the other party and the parties shall:

- (a) Firstly meet to negotiate, in good faith, resolution of the Dispute; and
- (b) Secondly, if negotiation fails to achieve a resolution of a Dispute within 5 working days of the notification of the Dispute, attend mediation, administered in accordance with procedures as set out by the Institute of Arbitrators and Mediators Australia.

Provided shall this provision shall not prevent the consultant from instituting legal action at any time to recover monies owing by the Applicant to the Consultant.

11. GOVERNING LAW

11.1 This Agreement will be governed by and construed in accordance with the law of the State of South Australia and the parties submit to the jurisdiction of the courts of that State.

12. UNAVOIDABLE DELAY

12.1 A party will not be entitled to exercise its rights and remedies upon the default of the other party (whether at Common Law or pursuant to this agreement) if that default –

- (a) Is caused by force majeure; or
- (b) Continues for less than three (3) days

13. WAIVER

13.1 A right under this Agreement will only be waived where the waiver is in writing and signed by the relevant parties.

13.2 A waiver by either party will not prejudice its rights in respect of any subsequent breach of this Agreement by the other party,

14. TERMINATION BY APPLICANT

14.1 The Applicant may, without prejudice to any other rights or remedies it may have by written notice served on the Consultant terminate its obligations under this Agreement:

- (a) if the Consultant is in breach of the terms of the Agreement and the breach has not been remedied within 28 days of a written notice served by the Applicant on the Consultant specifying the breach and requiring the breach to be remedied; or
- (b) Upon the Applicant giving the Consultant 60 days written notice of its intention to do so; or
- (c) If the Consultant informs the Applicant that it is insolvent, becomes bankrupt, or becomes subject to any official management, receivership, liquidation, provisional liquidation, voluntary administration, winding up or external administration, ("Insolvency Event").

15. SUSPENSION OF OBLIGATIONS

15.1 The Consultant may, without prejudice to any other rights or remedies it may have by notice in writing on the Applicant, suspend its obligations under this Agreement;

- (a) Immediately by written notice of the Applicant has failed to pay in accordance with this Agreement; or
- (b) If the Applicant is in breach of any of the other terms of the Agreement and the breach has not been remedied within 10 days (or longer as the consultant may allow) of a written notice served by the Consultant on the Applicant specifying the breach to be remedied.

