

**1 Definitions**

- 1.1 "Consultant" means Chemsafety Ltd, its successors and assigns, or any person acting on behalf of, and with the authority of, Chemsafety Ltd.
- 1.2 "Client" means the person/s requesting the Consultant to provide the Services as specified in any invoice, document or order, and if there is more than one person requesting the Services, is a reference to each person jointly and severally.
- 1.3 "Services" means all Services provided by the Consultant to the Client at the Client's request from time to time.
- 1.4 "Documentation" means any reports, documents, designs, drawings or other materials provided, utilised or created incidentally by the Consultant in the course of it conducting, or providing to the Client, any Services.
- 1.5 "Fee" means the price payable for the Services as agreed between the Consultant and the Client in accordance with clause 5 of this contract.
- 1.6 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this contract, either party's Intellectual Property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information and pricing details, but excludes information generally available in the public domain (without unauthorised disclosure under this contract), received from a third party entitled to disclose it or that is independently developed.

**2 Acceptance**

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for, or accepts Services provided by the Consultant.
- 2.2 These terms and conditions may only be amended with the Consultant's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Consultant.
- 2.3 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 22 of the Electronic Transactions Act 2002 or any other applicable provisions of that Act or any Regulations referred to in that Act.

**3 Change in Control**

- 3.1 The Client shall give the Consultant not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by the Consultant as a result of the Client's failure to comply with this clause.

**4 Authorised Representatives**

- 4.1 Unless otherwise limited as per clause 4.2, the Client agrees that should the Client introduce any third party to the Consultant as the Client's duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Services, and/or any variation thereto, on the Client's behalf (such authority to continue until all requested Services have been completed, or the Client otherwise notifies the Consultant in writing that said person is no longer the Client's duly authorised representative).
- 4.2 In the event that the Client's duly authorised representative as per clause 4.1 is to have only limited authority to act on the Client's behalf then the Client must specifically and clearly advise the Consultant in writing of the parameters of the limited authority granted to their representative.
- 4.3 The Client specifically acknowledges and accepts that they will be solely liable to the Consultant for all additional costs incurred by the Consultant (including the Consultant's profit margin) in providing any Services, or variation/s thereto, requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 4.2 (if any)).

**5 Fee and Payment**

- 5.1 At the Consultant's sole discretion the Fee shall be either:
  - (a) as indicated on any invoice provided by the Consultant to the Client; or
  - (b) the Consultant's quoted Fee (subject to clause 5.2 and a site inspection) which will be valid for the period stated in the Consultant's quotation or otherwise for a period of thirty (30) days.
- 5.2 The Consultant reserves the right to change the Fee:
  - (a) to include any reimbursable expenses (including, but not limited to, travelling costs, government and application fees, search fees, photocopies, advertisements and notices, air freight and courier services, rental of special equipment, parking and fares, accommodation, telephone, facsimile and other incidental costs and expenses, etc.); or
  - (b) if a variation to the Services (including any variation to the Client's brief or specifications) is requested; or
  - (c) in the event of increases to the Consultant in the cost of labour or materials, which are beyond the Consultant's control; or
  - (d) where additional costs are incurred by the Consultant due to unexpected delays, or receipt of approvals or permits, additional site visits, access to an assessment area not being available as was agreed or when pre-arranged.
- 5.3 At the Consultant's sole discretion, a non-refundable deposit may be required.
- 5.4 Time for payment for the Services being of the essence, the Fee will be payable by the Client on the date/s determined by the Consultant, which may be:
  - (a) on completion of the Services; or
  - (b) by way of instalments/progress payments in accordance with the Consultant's payment schedule; or
  - (c) twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices; or
  - (d) the date specified on any invoice or other form as being the date for payment; or
  - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Consultant.
- 5.5 Payment may be made by bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to three percent (3%) of the Fee), or by any other method as agreed to between the Client and the Consultant.
- 5.6 Unless otherwise stated the Fee does not include GST. In addition to the Fee the Client must pay to the Consultant an amount equal to any GST the Consultant must pay for any provision of Services by the Consultant to the Client under this contract or any other agreement. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Fee.

In addition the Client must pay any other taxes and duties that may be applicable in addition to the Fee, except where they are expressly included in the Fee.

