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Acumentis®



Valuation,  
Consultancy &  
Advisory Services  
Standard Terms & Conditions



Updated August 2024

Liability limited by a scheme approved under the Professional Standards Legislation

These terms and conditions apply to all valuation, consultancy, or advisory and other services (**Services**) that Acumentis Group ABN 50 102 320 329 of Level 7, 283 Clarence Street Sydney NSW 2000, its subsidiaries, related bodies corporate, licensees, franchisees and affiliates operating under the Acumentis brands (**Acumentis**) performs or provides to you, unless you and Acumentis sign a written agreement that expressly excludes or override these terms and conditions.

## **1 Introduction**

1.1 The agreement between you and Acumentis consists of these standard terms and conditions and any written quote, proposal, submission, annexure or letter signed by an authorised officer of Acumentis, that Acumentis gives you (**Proposal**) confirming Acumentis' proposal to provide valuation, consultancy, or advisory or other services. The Proposal will identify the Acumentis company, subsidiary, related body corporate, licensee, franchisee or affiliate operating under the Acumentis brand providing Services to you, and to whom these terms and conditions apply in their provision of Services to you. The Proposal will also identify the applicable Instructing Party, Applicant and Reliant Party.

## **2 Acceptance**

2.1 Any direction or notification whether written or verbal from you to Acumentis, that indicates that you accept the Proposal and/or that you direct Acumentis to undertake the Services described in the Proposal, is deemed to be your acceptance of these terms and conditions and when an agreement is formed.

2.2 Acumentis may refuse to provide the Services until you (and/or each of the applicable Instructing Party, Applicant and Reliant Party) provide written acceptance of the Proposal and these terms and conditions.

## **3 Term**

3.1 Acumentis will commence the Services on either:

- a) the date that you accept the Proposal or direct Acumentis to provide the Services; or
- b) any other date that you and Acumentis agree in writing or is specified in the Proposal,

and will continue until the Services are complete or Acumentis' engagement is terminated in accordance with these terms and conditions.

## **4 Duties**

4.1 Acumentis will:

- a) exercise reasonable skill and care in performing the Services and will comply with any codes of practice and other standards applicable by law;
- b) use all reasonable efforts to inform itself of your requirements; and
- c) consult with you as Acumentis considers reasonably necessary throughout the performance of the Services.

4.2 You must:

- a) give Acumentis adequate directions and instructions to define your reasonable requirements of Acumentis in performing the Services;
- b) fully disclose to Acumentis all information, documents and other particulars you hold or have access to relating to the Property and the requirements for performing the Services or that Acumentis otherwise reasonably requests;
- c) ensure that all information, documents and other particulars you give Acumentis relating to the Property and the Services are truthful, accurate and complete, and fully and frankly disclosed to Acumentis; and
- d) advise Acumentis in writing of the name of any person you appoint as your representative to act on your behalf for all purposes in connection with Acumentis's provision of the Services, including the giving of instructions to Acumentis and on whose direction Acumentis is entitled to rely as a direction from you. Unless you advise Acumentis accordingly, Acumentis will only take instructions and directions from you or, if you are a company or other organisation, any officers of the company or organisation Acumentis addresses the Proposal or liaises with regarding the Proposal.

4.3 You warrant that:

- a) the instructions and subsequent information, documents and other particulars you supply to Acumentis contain a full and frank disclosure of all information that is relevant to our provision of the Services;
- b) all third-party expert or specialist reports you provide Acumentis for the purpose of Acumentis providing the Services are provided with the authority of the authors of those reports.

## **5 Changes to the scope of Services**

5.1 If any material alteration, addition to or deletion from the Services is required (Variations), Acumentis and you must agree on these Variations in writing, and they are not effective unless and until that occurs.

5.2 If the Services are varied in accordance with clause 5.1, Acumentis is entitled to claim payment for any varied services, and you agree to pay Acumentis in accordance with Acumentis' normal rates or as Acumentis reasonably determines.

## **6 Services solely for Reliant Party's benefit**

6.1 Unless stated otherwise in the Proposal, the Services are provided strictly and solely for the benefit and use of the Reliant Party.

6.2 Except as required by law, you must not provide any documents in respect of the Services (including the Report) to any third party without the prior written consent of Acumentis. Acumentis accepts no liability or responsibility to any third party in respect of the Services (including but not limited to the Report and any third party's use of or reliance on it).

6.3 You cannot assign any Report to a third party without first obtaining the prior written consent of Acumentis, which Acumentis may withhold in its absolute discretion. Acumentis is entitled to make any approval of a request for assignment conditional on payment of an additional fee, payable by you.

