

LARKI Customer Terms and Conditions

1. Application

These Terms apply to the provision of Services and/or Deliverables by LARKI to the Customer. In submitting a Survey Request, the Customer agrees to be bound by these Terms.

2. Definitions

In these Terms:

“ACL” means the Australian Consumer Law as set out in Schedule 2 of the Competition and Consumer Act 2010 (Cth).

“Additional Fees” means fees payable by the Customer to LARKI over and above the Customer Price in accordance with these Terms or as otherwise agreed by the Customer.

“Business Day” means a day that is not a Saturday, Sunday or public holiday in the jurisdiction in which the Site is Located.

“Confidential Information” means all or any information concerning the business or affairs of a party, whether or not recorded in a material form, which is marked as being confidential or which, from its content or format, ought to reasonably be treated as being confidential and is not generally made available to the public.

“Customer” means a person or legal entity to whom LARKI provides Services and includes a person or legal entity who submits a Survey Request to LARKI or makes a purchase from LARKI.

“Customer Information” means any information owned by the Customer and provided to LARKI under or in connection with these Terms, including information containing any Intellectual Property rights.

“Customer Price” means the price payable by the Customer to LARKI for the Services and Deliverables as shown on the Website, in a proposal, email or other written means from LARKI quoting prices.

“Data Supplier” means an independent third party which provides data to LARKI for the purpose of inclusion in a Deliverable.

“Deliverables” means land surveying, spatial, architectural, property or planning data, information, knowledge, survey, diagrams, drawings, documents, three dimensional models or other outcome of Services performed by LARKI or LARKI’s Data Suppliers and intended to be conveyed to the Customer in consideration of the Customer Price.

“GST” means any tax including any additional tax imposed on the supply of or payment for goods or services which is imposed or assessed under the A New Tax System (Goods and Services Tax) Act 1999 and all related and auxiliary legislation.

“Intellectual Property” means all intellectual property and proprietary rights (whether registered or unregistered) including Confidential Information, algorithms, applications, artwork, blocks, business names, code, concepts, copyright, designs, digital files, digital models, discoveries, drawings, financial information, ideas, inventions, instructions, know-how, logos, marketing information, methods, moral rights, patent applications, patents, patterns, plates, processes, products, proposals, services, service marks, software, systems, specifications, tag lines, templates, training, trade secrets, and trademarks.

“LARKI” means LARKI Pty Ltd, (ABN 35 615 835 660) and, where the context requires, its contractors, agents and employees.

“Purpose” means (and is limited to) the purpose or use of the Services and/or Deliverables as stated in the Survey Request, including but not limited to architectural design, urban design, landscape design, property development, urban planning, authority assessments, construction, engineering, physical asset registers, or facility management.

“Scope Area” means the geographic or spatial extent forming the subject of a Services and/or Deliverables which will include all or part of the Site and might extend beyond the Site.

“Services” means the services performed by LARKI or LARKI’s Data Supplier in order to deliver the Deliverables to the Customer.

“Site” means the property titles, street addresses, or locations over which the Customer has ownership, control or authority to give LARKI and/or Data Suppliers access to perform the Services and/or Deliverables.

“Survey Request” means a request, brief or instruction submitted or accepted by the Customer via Website, email or other written means, for LARKI to provide a certain Service and/or Deliverable. A Survey Request could be a written document, proposal or Website information provided by LARKI and acknowledged by the Customer as the Services and/or Deliverables to be provided.

“Site Access Period” means the day and time that LARKI or Data Suppliers will be on Site in order to perform the Services and supply Deliverables.

“Terms” means these Terms and Conditions as amended by LARKI from time to time.

“Website” means the LARKI website located at www.larki.info, www.larki.com.au, 3dlandsurveying.com.au or other website managed by LARKI.

3. Services and Deliverables

3.a. LARKI will perform the Services and/or supply the Deliverables requested by the Customer in their Survey Request in accordance with the Scope Area and description provided by LARKI on the Website or other document provided by LARKI to Customer.

