

## Terms and Conditions of Trade

### 1. Definitions

- 1.1 "Client" means the person/s, entities or any person acting on behalf of and with the authority of the Client 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 proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
  - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
  - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
  - (d) includes the Client's executors, administrators, successors and permitted assigns.
- 1.2 "Consultants" shall mean any person or persons engaged by the Firm to provide specialised work on behalf of the Client.
- 1.3 "Contract" means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.4 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website and can be accessed either by the web server or the client's computer. **If the Client does not wish to allow Cookies to operate in the background when using the Firm's website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.5 "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.
- 1.6 "Fee" means the Fee payable (plus any Goods and Services Tax ("GST") where applicable) for the Services as agreed between the Firm and the Client in accordance with clause 6 of this Contract.
- 1.7 "Firm" shall mean Johnston Associates Chartered Accountants Limited, its successors and assigns.
- 1.8 "Services" mean all Services provided by the Firm to the Client at the Client's request from time to time.

### 2. Acceptance

- 2.1 The parties acknowledge and agree that:
- (a) they have read and understood the terms and conditions contained in this Contract; and
  - (b) the parties are taken to have exclusively accepted and are 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 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.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 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.
- 2.5 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.
- 2.6 None of the Firm's Firms or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Firm in writing nor is the Firm bound by any such unauthorised statements.
- 2.7 The Client acknowledges and accepts that the Firm will communicate electronically (email), unless otherwise instructed. The Client accepts this form of communication may be 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.
- 2.8 The Firm may, acting solely as Firm on behalf of the Client, obtain quotes and prices from third-party Consultants, and may subsequently engage such Consultants. Where the Firm engages third-party Consultants on behalf of the Client, the following shall apply:
- (a) the Firm shall be entitled to enter into contracts with such Consultants in the name of the Client;
  - (b) the Client shall be responsible for all payments to such contractors;
  - (c) where the Firm makes payment of the Consultants account on behalf of the Client, the Client shall reimburse the Firm for the payment of such account, together with an account-handling fee, as per the Firm's specified payment terms.
- 2.9 These terms and conditions are to be read in conjunction with the Firm's Engagement Letter 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.
- 2.10 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

### 3. Cooling off Period

- 3.1 If the Client is a "Consumer" within the meaning of the CCA, then the Client may terminate this Contract (subject to clause 19-Cancellation) within seven (7) business days following receipt from the Firm of a signed copy of this Contract.
- 3.2 To terminate this Contract, the Client must notify the Firm in writing, clearly stating that the Client rescinds the Contract, within the timeframe specified in clause 3.1 above in accordance with clause 25 (Notices).
- 3.3 Once the withdrawal notice is issued to the Firm, then:
- (a) the Contract is taken to be rescinded from the date in which it was signed;
  - (b) the Firm may retain out of any money already paid to the Firm by the Client, the amount of any reasonable out of pocket expenses that the Firm has incurred before the Contract was rescinded; and
  - (c) the Firm shall be entitled to be paid a reasonable amount for any Services undertaken prior to the date the Contract was rescinded.

### 4. Change in Control

- 4.1 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 and contact phone or fax number/s, change of trustees 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.

### 5. Services

- 5.1 The Services shall be as described in the Letter of Engagement provided by the Firm to the Client.
- 5.2 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.

### 6. Client's Obligations

- 6.1 The Client shall provide promptly to the Firm all reasonable and requested necessary documentation, including access to all information which the Firm considers to be relevant to the engagement, so as to enable the Firm to provide the Services, including the authorisation to liaise with the Client's Tax Firm/Accountant to obtain any or all necessary information required by the Firm to provide the Services. In doing so, the Client shall update information provided by it to the Firm where there has been a material change to that information which affects the scope of performance by the Firm of the Services.
- 6.2 Where the Client or the Client's employee/s are instructed to accept cash transactions, the Firm can only rely on information provided by the Client's authorised personnel in respect of such transactions and shall not accept any liability in the event that any inaccuracies regarding such transactions prove to be incorrect.