## **7 First Mortgage Lending**

- 7.1 Where the purpose of the Report is specifically stated to be for first mortgage lending, you agree that:
- a) the Report will be prepared on the assumption that only the lender specified in the Report, and no other, may rely on the Report for mortgage finance purposes, and that the lender will comply with its own lending guidelines as well as prudent finance industry lending practices, and will consider all prudent aspects of credit risk for any potential borrower, including the borrower's ability to service and repay any mortgage loan. Further, the Report will be prepared on the assumption that any such lender is providing mortgage finance at a conservative and prudent loan to value ratio;
  - b) no guarantor of any loan or any mortgage insurer may rely on the valuation, consultancy, or advisory;
  - c) the Report cannot be relied on for mortgage security purposes for a managed investment scheme where the principal/primary and/or substantial purpose is for the provision of tax benefits to investors, or where the Property is involved in any form of direct or indirect investment in primary production;
  - d) the Report cannot be relied on for solicitor introduced mortgages, including but not limited to any loans emanating from solicitor controlled managed mortgage fund, or solicitor private lending fund and/or scheme, and/or arrangement, but shall not include a mortgage fund registered as a Managed Investment Scheme.
- 7.2 Acumentis reserves the right, in its absolute discretion, to determine whether to address the Report to any financier (who may be the Reliant Party).
- 7.3 Acumentis does not make any guarantee, promise, warranty, representation or undertaking that the submission of the Report as part of a loan/finance application will result in mortgage finance being obtained.
- 7.4 If the Report has not been prepared for first mortgage lending purposes, then it cannot be relied upon for first mortgage lending purposes.

## **8 Reliance**

- 8.1 This valuation, consultancy, or advisory is for the private and confidential use only of the reliant party and for the specific purpose for which it has been requested.
- 8.2 The report is not to be relied upon by any other person, or for any other purpose.
- 8.3 We accept no liability to third parties, nor do we contemplate that this report will be relied upon by third parties. Any parties who may seek to rely on this report must seek the specific written consent from Acumentis.
- 8.4 We reserve the right to withhold our consent or to review the contents of this report in the event that our consent is sought.
- 8.5 If you have instructed us to undertake a kerbside restricted assessment or desktop assessment of any kind, or if you have instructed us not to undertake a full internal and external inspection, you hereby provide your agreement to our non-inspection or partial inspection of the relevant property being assessed, and you accept the inherent risk of potential inaccuracy arising from a limited inspection, and you agree to hold us harmless in the case of any loss arising from reliance on our report/advice.

## **9 Reports**

- 9.1 Reports are valid only for a period of 90 days from the date of valuation, consultancy, or advisory service.
- 9.2 Due to possible changes in the property market and circumstances of the Property, the Services and Report can only be regarded as relevant as at the date nominated in the report. Any value specified in a Report may change significantly and unexpectedly at any time, including but not limited to as a result of general market changes or factors specific to the particular property. You accept the risks associated with market movement after the date of assessment, including without limitation, any fall in the market value of the Property.
- 9.3 Our provision of the Services is subject to the basis of valuation, consultancy, or advisory qualifications and disclaimers and conditions as outlined in the Report. Acumentis does not represent it is expert in the areas including but not limited to Surveying, Building Certification(s), Quantity Surveying, Engineering, Town Planning, or Environmental Consultants.
- 9.4 All land areas, building areas and lettable areas referred to in a Report are approximate, and even professional surveyors can differ in relation to the measurement of areas. If you subsequently ascertain that areas referred to in a Report differ from other information provided to you, you agree to refer the Report back to Acumentis for comments and, where appropriate in Acumentis' opinion, amendment.
- 9.5 Acumentis will not, nor is Acumentis required to, inspect those parts of the Property that are unexposed or not accessible.
- 9.6 Reports will be based on:
- a) information and data generally available at the date of valuation; and
  - b) the information you provide Acumentis about the Property, and will not reflect future values or predictions.
- 9.7 You agree that:
- a) any errors in the documents, information and other particulars you provide Acumentis about the Property; or
  - b) your failure to provide or fully disclose to Acumentis information about the Property of which you are aware or ought to reasonably be expected to be aware,
- could result in errors in the Report, for which Acumentis will not be liable or responsible.
- 9.8 You agree that if you delay in giving Acumentis adequate directions and instructions to define your reasonable requirements of Acumentis in performing the Services, or delay in making available to Acumentis all information, documents and other particulars you hold or have access to relating to the Property and the requirements for performing the Services or that Acumentis otherwise reasonably requests, Acumentis' performance of the Services and completing of any Report might also be delayed. Acumentis will not be responsible for any delays that you cause or contribute to.
- 9.9 If the Report is required for capital / equity raising purposes, you must instruct Acumentis clearly in this regard.