5.7 The Client acknowledges and agrees that the Client's obligations to the Consultant for the provision of the Services shall not cease (and where it is intended that any ownership of the Documentation shall pass, it shall not pass) until:

- (a) the Client has paid the Consultant all amounts owing for the particular Services; and
- (b) the Client has met all other obligations due by the Client to the Consultant in respect of all contracts between the parties.

5.8 Receipt by the Consultant of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Consultant's ownership or rights in respect of the Services, and this contract, shall continue.

## **6 Client's Responsibilities**

6.1 The Client shall:

(a) (at their own cost) as soon as practicable:

- (i) make available to the Consultant all information, documents and other particulars relating to the Client's requirements for the Services, and the Consultant is entitled to rely thereon; and
- (ii) make arrangements to enable the Consultant to have all weather, clear and free access (including out of hours access, and access to the Consultant's plant and equipment) to the site and testing area, to enable the Consultant to provide the Services in accordance with this contract. The Consultant shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas, or gardens or landscaping, etc.) unless due to the Consultant's negligence; and

(b) provide the Consultant with all relevant health and safety information for the site.

6.2 In the event the Client gives information relating to the provision of Services (including plans, specifications, measurements, quantities and other information provided by the Client), it is the Client's responsibility to verify, and the Consultant shall be entitled to rely on, the accuracy of the information. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, the Consultant accepts no responsibility for any loss, damages, or costs however resulting therefrom.

6.3 If the Client becomes aware of any matter which may change the scope or timing of the Services then the Client will give written notice of same to the Consultant.

## **7 Provision of the Services**

7.1 Both parties shall make all reasonable effort to ensure the Services are provided in accordance with this contract and take all necessary reasonable steps to minimise any possible delay thereto. However, any time specified by the Consultant for provision of the Services is an estimate only, and the Consultant will not be liable for any loss or damage incurred by the Client as a result of any delay. In the event that the Consultant is unable to provide the Services as agreed solely due to any action or inaction of the Client, then the Client shall pay to the Consultant a reasonable sum of money to cover the consequential costs and expenses suffered by the Consultant as a result of the delay.

7.2 The Consultant shall be entitled to claim an extension to the term of the contract in the event of delays resulting from any matter whatsoever which is not entirely under the control of the Consultant. These matters shall include, but are not limited to delays caused by:

- (a) response(s) to information request(s) made by the Consultant to the Client, or any third party, not being available when expected or required; or
- (b) approval authorities response times for requests for preliminary decisions, information; or
- (c) changes to the design brief being requested by the Client; or
- (d) time taken by any approval authority for the granting of relevant approvals or permits; or
- (e) assessment area not being available as was agreed or when pre-arranged; or
- (f) any other variation to the contract.

7.3 Notwithstanding clause 7.2, if the Consultant becomes aware that they will be delayed in providing the Services in accordance with this contract, the Consultant must immediately notify the Client in writing of the cause and nature of the delay. The Consultant is to detail in the notice the steps they will take to contain the delay and the anticipated duration of the delay.

7.4 Where the Consultant requires that plant and any equipment required for the Services be stored or used unattended at the site, the Client shall supply the Consultant a safe area for storage and shall take all reasonable efforts to protect all items from possible destruction, theft or damage. In the event that any of the stored items are destroyed, stolen or damaged, then the cost of repair or replacement shall be the Client's responsibility.

## **8 Compliance with Laws**

8.1 The Client and the Consultant shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services, including any occupational health and safety laws, any other relevant safety standards or legislation.

8.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.

## **9 Personal Property Securities Act 1999 ("PPSA")**

9.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:

- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
- (b) a security interest is taken in Documentation and/or any monetary obligations of the Client to the Consultant for Services, that have previously been provided (if any), and that will be provided in the future, by the Consultant to the Client.

9.2 The Client undertakes to:

- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Consultant may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;

- (b) indemnify, and upon demand reimburse, the Consultant for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any registration made thereby;
- (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Services in favour of a third party without the prior written consent of the Consultant.

- 9.3 The Consultant and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 9.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 9.5 Unless otherwise agreed to in writing by the Consultant, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 9.6 The Client shall unconditionally ratify any actions taken by the Consultant under clauses 9.1 to 9.5.

## 10 Security and Charge

- 10.1 In consideration of the Consultant agreeing to provide Services, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 10.2 The Client indemnifies the Consultant from and against all the Consultant's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Consultant's rights under this clause.
- 10.3 The Client irrevocably appoints the Consultant and each director of the Consultant as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Client's behalf.