3.b. LARKI will provide a proposal, via Website, proposal web app, email or other written means, which might include certain options. Once Customer selects the options they want (or accepts the options selected for them) and accepts the proposal, then the selected parts of the proposal and the remaining mandatory parts of the proposal become the Survey Request while the options not selected will be excluded from the Service and/or Deliverables.

3.c. Together with the supply of the Deliverables, LARKI will notify Customer of the approximate date that the data was originally collected from the Scope Area.

3.d. Deliverables are provided exclusively for the benefit of the Customer, for the Purpose and for the Site only as stated in the Survey Request. No third party is entitled to use or rely on any Service, Deliverable or information provided by LARKI, and/or for any other purpose and/or for any other site other than that stated in the Survey Request without LARKI’s prior written consent.

4. Timing

4.a. LARKI will use reasonable endeavours to provide the Services and/or Deliverables in accordance with times indicated on the Website, proposal or otherwise notified to the Customer, but time will not be of the essence, the

Customer will still be required to pay the Customer Price to LARKI for the Services and/or Deliverables and LARKI will not be liable to the Customer if such delivery does not occur within the times indicated by LARKI.

4.b. Inclement weather or other circumstances on Site or Scope Area outside of LARKI's control may require changes to the Site Access Period, Deliverables timing and Data Supplier.

5. Price and Payment

5.a. Customer Prices will be as set by LARKI via Website, email or other written means. LARKI may amend Customer Prices at any time and such amended Customer Prices will apply to Survey Requests submitted following after the amendment. A quotation or proposal (including the Customer Price quoted therein) notified to Customer will expire within 5 Business Days from the date of the quotation or proposal, unless stated otherwise by LARKI.

5.b. The Customer must pay the Customer Price in full (including GST) by direct debit, LARKI's provided online payment portals or other method instructed or approved by LARKI. Full payment of the Customer Price must be received by LARKI before LARKI is obliged to provide the Deliverables to the Customer, unless otherwise agreed by LARKI in writing.

5.c. Customer is solely responsible for any additional payment processing fees added for Paypal, credit cards or other payment methods that attract additional costs.

5.d. If Customer Price has not been received by LARKI beyond the agreed payment due date, then a late payment charge will be payable at the rate of 1.5% per month compounded monthly (annual equivalent rate of 19.56%), or other amount quoted by LARKI, on any part of the invoice that remains unpaid by the Customer from the date payment is due until the date such payment are received by LARKI. Additional costs incurred by LARKI (including for debt recovery) associated with overdue payments must also be paid by the Customer.

5.e. Additional Fees must be paid by the Customer to LARKI if Services, Deliverables, work or equipment are requested by Customer that are outside of Survey Request or Site Access Period as agreed by the Customer or reasonably outside of LARKI's control such as weather, natural disasters, war or pandemics. Additional Fees will be charged at:

5.e.i.	Director	\$220.00	per hour plus GST;
5.e.ii.	Manager	\$180.00	per hour plus GST;
5.e.iii.	Site Surveyor	\$160.00	per hour plus GST;
5.e.iv.	Modeler / Draftsperson	\$100.00	per hour plus GST;
5.e.v.	Assistant	\$70.00	per hour plus GST;
5.e.vi.	Site Data Collection	\$1000.00	per day plus GST; or
5.e.vii.	otherwise stated by LARKI.		

Any additional time on Site and/or Scope Area not in the agreed Site Access Period factored into the original Customer Price shall be charged as an additional Site Data Collection which is an additional whole day.

5.f. In addition to the Customer Price, the Customer will pay for, or reimburse LARKI for any out-of-pocket expenses or disbursements in providing the Services and/or Deliverable, including but not limited to:

5.f.i. Fees, taxes, levies or charges paid to authorities;

- 5.f.ii. Services for access (such as working with children, security, health checks or inductions);
- 5.f.iii. Preparation of submissions and attendance at Tribunals;
- 5.f.iv. Special presentation material, videos and renderings;
- 5.f.v. Rental of special equipment (such as tripods higher than standard 2 metres or cherry pickers);
- 5.f.vi. Rental of safety equipment (such as scaffolding or gas masks);
- 5.f.vii. Traffic management;
- 5.f.viii. Photographic or video records;
- 5.f.ix. External hard-drives;
- 5.f.x. Telephone calls other than local;
- 5.f.xi. Postage, air freight and courier services; and
- 5.f.xii. Printing.