## **10 Records and documents**

- 10.1 Neither the whole or any part of any documents Acumentis produces (including but not limited to Reports) or any reference to same may be included in any published document, circular or statement without Acumentis' prior written consent, including as to the form and context in which it may appear. Acumentis may withhold its consent in its absolute discretion. Acumentis is entitled to make any approval of a request for consent conditional on payment of an additional fee and/or provision of an indemnity from you to Acumentis on terms Acumentis requires.
- 10.2 Subject to any laws to the contrary, it is Acumentis' practice to destroy documents and records belonging to Acumentis after they are more than 10 years old. You consent to Acumentis destroying any documents that belong to you which become filed amongst Acumentis' own papers. You agree that these data retention arrangements are acceptable.
- 10.3 Acumentis has a Privacy Policy, full details of which are available on our web site at [www.acumentis.com.au](http://www.acumentis.com.au). You agree to Acumentis collecting and using your personal information in accordance with its Privacy Policy, as amended from time to time.

## **11 Fees and expenses**

- 11.1 Acumentis' fees for the Services will be charged on the basis set out in the Proposal, or as Acumentis and you otherwise agree in writing. GST at the prevailing rate will be added and forms part of Acumentis' fees.
- 11.2 You remain liable to Acumentis for payment of Acumentis' fees, even if you ask someone else to pay Acumentis' fees on your behalf.
- 11.3 Unless Acumentis otherwise agrees in writing, fees and expenses will be invoiced either before the Services are commenced, monthly, on completion of the Services or at any intervals set out in the Proposal and are payable in accordance with Acumentis' tax invoices.
- 11.4 If you instruct Acumentis to proceed with the Services and subsequently cancel after Acumentis has inspected the Property (but before Acumentis provides the Report), you must pay Acumentis any cancellation fee specified in the Proposal. If a cancellation fee is not specified in the Proposal, the following cancellation fees apply, a cancellation fee to the maximum of \$500 or 20% of the quoted fee before inspection of the subject property, a cancellation fee of 50% of the quoted fee post inspection of the property and prior to report commencement, a cancellation fee of 75% of the quoted fee post inspection of the property and prior to report issue and a cancellation fee of 85% of quoted fee after issue of a preliminary consultancy (where relevant). If you pre-pay any fees, Acumentis is entitled to deduct the cancellation fee before refunding any balance to you.
- 11.5 Unless the Proposal states that Acumentis' fees for the Services are inclusive of all expenses and disbursements, Acumentis will charge you for reasonable out-of-pocket expenses and disbursements such as title searches, travel, accommodation, inquiry and report fees etc incurred in connection with the Services. The charges will be calculated as the amounts Acumentis incurs (net of any GST input tax credit to which Acumentis is entitled) plus GST as applicable.
- 11.6 If you fail to pay an amount to Acumentis on the date it is due, Acumentis may charge you interest on the outstanding amount at 10% per annum from the date on which the amount became due and payable until payment is made. Any interest accrued under this clause is payable on the date payment of the outstanding amount is made. You must reimburse Acumentis all costs (including legal costs on a solicitor-client basis) Acumentis incurs in recovering overdue amounts from you.
- 11.7 Debt Recovery Costs: If the fee is not paid and Acumentis undertakes debt collection activities, then the client will be required to pay all recovery costs incurred by Acumentis. These costs may include recovery agent costs, repossession costs, location search costs, process server costs, solicitor costs (on a solicitor / client basis), debt collection commission and legal fees on an indemnity basis. *Please note, debt collector services are only undertaken once all avenues of payment have been extinguished.*

## **12 Confidentiality**

- 12.1 Each party must keep confidential any confidential or proprietary information that one party provides to the other, except:
- where the party who gives the information consents to disclosure;
  - as may be required to be disclosed by law or to defend itself against a suit or action; or
  - where information is already publicly known.

## **13 Sub-contractors**

- 13.1 Acumentis may engage sub-contractors to perform all or any part of the Services, however, Acumentis remains liable to you for any of the Services that are provided by Acumentis' sub-contractors. Acumentis is not required to disclose to you the involvement of any sub-contractors.

## **14 Termination**

- 14.1 Acumentis may terminate its appointment to provide you with the Services, for any reason, on written notice to you. Termination will be without prejudice to either party's accrued rights and obligations incurred prior to the date that termination becomes effective.

## **15 Liability**

- 15.1 The liability of Acumentis is limited by a scheme approved under Professional Standards Legislation.
- 15.2 Notwithstanding Clause 15.1, to the full extent permitted by law you agree that Acumentis' liability to you (including but not limited to any liability for fraud, negligence, breach of contract or otherwise) in any way whatsoever, including performance of the Services and the Report, is strictly limited, in Acumentis' sole discretion, to either the fee paid or payable for the Services or Report, or the cost of providing the Services or Report again.
- 15.3 Where the *Competition and Consumer Act 2010 (Cth)* or other laws imply or confer warranties, conditions or guarantees or any other rights in this agreement, and it is not lawful or possible to exclude them, then those warranties, conditions or guarantees or other rights will (but only to the extent required by law) apply to this agreement. To the full extent permitted by law, Acumentis' liability in respect of such warranties, conditions or guarantees is limited to the supply of the Services or Report again or the cost of having the Services or Report supplied again.
- 15.4 Acumentis will not be liable for loss of business, revenue, contracts, savings or consequential losses that you may incur as a direct or indirect result of, or howsoever incurred by you in connection with, Acumentis' performance of the Services or provision of any Report.

