

1. Definitions

- 1.1 **“Agreement”** means the terms and conditions contained herein, together with any quotation, proposal, schedule and any other agreement, invoice or other document or amendments expressed to be supplemental to this Agreement.
- 1.2 **“Client”** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting NZ Drafting to provide the Services 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.
- 1.3 **“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 NZ Drafting’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.
- 1.4 **“Fee”** means the Fee payable (plus any Goods and Services Tax (“GST”) where applicable) for the Services as agreed between NZ Drafting and the Client in accordance with clause 6 below.
- 1.5 **“NZ Drafting”** means NZ Drafting Limited, its successors and assigns.
- 1.6 **“Project”** means the Project as specified in the scope of Services and/or letter of engagement that will read in conjunction with this Agreement for which the Services are provided by NZ Drafting to the Client.
- 1.7 **“Services”** means all Services provided by NZ Drafting to the Client, at the Client’s request, from time to time, and includes any electronic design files, documents, designs, plans, drawings, or materials (**“Documentation”**) provided, consumed, created, or deposited incidentally by NZ Drafting in the course of it conducting, or providing to the Client, any Services. Where the context so permits the terms ‘Services’ or ‘Documentation’ shall be interchangeable for the other.

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 NZ Drafting.
- 2.2 In the event of any inconsistency between the terms and conditions of this Agreement and any other prior document or schedule that the parties have entered into, the terms of this Agreement shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Agreement may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges that the supply of Documentation or Services on credit shall not take effect until the Client has completed a credit application with NZ Drafting and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Documentation or Services requested exceeds the Client’s credit limit and/or the account exceeds the payment terms, NZ Drafting reserves the right to refuse delivery.
- 2.6 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. Authorised Representatives

- 3.1 Unless otherwise limited as per clause 3.2 the Client agrees that should the Client introduce any third party to NZ Drafting as the Client’s duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Services on the Client’s behalf and/or to request any variation to the Services on the Client’s behalf (such authority to continue until all requested Services have been completed or the Client otherwise notifies NZ Drafting in writing that said person is no longer the Client’s duly authorised representative).
- 3.2 In the event that the Client’s duly authorised representative as per clause 3.1 is to have only limited authority to act on the Client’s behalf then the Client must specifically and clearly advise NZ Drafting in writing of the parameters of the limited authority granted to their representative.
- 3.3 The Client specifically acknowledges and accepts that they will be solely liable to NZ Drafting for all additional costs incurred by NZ Drafting (including NZ Drafting’s profit margin) in providing any Services or variation/s requested by the Client’s duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).

4. Errors and Omissions

- 4.1 The Client acknowledges and accepts that NZ Drafting 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 NZ Drafting in the formation and/or administration of this Agreement; and/or
(b) contained in/omitted from any literature (hard copy and/or electronic) supplied by NZ Drafting in respect of the Services.
- 4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of NZ Drafting; the Client shall not be entitled to treat this Agreement as repudiated nor render it invalid.

5. Change in Control

- 5.1 The Client shall give NZ Drafting 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 NZ Drafting as a result of the Client’s failure to comply with this clause.

6. Fee and Payment

- 6.1 At NZ Drafting’s sole discretion the Fee shall be either:
(a) as indicated on any invoice provided by NZ Drafting to the Client; or
(b) NZ Drafting’s quoted Fee (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.

