

1. Definitions

- 1.1 "Firm" shall mean Johnston Associates Chartered Accountants Ltd, its successors and assigns or any person acting on behalf of and with the authority of Johnston Associates Chartered Accountants Ltd.
- 1.2 "Client" means the person/s requesting the Firm to provide the Services (including but not limited to, instructions or queries via telephone calls and/or emails) 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 "Consultant" shall mean any person or persons engaged by the Firm to provide specialised work on behalf of the Client.
- 1.4 "Documentation" means any goods, documents, reports, drawings or materials supplied, consumed, created or deposited incidentally by the Firm in the course of it conducting, or providing to the Client, any Services.
- 1.5 "Services" means all Services provided by the Firm to the Client at the Client's request from time to time.
- 1.6 "Fee" means the Fee payable for the Services as agreed between the Firm and the Client in accordance with clause 5 of this contract.

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 Firm.
- 2.2 These terms and conditions are to be read in conjunction with the Firm's Letter of Engagement and may only be amended with the Firm's consent in writing. If there are any inconsistencies between the two documents then the terms and conditions contained in this document shall prevail.
- 2.3 On completion of the Services the Firm will retain any documents for a period of seven (7) years after which the documents will be destroyed unless otherwise requested by the Client.
- 2.4 The Client acknowledges and accepts that the Firm reserves the right to charge accordingly for time involved in accordance with the Firm's terms and conditions for all requests of verbal, email and/or written advice.
- 2.5 The Client acknowledges and accepts that the Firm will communicate electronically (email), unless otherwise instructed. The Client accepts this form of communication maybe subject to inherent hazards in electronic distribution and as such the Firm cannot warrant against delays or errors in transmitting data between the Client and the Firm, and you agree that to the maximum extent permitted by law, the Firm will not be liable for any losses which the Client suffers as a result of internet interruptions beyond the Firm's control that may cause delays or errors in transmitting instructions and/or confirmations.

3. Change in Control

- 3.1 The Client shall give the Firm 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 Firm as a result of the Client's failure to comply with this clause.

4. Services

- 4.1 The Services shall be as described in the Letter of Engagement provided by the Firm to the Client.
- 4.2 These terms and conditions are to be read in conjunction with the Firm's Letter of Engagement. If there are any inconsistencies between the two documents then the terms and conditions contained therein shall prevail.

5. Fee and Payment

- 5.1 At the Firm's sole discretion the Fee shall be either:
 - (a) as indicated on invoices provided by the Firm to the Client in respect of Services provided; or
 - (b) the Firm's quoted Fee (subject to clause 5.2) which shall be binding upon the Firm provided that the Client shall accept the Firm's quotation in writing within thirty (30) days.
- 5.2 The Firm reserves the right to change the Fee in the event of a variation to the Firm's quotation. Any variation from the plan of scheduled Services (including, but not limited to, any variation as a result of additional Services required at the expressed request of the Client via telephone and or email) will be charged for on the basis of the Firm's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 5.3 At the Firm's sole discretion, a non-refundable deposit of up to fifty percent (50%) may be required on acceptance of the Firm's quotation.
- 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 Firm, which may be:
 - (a) by way of instalments/progress payments in accordance with the Firm's payment schedule;
 - (b) the date specified on any invoice or other form as being the date for payment; or
 - (c) 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 Firm.
- 5.5 Payment will be made by cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and the Firm.
- 5.6 Unless otherwise stated the Fee is in New Zealand Dollars does not include GST. In addition to the Fee the Client must pay to the Firm an amount equal to any GST the Firm must pay for any provision of Services by the Firm to the Client under this 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 Receipt by the Firm 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 Firm's ownership or rights in respect of the Services, and this agreement, shall continue.

6. Provision of Services

- 6.1 The Firm shall exercise reasonable skill, care and diligence in the performance of the Services in accordance with the ethics of the Accounting/Bookkeeping profession.
- 6.2 Any time specified by the Firm for provision of the Services is an estimate only and the Firm will not be liable for any loss or damage incurred by the Client as a result of any delay. However both parties agree that they shall make every endeavour to enable the Services to be provided at the time and place as was arranged between both parties. In the event that the Firm is unable to provide the Services as agreed

solely due to any action or inaction of the Client then the Firm shall be entitled to charge a reasonable fee for re-providing the Services at a later time and date.

