

SHORT FORM AGREEMENT / CONDITIONS OF SALE

1. The Consultant shall perform the Services as described in the Short Form Agreement. If the Client engages the Consultant without a signed Short Form Agreement the following Conditions of Sale will be the agreement. The Client and the Consultant agree that the Services are acquired for the purposes of a business and that the provisions of the Consumer Guarantees Act 1993 are excluded in relation to the Services.
2. The Client shall provide to the Consultant, free of cost, as soon as practicable following any request for information, all information in his or her power to obtain which may relate to the Services. In providing the information to the Consultant, the Client shall ensure compliance with the Copyright Act 1994 and shall identify any proprietary rights that any other person may have in any information provided.
3. A Variation is an addition, deletion or change to design elements from the original agreed design. The Client may order Variations to Services in writing or verbally. The Client may request the Consultant submit proposals for variation to the Services. Variations to the Services will be charged at the Variation Rate over and above the Fee Estimate as set out in the Short Form Agreement. If a Variation Rate has not been defined in a Short Form Agreement then all variations will be performed with a rate of \$100 per hour.
4. The Client shall pay the Consultant for the Services fees and expenses at the times and in the manner set out in this document. Where this Agreement has been entered by an Agent (or a person purporting to act as Agent) on behalf of the Client, the Agent and Client shall be jointly and severally liable for payment of all fees and expenses due to the Consultant under this Agreement.
5. All amounts payable by the Client shall be paid within twenty (20) working days of the relevant invoice date. Late payment shall constitute a default, and the Client shall pay default interest on overdue amounts from the date payment falls due to the date of payment at the rate of the Consultant's overdraft rate plus 2% and in addition the costs of any actions taken by the Consultant to recover the debt.
6. Where Services are carried out on a Time & Materials charge basis, the Consultant may purchase such incidental goods and/or Services, as are reasonably required for the Consultant to perform the Services. The cost of obtaining such incidental goods and/or Services shall be payable by the Client. Travel costs shall be payable by the Client.
7. The Consultant shall perform the Services with the degree of skill, care and diligence normally expected of a competent draftsman, to the best of his/her professional ability, using specialised licensed software and their own experience in such work.
8. If the output of the Services is shown to be materially faulty within one month from the completion of the Services then the Consultant will either re-supply such output to the Client free of charge or refund the Fee Estimate, at our option.
9. Neither the Client nor the Consultant shall be considered liable for any loss or damage resulting from any occurrence unless a claim is formally made on him or her within one month from completion of the Services.
10. The Consultant gives no other express or implied warranty as to the Services and the output and, for the reason that the costs of these Services is not in proportion to the extent of our potential liability, exclude our liability whether in contract, tort (including negligence) or otherwise, to the Client or any other person or company for losses (whether direct or indirect).
11. The liability of the Consultant to the Client in respect of his or her Services for the project, whether in contract, tort or otherwise, shall have a maximum limit in all circumstances no greater than the invoice amount (exclusive GST and disbursements). Where the Services are carried out on an Hourly Basis liability as stated shall have a maximum limited of the total hours worked multiplied by the hourly rate (exclusive GST and disbursements). The Consultant shall only be liable to the Client for direct loss or damage suffered by the Client as the result of a breach by the Consultant of his or her obligations under this Agreement and shall not be liable for any loss of profits.
12. The Services and the output are provided for the sole use by the Client and no responsibility is accepted to any third party for the whole or any part of their contents.
13. The Client shall, at its own cost, obtain and maintain an insurance policy (with a reputable insurer) which includes contractual liability cover (in respect of this Agreement) and cover in respect of all liability for claims arising for any loss or damage to persons or property resulting directly from or in connection with this Agreement and/or the Services and any event occurring during the performance of the Services, caused by the negligence of the Consultant or otherwise. Such policy of insurance shall provide that the Consultant is an additional named insured and the Client shall provide the Consultant, upon request, evidence in the form of a certificate of the insurance it is required to maintain under this clause.
14. The Consultant shall retain intellectual property/copyright in all electronic and hardcopy drawings, models, specifications and other documents prepared by the Consultant. The Client shall be entitled to use them or copy them only for the Works and the purpose for which they are intended. The ownership of data and factual information collected by the Consultant and paid for by the Client shall, after payment by the Client, lie with the Client. The Client may reproduce drawings, specifications and other documents in which the Consultant has copyright, as reasonably required in connection with the project but not otherwise. The Client shall have no right to use any of these documents where any or all of the fees and expenses remain payable to the Consultant.
15. The Consultant has not and will not assume any obligation as the Client's Agent or otherwise which may be imposed upon the Client from time to time pursuant to the Health and Safety in Employment Act 1992 ("the Act") arising out of this engagement. The Consultant and Client agree that in terms of the Act, the Consultant will not be the person who controls the place of work.
16. The Client and the Consultant may (in the event the other Party is in material default) terminate the Agreement by notice to the other Party. Suspension or termination shall not prejudice or affect the accrued rights or claims and liabilities of the Parties.
17. The Parties shall attempt in good faith to settle any dispute themselves but failing that by mediation.
18. This Agreement is governed by New Zealand law. The New Zealand courts have jurisdiction in respect of this Agreement.
19. All amounts are payable in New Zealand Dollars (NZD) unless otherwise noted under Commercial Terms.