### 7. Fee and Payment

- 7.1 At the Firm's sole discretion, the Fee shall be either:
- (a) as indicated on invoices in respect of Services provided; or
  - (b) the Firm's Engagement Letter; or
  - (c) (where the Client is on a "Subscription Plan"), the Client is required to pay monthly Fees for the on-going provision of the Services to the Client by the Firm as stipulated in this Contract; or
  - (d) the Firm's quoted Fee (subject to clause 7.2) which shall be binding upon the Firm provided that the Client shall accept the Firm's quotation in writing within thirty (30) days.
- 7.2 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 or email and/or repair to damaged files due to viruses or illegal hacking) will be charged for on the basis of the Firm's quotation, and will be detailed in writing, and shown as variations on the Firm's invoice. The Client shall be required to respond to any variation submitted by the Firm within ten (10) working days. Failure to do so will entitle the Firm to add the cost of the variation to the Fee. Payment for all variations must be made in full at the time of their completion.
- 7.3 The Firm shall be reimbursed for all expenses reasonably and properly incurred in connection with the provision of the Services, except where such expenses are specifically stated in the Letter of Engagement, or in writing by the Firm, as being non-reimbursable. All reimbursable expenses (e.g. travel-call-outs, communications, couriers, etc.) will be charged at the cost involved (excluding GST) to the Firm, plus an administration fee of ten percent (10%) thereof.
- 7.4 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.
- 7.5 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.
- 7.6 Payment will be made by electronic/on-line banking, credit card (a surcharge may apply

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- per transaction), or by any other method as agreed to between the Client and the Firm.
- 7.7 The Firm may in its discretion allocate any payment received from the Client towards any invoice that the Firm determines and may do so at the time of receipt or at any time afterwards.
- 7.8 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. Once in receipt of an invoice for payment, if any part of the invoice is in dispute then the Client must notify the Firm in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as the Firm investigates the dispute claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in the Firm placing the Client's account into default and subject to default interest in accordance with clause 17.1.
- 7.9 Unless otherwise stated the Fee is in New Zealand Dollars and 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.
- 7.10 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 Contract, shall continue.
- 8. Subscription Plan**
- 8.1 The Subscription Plan shall continue for an annual term ("initial term") and, upon expiration of this term, shall revert to a monthly roll over basis automatically, thereafter, unless agreed otherwise until terminated by either party by giving at least thirty (30) days' written notice as defined in the Contract prior to the expiration date of the initial term or any additional term. Following receipt of notice from the Client, the provision of the Services to the Client by the Firm shall cease at the end of the notification period and the Client must reimburse the Firm (on a pro rata calculation basis) for any use of the Services above its Subscription Plan's allowance.
- 8.2 The Client acknowledges and accepts that Subscription Plan Fees stated will remain fixed for an initial period of twelve (12) months from the date of this Contract and will then be subject to revision on the basis of the movement in the Consumer Price Index (CPI).
- 8.3 Failure by the Client to maintain their Subscription Plan Fees as agreed, then the Firm reserves the right to suspend the Services in accordance with clause 19.1.
- 9. Provision of Services**
- 9.1 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.
- 9.2 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.
- 10. Risk**
- 10.1 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.
- 10.2 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 10.1.
- 10.3 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 and/or illegal hacking) resulting from the Services provided by the Firm, once the Firm has completed the Client's requirements online and signed out. 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. Any damage to data files due to the likes of viruses or illegal hacking will be subject to an additional cost for repair in accordance with clause 7.2.
- 10.4 Notwithstanding clause 10.3 where multiple users are granted access / logins, the Firm cannot be held responsible for the security of those login details or changes made by that login/user. NB: The Firm can, in most cases, limit access, however, are limited to the control of data entry, changes etc. once a user is provided access.
- 11. Compliance with Laws**
- 11.1 The Client agrees and shall comply with the provisions of all statutes (including but not limited to, any Anti Money Laundering Laws).
- 11.2 Notwithstanding clause 11.1 the Firm also has a duty of care to comply with the provisions of all statutes relevant to the supply of the Services including the NZICA Code of Ethics, which includes provisions that apply where the Firm becomes aware of any actual or potential "non-compliance governing laws or regulations "NOGLAR" he has a duty to report

such activities etc.), regulations and bylaws of government, local and other public authorities including regulations and ethical guidelines set down by the Chartered Accountants Australia and New Zealand and the New Zealand Institute of Chartered Accountants that may be applicable to the Services.

**12. Title**

- 12.1 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.
- 12.2 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 Firm 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.

**13. Errors and Omissions**

- 13.1 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.
- 13.2 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 13.1.

**14. Consumer Guarantees Act 1993 and the Fair Trading Act 1986**

- 14.1 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 ("CGA") do not apply to the supply of Services by the Firm to the Client.
- 14.2 The Firm agrees to abide by the provisions of the Fair Trading Act 1986 ("FTA").