## 11 Errors and Omissions

- 11.1 The Client must inspect the Services on completion and must within seven (7) days of such time notify the Consultant in writing of any alleged defect, error or omission, or failure to comply with the description of, or quotation for, the Services. The Client shall afford the Consultant an opportunity to review the Services within a reasonable time following such notification if the Client believes the Services are defective in any way. If the Client shall fail to comply with these provisions, the Services shall be conclusively presumed to be in accordance with the terms and conditions and free from any errors or omissions.
- 11.2 For defective Services, which the Consultant has agreed in writing that the Client is entitled to reject, the Consultant's liability is limited to either (at the Consultant's discretion) replacing the Services or rectifying the Services provided that the Client has complied with the provisions of clause 11.1.

## 12 Intellectual Property

- 12.1 The Consultant shall retain ownership of the copyright to all Documentation produced by the Consultant during the course of the Services. The Client shall only have a licence to use such Documentation for the purpose of the individual brief supplied, and the quotation accepted, by the Client and is not entitled to any additional use without the Consultant's express approval in writing.
- 12.2 The Client warrants that all designs, specifications or instructions given to the Consultant will not cause the Consultant to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Consultant against any action taken by a third party against the Consultant in respect of any such infringement.
- 12.3 The Client agrees that the Consultant may (at no cost) use for the purposes of marketing or entry into any competition, any Documentation which the Consultant has created for the Client.
- 12.4 If during the course of providing the Services, the Consultant develops, discovers, or first reduces to practice a concept, product or process which is capable of being patented, then:
  - (a) such concept, product or process shall be and remain the property of the Consultant, and the Client shall not use, infringe or otherwise appropriate the same without first obtaining the written consent of the Consultant; and
  - (b) the Client shall be entitled to a royalty free licence to use the same during the course of the Services.

## 13 Documentation

- 13.1 Whilst the Consultant has taken every feasible action to ensure that the quality and integrity of the Services are true and correct, due to the scientific basis of analytical results, the Consultant does not guarantee the completeness or accuracy of information gathered and presented in the Documentation. The information and knowledge in the Documentation should not be relied upon in its entirety, and any commercial decisions made should be done in consultation with other documentation, and advice not purely from the Documentation.
- 13.2 The Documentation is not intended to be used for the purposes of tendered, programming of works, refurbishment works or demolition works unless used in conjunction with a specification detailing the extent of the works. To ensure its contextual integrity, the Documentation must be read in its entirety and should not be copied, distributed or referred to in part only.
- 13.3 Where the Consultant has not received or been tendered the whole of the Fee, or the payment has been dishonoured, the Consultant shall have a lien on the Documentation and, except as may be required by any law or statute, shall be under no obligation to release the documents or Documentation to the Client.

## 14 Asbestos Documentation

- 14.1 The Documentation relates only to the identification of hazardous materials used in the construction of the property and does not include the identification of dangerous goods, or hazardous substances in the form of chemicals used, stored or manufactured with the property or plant.
- 14.2 The Client acknowledges:
  - (a) while the Services have attempted to locate the asbestos-containing materials within the site, the Services conducted consist of a visual inspect and limited sampling program only; and
  - (b) that representative samples of suspect asbestos materials are collected for analysis only, and other asbestos materials of similar appearance are assumed to have a similar content; and
  - (c) not all suspected asbestos materials are sampled; only those asbestos materials that are physically accessible can be located and identified. Therefore, it is possible that asbestos materials, which may be concealed within inaccessible areas/voids, may not have been located during the Services. Inaccessible area fall into a number of categories, including, but not limited to:

- (i) set ceilings or wall cavities; or
- (ii) areas accessible only by dismantling equipment or performing minor localised demolition works; or
- (iii) service shafts, ducts, etc. concealed within the structure; or
- (iv) energised services, gas, electrical, pressurised vessel and chemical lines; or
- (v) voids or internal areas of machinery, plant, equipment, air-conditioning ducts, etc.; or
- (vi) totally inaccessible areas such as voids and cavities created and intimately concealed within the structure. These voids are only accessible during major demolition works;
- (vii) height restricted areas; or
- (viii) areas deemed unsafe or hazardous at the time of provision of the Services.