To the extent any individual expense is greater than \$50, LARKI will seek approval from the Customer in advance of incurring the expense. The Customer should note that a delay to approval of these expenses or paying for them may incur delays and/or Additional Fees.

6. Access to the Site and Scope Area

6.a. Customer is responsible for providing timely and adequate information, such as photographs, plans, and descriptions, for LARKI to understand the Site and Scope Area in order to provide appropriate Customer Price, Services & Deliverables. Customer should inform LARKI with sufficient time prior to formulating the Customer Price if any information, equipment or service is required to gain safe and timely access to the Scope Area and visibility of the subject of the Deliverables (but not limited to): dense vegetation, high fences, hidden areas, areas that need pre-approval for access (working with children, health checks, whitecards, or site induction), areas of restricted access, moving elements (animals, traffic, people), obstructions (parked vehicles, furniture, bins, signs), privacy issues, ground that is too steep to setup up a tripod, low head room, safety issues, unconventional building elements, or the need for traffic management, scaffolding, tripods higher than standard 2 metres or cherry pickers.

6.b. The Customer Price is based on information provided by the Customer and from information that LARKI can ascertain from quick web searches but is not based on LARKI attending the Scope Area nor Site in person. If LARKI has to attend to the Scope Area or Site in person on a time outside of the Site Access Period then LARKI reserves the right to charge Additional Fees.

6.c. If it takes LARKI or LARKI's representative more than the greater of 3 attempts or 30 minutes' time in aggregate to get the Site Access Period approved by the Customer, the Customer's agent, tenants or neighbours, then LARKI reserves the right to charge Additional Fees.

6.d. Customer will provide timely access to all areas required for LARKI or Data Suppliers to perform the Services and/or provided the Deliverables, including all doors and gates unlocked and open-able for the duration of the Site Access Period.

6.e. Unlocking, security and lock up are the responsibility of the Customer.

6.f. Customer is solely responsible to ensure that the Site is safe and there is clear access from ground level and that there is visibility of the subject of the

Deliverables in order that LARKI and/or Data Suppliers can perform the Services necessary to create the Deliverables during the agreed Site Access Period.

6.g. Customer must pay to LARKI its reasonable out of pocket costs associated with any safety or access work or equipment to gain safe and timely access to the Scope Area and Site and visibility of the subject of the Deliverables.

6.h. If LARKI and/or Data Suppliers cannot get access during the Site Access Period or there is more than a total of 30 minutes waiting time in aggregate for LARKI and/or Data Supplier to gain access or visibility, then Deliverables will be issued to the extent possible (which may include reduction in Deliverables) within the given time, access and visibility and Customer will pay the full Customer Price and/or LARKI reserves the right to charge Additional Fees.

6.i. Unless otherwise stated by LARKI, the quoted Customer Price is assumed to include that the Services requires that the Site Access Period is for no more than a total of seven hours on the same Business Day anytime from 7am to 5pm only. If an additional day or time is necessary (in the opinion of LARKI) then LARKI will discuss in advance with Customer and LARKI reserves the right to charge Additional Fees.

7. Data Suppliers and Communication

7.a. Customer Price may include: bulk, wholesale or negotiated discount arrangements between LARKI's Data Suppliers and LARKI, LARKI's management time, and factor in LARKI's ability to resell aspects of the Services and/or Deliverables that are not private or can be captured from public areas. If actions of the Customer cause LARKI to lose Data Supplier arrangements, time, and/or the ability to resell data then LARKI will be suffering a commercial loss.

7.b. If the Customer contacts a Data Supplier directly and/or other actions of the Customer cause LARKI a loss or future loss, then the Customer agrees to pay LARKI an additional 50% of the Customer Price on top of the Customer Price as a genuine pre-estimate of LARKI's lost future earnings, and/or LARKI reserves the right to add Additional Fees for the time spent managing and negotiating with Data Supplier.