**15. Use of Reports and Advice**

- 15.1 Any advice that the Firm gives to the Client, its employees or Firms is for the Client's exclusive use and must be used only for the purpose described in the quotation.
- 15.2 Unless the Firm gives the Client prior written consent, the advice:
- (a) must not be used or disclosed for any other purpose, referred to in any document or made available to any other person, except the Client's lawyers or other professional advisor assisting in the Services; and
  - (b) may not be relied upon by any other party other than the Client.
- 15.3 The Firm is not responsible to any other party other than the Client, who is provided with or obtains a copy of the Firm's advice.
- 15.4 The Firm's advice may, on occasion, be given to the Client in draft form or orally only on the basis that the Client may not rely on advice in that form. Accordingly, the Firm shall not be responsible if the Client or any other party relies on the advice or chooses to act, or refrains from acting, on the basis of any draft advice or oral comments or advice.
- 15.5 The Client acknowledges that the signed copy of the Firm's final advice is the definitive version.

**16. Confidentiality / Intellectual Property**

- 16.1 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.
- 16.2 Exceptions to clause 16.1 will be disclosures to legal advisers, disclosures required by law, and disclosures necessary for the proper performance of the Services.
- 16.3 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.
- 16.4 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.
- 16.5 The Client acknowledges that any software / online services provided by the Firm belong

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- to the publishers and the Client is granted access to use the software / online services. The Client gives the Firm the right to access the software / online services using the Client's and/or administration login for the purposes of completing the Services, complying with IRD instructions or in the case of non-payment to restrict or block the Client's access to the software / online services.
- 16.6 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 Contract.
- 16.7 The obligations of this clause 16 shall survive termination or cancellation of this Contract.
- 17. Default and Consequences of Default**
- 17.1 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 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.
- 17.2 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, legal costs on a solicitor and own client basis, the Firm's collection agency costs, and bank dishonour fees).
- 17.3 Further to any other rights or remedies the Firm may have under this Contract, if a Client has made payment to the Firm by 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 Firm under the clause 16.7, 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.
- 17.4 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.
- 18. Disclosure - Referral**
- 18.1 The Client acknowledges that:
- (a) the Firm can, and may, refer the Client for products and/or professional services associated with the provision of the Services by the Firm. The Client further acknowledges that the Firm may expect to derive consideration, either monetary or otherwise, from the referral; and
  - (b) a third party may derive consideration, either monetary or otherwise, from the referral; and
  - (c) unless any such consideration in respect of any referral that involves a monetary value, the Firm shall not be required to disclose written notice, of the nature, source and amount of any consideration from a third party, that the Firm will receive the benefit from the referral.
- 19. Cancellation**
- 19.1 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.
- 19.2 The Client may terminate the Contract at any time by providing thirty (30) days written notice to the Firm. As soon as this notice is received, the Firm shall stop providing the Services. Termination of the Contract shall not prejudice, or affect, the accrued rights, claims and/or liabilities of either party to the Contract.
- 19.3 If the Client terminates the Contract, or the Firm terminates the Contract because the Client is in material breach thereof (and fails to remedy such breach within seven (7) days of the Firm giving notice to the Client of such breach), then the Client shall be liable to pay the Firm for all Services provided up until the date of termination, plus any disbursements and all loss incurred (whether direct or indirect) by the Firm as a direct result of termination by the Client (including, but not limited to, any loss of profits).
- 20. Privacy Policy**
- 20.1 All emails, documents, images or other recorded information held or used by the Firm is "Personal Information" as defined and referred to in clause 20.3 and therefore considered confidential. The Firm acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines as set out in the Act. The Firm acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by the Firm that may result in serious harm to the Client, the Firm will notify the Client in accordance with the Act. Any release of such Personal Information must be in accordance with the Act and must be approved by the Client by written consent, unless subject to an operation of law.
- 20.2 Notwithstanding clause 20.1, privacy limitations will extend to the Firm in respect of Cookies where the Client utilises the Firm's website to make enquiries. The Firm agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
  - (b) tracking website usage and traffic; and
  - (c) reports are available to the Firm when the Firm sends an email to the Client, so the Firm may collect and review that information ("collectively Personal Information")
- If the Client consents to the Firm's use of Cookies on the Firm's website and later wishes to withdraw that consent, the Client may manage and control the Firm's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 20.3 The Client authorises the Firm or the Firm's Firm to:
- (a) access, collect, retain and use any information about the Client;
    - i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or 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.
- 20.4 Where the Client is an individual the authorities under clause 20.3 are authorities or consents for the purposes of the Privacy Act 2020.
- 20.5 The Client shall have the right to request (by e-mail) from the Firm, a copy of the Personal Information about the Client retained by the Firm and the right to request that the Firm correct any incorrect Personal Information.
- 20.6 The Firm will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 20.7 The Client can make a privacy complaint by contacting the Firm via e-mail. The Firm will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Privacy Commissioner at <http://www.privacy.org.nz>.
- 21. Personal Property Securities Act 1999 ("PPSA")**
- 21.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 21.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in:
- (a) all Documentation previously supplied by the Firm to the Client;
  - (b) all Documentation that will be supplied in the future by the Firm to the Client and the proceeds from such Incidental Items as listed by the Firm to the Client in invoices rendered from time to time; and
  - (c) all the Client's present and after acquired property being a charge, including anything in respect of which the Client has at any time a sufficient right, interest or power to grant a security interest in for the purposes of securing repayment of all monetary obligations of the Client to the Firm for Services - that have previously been provided and that will be provided in the future by the Firm to the Client.
- 21.3 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.
- 21.4 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.
- 21.5 The Client shall unconditionally ratify any actions taken by the Firm under clauses 21.1 to 21.4.
- 21.6 Subject to any express provisions to the contrary (including those contained in this clause 21), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 22. Security and Charge**
- 22.1 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, and the Client grants a