7. Risk

- 7.1 Irrespective of whether the Firm retains ownership of any Documentation all risk for such items shall pass to the Client as soon as such items are delivered to the Client and shall remain with the Client until such time as the Firm may repossess the Documentation. The Client must insure all Documentation on or before delivery.
- 7.2 The Firm reserves its right to seek compensation or damages for any damage, destruction or loss suffered in relation to the Documentation as a result of the Client's failure to insure in accordance with clause 6.1.
- 7.3 The Firm shall not be held liable for any loss, corruption, or deletion of files or data (including, but not limited to the unintended introduction of viruses) resulting from the Services provided by the Firm. It is the sole responsibility of the Client to back-up any data which they believe to be important, valuable, or irreplaceable prior to the Firm providing the Services.

8. Title

- 8.1 The Firm and the Client agree that, where it is intended that the ownership of Documentation is to pass to the Client, that such ownership shall not pass until:
 - (a) the Client has paid the Firm all amounts owing for the Services; and
 - (b) the Client has met all other obligations due by the Client to the Firm in respect of all contracts between the Firm and the Client.
- 8.2 It is further agreed that:
 - (a) until such time as payment for the Services has been received in full the Firm may give notice in writing to the Client to return to the Firm any documentation provided to the Client as part of the Firm's Services. Upon such notice being given the rights of the Client to obtain ownership or any other interest in the Services shall cease; and
 - (b) if the Client fails to return documentation to the Firm when requested then the Firm or the Firm's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises where the documentation is situated as the invitee of the Client and take possession of the documentation, and the Firm will not be liable for any reasonable loss or damage suffered as a result of any action by the Firm under this clause.

9. Errors and Omissions

- 9.1 The Client shall within seven (7) days of provision of the Services notify the Firm of any alleged defect, shortage in quantity, errors, omissions or failure to comply with the description or quote. The Client shall afford the Firm 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.
- 9.2 For defective Services, which the Firm has agreed in writing that the Client is entitled to reject, the Firm's liability is limited to either (at the Firm's discretion) replacing the Services or rectifying the Services provided that the Client has complied with the provisions of clause 9.1.

10. Consumer Guarantees Act 1993

- 10.1 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 Firm to the Client.

11. Confidentiality / Intellectual Property

- 11.1 Both the Client and the Firm agree to treat all information and ideas communicated to it by the other confidentially and agree not to divulge them to any third party, without the other party's written consent. The parties will not copy any such information supplied, and will either return it or destroy it (together with any copies thereof) on request of the other party.
- 11.2 Exceptions to clause 11.1 will be disclosures to legal advisers, disclosures required by law, and disclosures necessary for the proper performance of the Services.
- 11.3 Where the Firm has developed software, spreadsheets, training materials, databases, proposals, tender documents and other electronic tools in providing the Services to the Client, then the copyright in those software, spreadsheets, training materials, databases, proposals, tender documents and other electronic tools shall remain vested in the Firm, and shall only be used by the Client at the Firm's discretion.
- 11.4 The Client warrants that any software, spreadsheets, databases, other electronic tools or instructions provided by the Client to the Firm will not cause the Firm to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Firm against any action taken by a third party against the Firm in respect of any such infringement.
- 11.5 Whether the Firm or the Client retains the copyright in relation to original work which is specifically developed for the Client shall be as is agreed, recorded in writing, and signed by both parties to this agreement.

12. Default and Consequences Of Default

- 12.1 At the Firm's sole discretion, interest on overdue invoices may accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at the Firm's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 12.2 If the Client owes the Firm any money the Client shall indemnify the Firm from and against all costs and disbursements incurred by the Firm in recovering the debt (including but not limited to internal administration fees (including a late payment fee of ten percent (10%) of the overdue amount, which may be charged to the Client's account where any amount remains overdue for more than sixty (60) days), legal costs on a solicitor and own client basis, the Firm's collection agency costs, and bank dishonour fees).
- 12.3 Without prejudice to any other remedies the Firm may have, if at any time the Client is in breach of any obligation (including those relating to payment), the Firm may suspend or terminate the provision of Services to the Client and any of its other obligations under the terms and conditions. The Firm will not be liable to the Client for any loss or damage the Client suffers because the Firm has exercised its rights under this clause.
- 12.4 Without prejudice to the Firm's other remedies at law the Firm shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Firm shall, whether or not due for payment, become immediately payable in the event that:

- (a) any money payable to the Firm becomes overdue, or in the Firm's opinion the Client will be unable to meet its payments as they fall 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.