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- 6.2 NZ Drafting reserves the right to change the Fee:
- (a) in the event the Client requests changes and/or causes delays or stoppages after commencement of the Services then NZ Drafting (at its sole discretion) shall be entitled not only to vary the Fee but the term of the Agreement. All variations shall be in writing, detailing the reason for the variation, the impact on the Fee, term and/or the scope of the Agreement and shall be signed by both parties; or
 - (b) where additional costs are incurred by NZ Drafting due to unexpected delays, or receipt of approvals or certificates, etc.; or
 - (c) to include all costs and expenses (including, but not limited to, travel, disbursements, postage, search fees, couriers and the like expenses), incurred by NZ Drafting in connection with the provision of the Services. NZ Drafting shall fully document all such expenses for submission to the Client.
- 6.3 Variations will be charged for on the basis of NZ Drafting's quotation, and will be detailed in writing, and shown as variations on NZ Drafting's invoice. The Client shall be required to respond to any variation submitted by NZ Drafting within ten (10) working days. Failure to do so will entitle NZ Drafting 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.
- 6.4 At NZ Drafting's sole discretion a deposit may be required.
- 6.5 Time for payment for the Documentation being of the essence, the Fee will be payable by the Client on the date/s determined by NZ Drafting, which may be:
- (a) on completion of the Services; or
 - (b) by way of instalments/progress payments in accordance with NZ Drafting's payment schedule;
 - (c) for certain approved Clients, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - (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 NZ Drafting.
- 6.6 Payment may be made by electronic/on-line banking, or by any other method as agreed to between the Client and NZ Drafting.
- 6.7 NZ Drafting may in its discretion allocate any payment received from the Client towards any invoice that NZ Drafting determines and may do so at the time of receipt or at any time afterwards. On any default by the Client NZ Drafting may re-allocate any payments previously received and allocated. In the absence of any payment allocation by NZ Drafting, payment will be deemed to be allocated in such manner as preserves the maximum value of NZ Drafting's Purchase Money Security Interest (as defined in the PPSA) in the Documentation.
- 6.8 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 NZ Drafting nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.9 Unless otherwise stated the Fee does not include GST. In addition to the Fee, the Client must pay to NZ Drafting an amount equal to any GST NZ Drafting must pay for any supply by NZ Drafting under this or any other contract for the sale of the Documentation. 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. Provision of the Services**
- 7.1 NZ Drafting may provide the Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 7.2 NZ Drafting shall as per clause 7.2 above be entitled to claim an extension to the term of this Project in the event of delays resulting from any matter whatsoever which is not entirely under the control of NZ Drafting. These matters shall include, but are not limited to, delays caused by:
- (a) response(s) to information request(s) made by NZ Drafting to the Client not being available when required; or
 - (b) approval authorities response times for requests for preliminary decisions/information; or
 - (c) information from consultants, councils or referral agencies not being available when required; or
 - (d) changes to the scope of the Services being requested by the Client; or
 - (e) time taken by the approval authority for the granting of required approvals; or
 - (f) any other variation to this Agreement.
- 7.3 In the event that there is a break in the continuity of Services being provided by NZ Drafting due to the Client's instructions, or lack of instruction, and such instructions are not received within thirty (30) calendar days of being requested by NZ Drafting, or from the last Client instruction, or all Services are suspended by NZ Drafting pursuant to overdue payments, then Fees for Services completed at the time of such a break or suspension shall be:
- (a) the percentage due for completed Services of the current stage, plus the cost of all Project staff working at the time of such a break or suspension of the Services for one (1) month, all Fees due up to date of such a break or suspension plus all Fees, wages and expenses reasonably incurred because of such a break or suspension, unless otherwise agreed; and
 - (b) if the Project recommences, in addition to the amounts payable previously, the Client shall pay a commencement fee to NZ Drafting. This fee shall be equivalent to the time charge cost for five (5) days of all Project staff required to be working on the Project at the time of such a break or suspension thereof, unless otherwise agreed.
- 7.4 Any time specified by NZ Drafting for provision of the Services is an estimate only and NZ Drafting will not be liable for any loss or damage incurred by the Client because of the Services being delayed. 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. If NZ Drafting is unable to provide the Services as agreed solely due to any action or inaction of the Client, then NZ Drafting shall be entitled to:
- (a) charge the Client additionally for re-providing the Services at a later date; or
 - (b) subject to clause 20, terminate the Agreement.
- 8. Nominated Sub-Contractors**
- 8.1 NZ Drafting shall engage sub-contractors, as required, acting solely as agent on behalf of the Client and the following shall apply:
- (a) NZ Drafting shall be entitled to enter into contracts with such sub-contractors in the name of the Client; and
 - (b) the Client shall be responsible for all payments to such sub-contractors; and