14.3 Only minor destructive auditing and sampling techniques are employed to gain access to the areas specified in the Documentation. Consequently, without substantial demolition of the site, it is not possible to guarantee that every source of asbestos has been detected. During the course of normal site works, care should be exercised when entering any previously inaccessible areas, or areas mentioned above, and it is imperative that work cease pending further sampling if materials suspected of containing asbestos or unknown materials are encountered. Therefore, during any refurbishment or demolition works, further investigations and assessment may be required should any suspect material be observed in previously inaccessible areas, or areas not fully inspected previously (i.e. carpeted floors, etc.).

## 15 Confidentiality

15.1 Subject to clause 15.2, each party agrees to treat as confidential the other party's Confidential Information, and agree not to divulge it to any third party, without the other party's written consent.

15.2 Both parties agree to:

- (a) use the Confidential Information of the other party only to the extent required for the purpose it was provided; and
- (b) not copy or reproduce any of the Confidential Information of the other party in any way (except where may be required in order to provide the Services); and
- (c) only disclose the other party's Confidential Information to:
  - (i) employees and contractors who need access to the information and who have agreed to keep it confidential; and
  - (ii) its legal advisers and insurance providers if those persons undertake to keep such information confidential; and
  - (iii) not disclose the other party's Confidential Information to any person not referred to in this clause except with the other party's prior written consent or if required by law, any stock exchange or any regulatory body.

15.3 Either party must promptly return or destroy all Confidential Information of the other party in its possession or control at the other party's request unless required by law to retain it.

15.4 The obligations of this clause 15 shall survive termination or cancellation of this contract.

## 16 Default and Consequences of Default

16.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Consultant's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

16.2 If the Client owes the Consultant any money the Client shall indemnify the Consultant from and against all costs and disbursements incurred by the Consultant in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Consultant's collection agency costs, and bank dishonour fees).

16.3 Further to any other rights or remedies the Consultant may have under this contract, if the Client has made payment to the Consultant by credit card, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Consultant under this clause 16 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this contract.

16.4 Without prejudice to any other remedies the Consultant may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Consultant may suspend or terminate the provision of Services to the Client. The Consultant will not be liable to the Client for any loss or damage the Client suffers because the Consultant has exercised its rights under this clause.

16.5 Without prejudice to the Consultant's other remedies at law the Consultant shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Consultant shall, whether or not due for payment, become immediately payable if:

- (a) any money payable to the Consultant becomes overdue, or in the Consultant's opinion the Client will be unable to make a payment when it falls due; or
- (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

## 17 Cancellation

17.1 The Consultant may cancel any contract to which these terms and conditions apply, or cancel provision of the Services at any time before the Services have commenced, by giving written notice to the Client. On giving such notice the Consultant shall repay to the Client any money paid by the Client for the Services. The Consultant shall not be liable for any loss or damage whatsoever arising from such cancellation.

17.2 In the event that the Client wishes to cancel this contract, or provision of the Services, then the Client must notify the Consultant of the same in writing and the Client shall pay the Consultant for all Services provided up until the notice of cancellation was received by the Consultant, plus all loss incurred (whether direct or indirect) by the Consultant as a direct result of the cancellation (including, but not limited to, any loss of profits).

## 18 Privacy Act 1993

18.1 The Client authorises the Consultant (or the Consultant's agent) to:

- (a) access, collect, retain and use any information about the Client;
    - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
    - (ii) for the purpose of marketing Services to the Client.
  - (b) disclose information about the Client, whether collected by the Consultant from the Client directly or obtained by the Consultant from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 18.2 Where the Client is an individual the authorities under clause 18.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 18.3 The Client shall have the right to request the Consultant for a copy of the information about the Client retained by the Consultant and the right to request the Consultant to correct any incorrect information about the Client held by the Consultant.