13. Cancellation

- 13.1 The Firm may cancel any contract to which these terms and conditions apply or cancel provision of the Services at any time before the Services are completed by giving written notice to the Client. On giving such notice the Firm shall repay to the Client any sums paid in respect of the Fee, less any amounts owed by the Client to the Account for Services already provided. The Firm shall not be liable for any loss or damage whatever arising from such cancellation.
- 13.2 In the event that the Client cancels provision of the Services, the Client shall be liable for any loss incurred by the Firm (including, but not limited to, any loss of profits) up to the time of cancellation.

14. Privacy Act 1993

- 14.1 The Client authorises the Firm or the Firm'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 products and services to the Client.
 - (b) disclose information about the Client, whether collected by the Firm from the Client directly or obtained by the Firm 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.
- 14.2 Where the Client is an individual the authorities under clause 14.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 14.3 The Client shall have the right to request the Firm for a copy of the information about the Client retained by the Firm and the right to request the Firm to correct any incorrect information about the Client held by the Firm.

15. Personal Property Securities Act 1999 ("PPSA")

- 15.1 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 all Documentation and/or collateral (account) – being a monetary obligation of the Client to the Firm for Services – previously provided (if any) and that will be provided in the future by the Firm to the Client.
- 15.2 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 Firm 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 Firm 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 a financing change statement or a change demand without the prior written consent of the Firm.
- 15.3 The Firm and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 15.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 15.5 Unless otherwise agreed to in writing by the Firm, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 15.6 The Client shall unconditionally ratify any actions taken by the Firm under clauses 15.1 to 15.5.

16. Security and Charge

- 16.1 In consideration of the Firm 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).
- 16.2 The Client indemnifies the Firm from and against all the Firm's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Firm's rights under this clause.
- 16.3 The Client irrevocably appoints the Firm and each director of the Firm as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 16.1 including, but not limited to, signing any document on the Client's behalf.

17. Lien

- 17.1 Where the Client has left any of the Client's documentation with the Firm for the Firm to provide any Services in relation to that documentation and the Firm has not received or been tendered the whole of the Fee, or the payment has been dishonoured, the Firm shall have:
 - (a) a lien on the documentation; and
 - (b) the right to retain the documentation whilst the Firm is in possession of the documentation until such time as payment has been made in full; and
 - (c) the lien of the Firm shall continue despite the commencement of proceedings, or judgment for the Fee having been obtained; and
 - (d) the Firm shall be under no obligation to release the documentation to the Client if the Client is in default of payment except as may be required by any law or statute.

18. Liability Limitations

- 18.1 The Firm shall be under no liability whatsoever to the Client for any indirect loss, consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Firm of these terms and conditions; alternatively the Firm's liability shall be limited to damages which under no circumstances shall exceed the Firm's Professional Indemnity Insurance in place.
- 18.2 The Client agrees to indemnify the Firm, its partners, associates, employees, contractors and any other person who may be sought to be made liable in excess of the limit of liability described in clause 18.1 in respect of any activity arising from or connected with these terms in respect of any claim of whatever kind, including negligence, that may be made by any person and any costs and expenses that may be incurred by the Firm.

19. General

- 19.1 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.
- 19.2 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.
- 19.3 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 Firm, nor to withhold payment of any invoice because part of that invoice is in dispute.
- 19.4 The Firm may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 19.5 The Client agrees that the Firm may amend these terms and conditions at any time. If the Firm makes a change to these terms and conditions, then that change will take effect from the date on which the Firm 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 Firm to provide Services to the Client.
- 19.6 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 19.7 The failure by the Firm to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Firm's right to subsequently enforce that provision.
- 19.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.