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security interest in all of its present and after-acquired property, 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). The terms of the charge and security interest are the terms of Memorandum 2018/4344 registered pursuant to s.209 of the Land Transfer Act 2017.

22.2 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.

22.3 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 22.1 including, but not limited to, signing any document on the Client's behalf.

**23. Lien**

23.1 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.

**24. Liability Limitations**

24.1 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.

24.2 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 24.1 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.

24.3 The Client acknowledges and accepts that the Firm shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):

- (a) resulting from an inadvertent mistake made by the Firm in the formation and/or administration of this Contract; and/or
- (b) contained/omitted in/from any literature (hard copy and/or electronic) supplied by the Firm in respect of the Services.

24.4 In the event such an error and/or omission occurs in accordance with clause 24.3, and is not attributable to the negligence and/or wilful misconduct of the Firm; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

**25. Service of Notices**

25.1 Any written notice given under this Contract shall be deemed to have been given and received:

- (a) by handing the notice to the other party, in person;
- (b) by leaving it at the address of the other party as stated in this Contract;
- (c) by sending it by registered post to the address of the other party as stated in this Contract;
- (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
- (e) if sent by email to the other party's last known email address.

25.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

**26. Trusts**

26.1 If the Client at any time upon or subsequent to entering into the Contract is acting in the capacity of trustee of any trust or as a Firm for a trust ("Trust") then whether or not the Firm may have notice of the Trust, the Client covenants with the Firm as follows:

- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust, the trustees and the trust fund;
- (b) the Client has full and complete power and authority under the Trust or from the Trustees of the Trust as the case maybe to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust, the trustees and the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
- (c) the Client will not during the term of the Contract without consent in writing of the Firm (the Firm will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
  - i) the removal, replacement or retirement of the Client as trustee of the Trust;
  - ii) any alteration to or variation of the terms of the Trust;
  - iii) any advancement or distribution of capital of the Trust; or
  - iv) any resettlement of the trust fund or trust property.

**27. General**

27.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party'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.

27.2 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 Auckland, New Zealand.

27.3 The Firm may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent provided the assignment does not cause detriment to the Client.

27.4 The Client cannot licence or assign without the written approval of the Firm.

27.5 The Firm may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Firm's sub-contractors without the authority of the Firm.

27.6 The Client agrees that during the term of the Contract and for a period of six (6) months following the termination of the Contract for any reason, the Client will not:

- (a) attempt to encourage or persuade any Consultants, employee or consultant of the Firm to terminate their contract or employment with the Firm; and
- (b) the Client acknowledges that the restraints are fair and reasonable for the proper preservation of the goodwill of the business of the Firm.

27.7 The Client agrees that the Firm may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for the Firm to provide Services to the Client.

27.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including worldwide destination ports), etc., ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Client to make a payment to the Firm, following cessation of a Force Majeure.

27.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.