## 19 Limitation of Liability

- 19.1 The Consultant will provide written and verbal recommendation pursuant to the Services, however at all times prior, during and following such is in good faith. As such, the Consultant's servants, employees and agents are not subject to any liability whatsoever (whether by reason of lack of due care and attention, or otherwise), and the Client releases and discharges the Consultant and its servants, agents and employees from all actions, suits, claims, demands, causes of actions, costs and expenses, legal equitable under statute, and otherwise, and all other liabilities of any nature (whether or not the parties were, or could have been, aware of them) which the Client may have, or but for this disclaimer, could or might have had against the Consultant and its servants, agents and employees, in any way related to the Services provided, or the circumstances recited in this disclaimer, or allegations arising out of, or in any way related to, the Services provided to the Client. Notwithstanding this disclaimer, the Consultant shall only be liable to the Client for the consequences of any negligent act, omission or statement of the Consultant, and then only to the extent and limitations referred to in clause 19.2.
- 19.2 The loss and damage for which the Consultant is so liable, and the recompense to be made by the Consultant to a Client for such liability as specified in clause 19.1, shall be limited to the maximum value of the Consultant's Professional Indemnity cover in respect of any single act, omission or statement, unless otherwise specified in the quotation.
- 19.3 The liability of the Consultant shall cover only direct loss or damage in respect of the Services, or other matters arising directly from the scope of the Services agreed in the quotation, and then only to the maximum limit specified as per clause 19.2. Unless otherwise agreed to in writing, all references herein to loss or damage shall be deemed to exclude any liquidated damages, or loss or damage sustained by any third party in respect of which the Client is liable and responsible (as between the Client and the third party) whether by statute, contract tort or otherwise.
- 19.4 The liability of the Consultant to the Client shall expire twelve (12) months from the issue of the last invoice relevant to the particular Services, unless in the meantime the Client has made a claim in writing to the Consultant, specifying a negligent act, omission or statement said to have caused alleged loss or damage sustained or sustainable.
- 19.5 Notwithstanding clauses 19.1 to 19.4, the Consultant shall not be liable for any loss or damage sustained or sustainable by a Client in relation to:
  - (a) errors occurring in plans, designs or specifications not created or prepared by the Consultant; or
  - (b) errors occurring during the course of any services which are not provided by, nor the responsibility of, the Consultant; or
  - (c) the use of any Documentation or other information of advice without the approval of the Consultant.

## 20 Dispute Resolution

- 20.1 All disputes and differences between the Client and the Consultant touching and concerning this contract shall be referred to arbitration under a single arbitrator agreed upon by both parties, or failing agreement, by two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1996.

## 21 Construction Contracts Act 2002

- 21.1 The Client hereby expressly acknowledges that:
  - (a) the Consultant has the right to suspend the Services within five (5) working days of written notice of its intent to do so if a payment claim is served on the Client, and:
    - (i) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Client; or
    - (ii) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
    - (iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to the Consultant by a particular date; and
    - (iv) the Consultant has given written notice to the Client of its intention to suspend the Services under the contract.
  - (b) if the Consultant suspends the Services, it:
    - (i) is not in breach of contract; and
    - (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Client or by any person claiming through the Client; and
    - (iii) is entitled to an extension of time to complete the contract; and
    - (iv) keeps its rights under the contract including the right to terminate the contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
  - (c) if the Consultant exercises the right to suspend the Services, the exercise of that right does not:
    - (i) affect any rights that would otherwise have been available to the Consultant under the Contractual Remedies Act 1979; or
    - (ii) enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of the Consultant suspending the Services under this provision.

**22 General**

- 22.1 The failure by the Consultant to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Consultant's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 22.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.
- 22.3 The Consultant shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Consultant of these terms and conditions (alternatively the Consultant's liability shall be limited to damages which under no circumstances shall exceed the Fee).
- 22.4 If the Client is acquiring Services for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the provision of Services by the Consultant to the Client.
- 22.5 The Client hereby disclaims any right to rescind, or cancel any contract with the Consultant, or to sue for damages, or to claim restitution, arising out of any inadvertent misrepresentation made to the Client by the Consultant, and the Client acknowledges that the Services are bought relying solely upon the Client's skill and judgment.
- 22.6 The Client shall not be entitled to set off against, or deduct from the Fee, any sums owed or claimed to be owed to the Client by the Consultant nor to withhold payment of any invoice because part of that invoice is in dispute.
- 22.7 The Consultant may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 22.8 The Client agrees that the Consultant may amend these terms and conditions at any time. If the Consultant makes a change to these terms and conditions, then that change will take effect from the date on which the Consultant notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for the Consultant to provide Services to the Client.
- 22.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 22.10 The Client warrants that it has the power to enter into this contract and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this contract creates binding and valid legal obligations on it.