7.c. In the event that the Customer requires further information, has queries relating to the Services or Deliverables or is unsatisfied, the Customer should contact a senior LARKI staff member only (such as Founder, Director or Manager). LARKI contact details can be found on the Website and LARKI email footers. The Customer must not contact LARKI's Data Supplier directly, unless authorized by LARKI.

7.d. Should LARKI's Data Supplier contact the Customer for any reason, the Customer should refer the Data Supplier to LARKI to avoid omissions, miscommunication or Additional Fees.

8. Confidentiality and Privacy

8.a. Each party must treat as confidential, the Confidential Information of the other party. The party who receives Confidential Information from the other party must not without the prior written consent of the other party:

8.a.i. use it except in performing its obligations under this Agreement or as otherwise specified in this Agreement; or

8.a.ii. disclose it to any person except those of its personnel and then only to those personnel who need to know the same and who agree to be bound by these obligations of confidentiality.

8.b. The exceptions are where:

8.b.i. disclosure is required by law;

8.b.ii. Confidential Information is in the public domain through no fault or action of the recipient or its personnel; or

8.b.iii. Confidential Information was received by the recipient on a non-confidential basis from a third party who is entitled to disclose it.

9. Consumer Rights and Remedies

9.a. If LARKI supplies a Customer who is covered by ACL, LARKI's liability for failure to comply with a consumer guarantee is limited to supplying the Deliverables again or paying the cost of having the Deliverables supplied again.

9.b. If the failure constitutes a major failure under the ACL, the Customer may terminate the contract for the supply of goods or services or recover compensation for any reduction in value of the Services.

10. Limitation of Liability

10.a. Terms, conditions, warranties and guarantees implied by Law, which cannot be excluded, restricted or modified apply to this Agreement to the extent required by that Law.

10.b. LARKI excludes to the extent permitted by Law all other terms, conditions, warranties, guarantees, merchantability or fitness for any particular purpose which might be implied into this Agreement.

10.c. If LARKI supplies Services or Deliverables to a Customer who is not covered by ACL, LARKI provides the Deliverables on an "as is" basis. Although LARKI agrees to use reasonable commercial endeavours to ensure accuracy and reliability of the Deliverables, LARKI does not warrant the accuracy of the Deliverables, and is not liable for inaccuracies or omissions caused through inaccuracies, omissions, or other technical failure of data supplied by LARKI, Data Suppliers, third parties or by the Customer.

10.d. Customer acknowledges that in entering this Agreement, it has not relied on any promise, warranty, or representation not expressly set forth in this Agreement.

10.e. LARKI will not under any circumstance be liable to the Customer in respect of any indirect, consequential or special losses (including loss of profit, holding costs, loss of business opportunity and payment of liquidated sums or damages under any other agreement). Subject to any rights which Customer may have under the ACL, in no circumstances will LARKI's liability to the Customer exceed the Customer Price actually received LARKI from the Customer for the Services and/or Deliverables.

10.f. Customer indemnifies LARKI, Data Suppliers, its employees, agents and contractors (those indemnified) for any losses, damages, costs and/or expenses incurred or sustained by those indemnified to the extent caused by negligent or unlawful conduct of the Customer, or their respective employees, agents or contractors arising from a breach of these terms or the use of the Services or Deliverables for any anything other than the Purpose.