- 15.5 Where the report provides an insurance assessment, to the maximum extent permitted by law, commencing on the earliest of one year from:
- a) The date of completion of the Services;
  - b) The date of our final invoice for the provision of the Services; or
  - c) The date this Agreement is terminated;
- you release us from, and agree that you are estopped from commencing, any claim for any Loss in relation to:
- i. The performance or non-performance of the Services; and
  - ii. Any act or omission in connection with the Services;
- whether in tort (including negligence), equity, pursuant to statute or otherwise.

## **16 Dispute Resolution Clause**

- 16.1 If a dispute arises between you and Acumentis, the complainant must send a written notice to the other party setting out the nature of the dispute, what outcome the complainant wants and what action the complainant thinks will settle the dispute.
- 16.2 The parties must then try to resolve the dispute by mutual negotiation. If the parties are unable to resolve the dispute within 21 days, either party may by notice in writing advise the other party that it seeks to have the dispute resolved by mediation.
- 16.3 If the parties cannot agree on a mediator, then either party may ask the Law Society in the appropriate state or territory to appoint a mediator (the Mediator).
- 16.4 The Mediator will determine a time and a place for mediation. The parties must attend the mediation as determined by the Mediator and try to resolve the dispute.
- 16.5 The parties will be equally liable for the costs of mediation unless they agree otherwise. The parties must pay for their own costs of attending the mediation.
- 16.6 If the dispute is not resolved at mediation either party may then commence court proceedings relating to the dispute.

## **17 Severance**

- 17.1 If any provision of these terms and conditions is held to be prohibited, invalid or unenforceable in any jurisdiction:
- a) that provision is ineffective to the extent of the prohibition, invalidity or unenforceability in that jurisdiction, and
  - b) the remaining provisions of these terms and conditions are not affected.

## **18 Intellectual Property**

- 18.1 All intellectual property rights and all other rights in reports, drawings and accounts, including but not limited to any Reports and other documentation created, prepared or produced by Acumentis in relation to Acumentis' performance of the Services, shall be exclusively owned by and remain vested in Acumentis.

## **19 Governing law**

- 19.1 These terms and conditions are governed by the law in force in the state or territory in which Acumentis performs the Services and the parties submit to the non-exclusive jurisdiction of the courts of, or exercising jurisdiction in, that state or territory.

## **20 Miscellaneous**

- 20.1 In these terms and conditions, unless the context indicates a contrary intention:
- a) **Applicant** means the party identified in the Proposal as the "Applicant", if any;  
**Instructing Party** means the party identified in the Proposal as the "Instructing Party", if any;  
**Acumentis** means the entity within the corporate group of Acumentis Group Limited that provides the Services and includes its subsidiaries, related bodies corporate, licensees, franchisees and affiliates operating under the Acumentis brands. The Acumentis entity providing the Services to you will be stated in the Proposal;  
**Property** means any properties in relation to which you ask Acumentis to perform valuation, consultancy, or advisory or other services, which may be detailed in the Proposal;  
**Reliant Party** means the party identified in the Proposal as the "Reliant Party", if any;  
**Report** means any valuation, consultancy or advisory report that Acumentis provides to you that is prepared and signed by a valuer representing Acumentis and formally issued to you; and  
**You & your** means any party to who Acumentis directly or indirectly provides Services, including Reports, and includes the Instructing Party, the Applicant and the Reliant Party, jointly and severally.
  - b) a reference to:
    - the singular includes the plural and vice versa;
    - an individual or person includes a corporation, partnership, venture, association, authority, trust, state or government;
    - time is to time in the state or territory where the Services are performed;
    - a day is to a period of time commencing at midnight and ending 24 hours later;
    - a month is to a calendar month;
    - where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
    - any headings in this document are for convenience only and do not affect interpretation; and
    - including and similar expressions are not to be treated as words of limitation.
- 20.2 Unless expressly stated to the contrary in the quote, proposal, submission, annexure or letter of which these standard terms and conditions form part, if there is any inconsistency between these standard terms and conditions and the quote, proposal, submission, annexure or letter, these terms and conditions prevail to the extent of the inconsistency. These terms and conditions apply to the exclusion of any order form, terms and conditions or document that you issue to Acumentis.