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- (c) where NZ Drafting pays the sub-contractors account on behalf of the Client, the Client shall reimburse NZ Drafting for the payment of the sub-contractors account together with an account-handling fee within seven (7) days from the date of submission of the account by NZ Drafting to the Client; and
 - (d) if the Client does not reimburse NZ Drafting within seven (7) days from the date of submission of the account in accordance with sub-clause (c) above, NZ Drafting shall be entitled to:
 - (i) charge interest as per clause 19.1 from the date of payment of the sub-contractors account by NZ Drafting to the date of reimbursement to NZ Drafting by the Client; and/or
 - (ii) charge an administration fee as allowed by this Agreement.
- 8.2 At the option of the Client, and notified to NZ Drafting in writing, the Client shall engage relevant sub-contractors required for the Project (after consultation with NZ Drafting) and shall be liable for all payments to such sub-contractors.

9. NZ Drafting's Obligations

- 9.1 NZ Drafting warrants that it has the necessary skills, competence, and experience to undertake and complete the Services and shall at all times apply such skills, competence and experience in performance of the Services.
- 9.2 NZ Drafting represents that NZ Drafting will maintain current professional indemnity insurance.
- 9.3 If the Client instructs NZ Drafting to change the scope of the Services, NZ Drafting shall promptly notify the Client in writing of any variation in Fee pursuant to clause 6.2 of this Agreement. The Client agrees that additional Fees may be payable.
- 9.4 NZ Drafting shall keep full records of the Services provided in the manner determined by NZ Drafting, and shall provide to the Client with updates with respect of the Services at the time and in the manner determined by NZ Drafting in NZ Drafting's absolute discretion.

10. Client's Responsibilities

- 10.1 The Client acknowledges and accepts that the documentation, drawings, specifications (including CAD drawings) and other information provided by the Client to NZ Drafting are accurate and that the ability of NZ Drafting to provide the Services is dependent upon the Client complying with this clause .
- 10.2 In the event that any documentation, drawings, specifications (including CAD drawings) or information provided by the Client is inaccurate:
 - (a) NZ Drafting accepts no responsibility or liability for any loss, damages, or costs however resulting from these inaccurate documentation, drawings, specifications or other information;
 - (b) NZ Drafting is entitled to suspend or terminate the supply of the Services to the Client if there is a material change to the scope of Services as a result of inaccurate documentation, drawings, specifications or other information;
 - (c) NZ Drafting will not be liable to the Client for any loss or damage the Client suffers because NZ Drafting has exercised its rights under this clause.

11. Compliance with Laws

- 11.1 The Client and NZ Drafting agree that both parties shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the provision of Services by NZ Drafting, including any WorkSafe guidelines and any other relevant safety standards or legislation.
- 11.2 The Client shall obtain (at the expense of the Client) all licences, approvals and/or certificates that may be required to enable NZ Drafting to provide the Services.
- 11.3 NZ Drafting has not and will not at any time 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 & Safety at Work Act 2015 (the "HSW Act") arising out of the engagement. The parties agree that for the purposes of the HSW Act, NZ Drafting shall not be the person who controls the place of work in terms of the HSW Act.

12. Title

- 12.1 NZ Drafting and the Client agree that ownership of the Documentation shall not pass until:
 - (a) the Client has paid NZ Drafting all amounts owing to NZ Drafting; and
 - (b) the Client has met all of its other obligations to NZ Drafting.
- 12.2 Receipt by NZ Drafting 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.
- 12.3 It is further agreed that until ownership of the Documentation passes to the Client in accordance with clause 12.1:
 - (a) the Client is only a bailee of the Documentation and must return the Documentation to NZ Drafting on request;
 - (b) the Client holds the benefit of the Client's insurance of the Documentation on trust for NZ Drafting and must pay to NZ Drafting the proceeds of any insurance in the event of the Documentation being lost, damaged or destroyed;
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Documentation other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Documentation then the Client must hold the proceeds of any such act on trust for NZ Drafting and must pay or deliver the proceeds to NZ Drafting on demand;
 - (d) the Client should not convert or process the Documentation or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of NZ Drafting and must sell, dispose of or return the resulting product to NZ Drafting as it so directs;
 - (e) the Client irrevocably authorises NZ Drafting to enter any premises where NZ Drafting believes the Documentation are kept and recover possession of the Documentation;
 - (f) NZ Drafting may recover possession of any Documentation in transit whether or not Delivery has occurred;
 - (g) the Client shall not charge or grant an encumbrance over the Documentation nor grant nor otherwise give away any interest in the Documentation while they remain the property of NZ Drafting; and
 - (h) NZ Drafting may commence proceedings to recover the Fee of the Documentation sold notwithstanding that ownership of the Documentation has not passed to the Client.