11. Insurance and Risk

11.a. The Customer must make enquiries and be satisfied with:

- 11.a.i. the level of Professional Indemnity or other insurance cover, which may include no insurance in certain circumstances, of LARKI and Data Suppliers;
 - 11.a.ii. LARKI's limits of liability as set out above;
 - 11.a.iii. the fitness for purpose of the Services and/or Deliverables provided by LARKI or Data Supplier; and
 - 11.a.iv. LARKI not warranting or representing the performance, coverage or continued availability of the Services and/or Deliverables.
- 11.b. Any Services, Deliverables or any other information supplied to Customer *pro bono* or without LARKI's knowledge will be used at the Customer's own risk.
- 11.c. Where LARKI resells or distributes a Data Suppliers data, then the Data Supplier is exclusively responsible for its accuracy or defects, not LARKI.
- 11.d. Customer is solely responsible to implement its own error check and verification measures with respect to both Customer Information and the Deliverables. Customer must ensure that Deliverables intended for use in a critical application are independently checked and verified prior to use.
- 11.e. Parts of Deliverables provided by LARKI are more accurate than others. For example:
- 11.e.i. a tripod-captured point cloud from a survey-grade laser scanner is usually more accurate than an aerial photogrammetry point cloud; and
 - 11.e.ii. a tripod-captured point cloud from a survey-grade laser scanner is usually more accurate than a two dimensional line drawing or three dimensional surface or object-oriented model.

Customer is solely responsible to be specific about their accuracy requirements as part of the Survey Request. In the absence of specific accuracy requirements notified to, and agreed to by LARKI in the Survey Request, any shortfall in accuracy of the Deliverables is deemed not to be a defect in the Deliverables.

12. Intellectual Property Rights

12.a. No Intellectual Property rights are transferred to the Customer through the provision of Services, Deliverables or any information transmitted by LARKI. LARKI and Data Suppliers retains all right, title and interest in and to their Intellectual Property rights in Deliverables. LARKI reserves the right to use the Deliverables and the Intellectual Property therein for any purpose without notifying nor providing any consideration to the Customer.

12.b. The Customer grants to LARKI a license of such Intellectual Property rights in Customer Information as are necessary to enable LARKI to perform the Services and provide the Survey in accordance with these Terms.

12.c. LARKI grants to the Customer a limited license to use the Deliverables for the Purpose and solely in respect of the Site stated in the Survey Request or proposal from LARKI. Customer is not permitted to reproduce or distribute or sublicense the Services and/or Deliverables (in whole or in part), or any part of LARKI's Website, other than for the specific Purpose stipulated in the Survey Request or proposal from LARKI.

13. Cancellation, Amendment or Transfer

13.a. In the event that Customer cancels a Survey Request more than 3 Business Days prior to an Site Access Period or estimated Deliverables delivery date (regardless of whether Site access has been agreed or not), then the Customer is responsible to pay to LARKI a cancellation fee of the greater of \$1000 plus GST

or 10% of the Customer Price in the Survey Request; and Customer must pay to LARKI any costs incurred by LARKI (including payments committed to any third party which cannot be redeemed) in fulfilling the Survey Request up to the time of the cancellation or amendment. The cancellation fee is to cover preparation, resourcing, reallocation and associated costs.

13.b. If the Customer cancels or amends the Survey Request within 3 Business Days prior to an agreed Site Access Period or estimated Deliverables delivery date then the Customer Price must still be paid in full. It is therefore important to ensure that details submitted in a Survey Request are correct.

13.c. Customer may submit an additional Survey Request at any time and LARKI may (in its discretion) agree to provide the additional Services and/or Deliverables.

13.d. The Survey Request cannot be transferred to third parties unless agreed by both the Customer and LARKI via email or other written means.

14. General

14.a. Any waiver by LARKI of any of these Terms must be in writing signed by LARKI and will be effective only to the extent specifically set out in the waiver.

14.b. Time is of the essence in relation to all the Customer's obligations under these Terms.

14.c. If any provision or part of a provision of these Terms is found to be unenforceable, it is to be severed from these Terms and will not affect the operation or enforceability of the remaining provisions.

14.d. This document is governed by the federal and state laws of Australia, and the parties submit to the nonexclusive jurisdiction of the courts of that state in which the Site exists.

14.e. These Terms may be varied at any time by LARKI by written notice to the Customer or by posting notice on its website. Any variation will be effective from the date on which it is notified.

14.f. These Terms, together with the Survey Request, constitute the complete agreement between LARKI and the Customer in relation to the supply of the Survey and information by LARKI to the Customer.