13. Personal Property Securities Act 1999 (“PPSA”)

- 13.1 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 that have previously been supplied and that will be supplied in the future by NZ Drafting to the Client, and the proceeds from such Documentation as listed by NZ Drafting to the Client in invoices rendered from time to time.
- 13.2 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 NZ Drafting may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, NZ Drafting for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Documentation charged thereby;
 - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Documentation or the proceeds of such Documentation in favour of a third party without the prior written consent of NZ Drafting; and
 - (d) immediately advise NZ Drafting of any material change in its business practices of selling the Documentation which would result in a change in the nature of proceeds derived from such sales.
- 13.3 NZ Drafting and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 13.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 13.5 Unless otherwise agreed to in writing by NZ Drafting, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 13.6 The Client shall unconditionally ratify any actions taken by NZ Drafting under clauses 13.1 to 13.5.
- 13.7 Subject to any express provisions to the contrary (including those contained in this clause 13), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

14. Security and Charge

- 14.1 In consideration of NZ Drafting agreeing to supply the Documentation or 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 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.
- 14.2 The Client indemnifies NZ Drafting from and against all NZ Drafting's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising NZ Drafting's rights under this clause.
- 14.3 The Client irrevocably appoints NZ Drafting and each director of NZ Drafting as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Client's behalf.

15. Defective Services

- 15.1 The Client acknowledges and accepts that where a claim of design failure is made against NZ Drafting that:
- (a) an impartial suitably qualified inspector will be employed to establish the fault; and
 - (b) should it be deemed that the cause of the design failure is of no fault of NZ Drafting, then all associated costs will be borne by the Client.
- 15.2 The Client shall inspect the Services on completion and shall within seven (7) days of such time notify NZ Drafting in writing of any alleged defect in the Services provided (including NZ Drafting's workmanship), any error or omission, or of any other failure by NZ Drafting to comply with the description of, or proposal for, the Services which NZ Drafting was to provide. The Client must notify any other alleged defect in NZ Drafting's Services as soon as is reasonably possible after any such defect becomes evident. Upon such notification the Client must allow NZ Drafting, within a reasonable time following such notification, to review the Services that were provided. If the Client fails to comply with these provisions, the Services shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.

16. Consumer Guarantees Act 1993

- 16.1 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 NZ Drafting to the Client.

17. Intellectual Property

- 17.1 Where NZ Drafting has supplied Documentation to the Client, then the copyright in the Documentation (either in whole or in part) shall remain vested in NZ Drafting, and shall only be used by the Client at NZ Drafting's discretion. However, NZ Drafting grants the Client a licence to use the Documentation to complete the Client's project, for which they were intended, conditional upon all of the following:
- (a) the licence applies only to the individual Project (or part thereof) to which the Documentation relates; and
 - (b) the Fee properly due to NZ Drafting has been paid.
- 17.2 The Client acknowledges that if they wish to reproduce the Project, then a further Fee will be due and payable to NZ Drafting. Upon payment of that Fee NZ Drafting shall grant a further licence to use the Documentation to complete the reproduced Project but this shall only be applicable to that reproduction.
- 17.3 Any licence granted shall immediately be withdrawn if payment of the Fee is not made on due date and any Documentation (including copies) must be immediately returned to NZ Drafting by the Client.
- 17.4 Where the Client provides NZ Drafting any materials including sketches, photographs, drawings, plans or concepts upon which NZ Drafting is to base the Services, the Client shall indemnify and keep indemnified NZ Drafting at all times against all actions, proceedings, claims, demands, liabilities, either express or implied, and all costs, losses, losses of profit, damages and expenses whatsoever which may be taken against NZ Drafting or incurred or become payable by NZ Drafting resulting or arising from any claim or infringement of any patent, registered design, trademark, copyright or any other property interest of a third party which may result out of the use by NZ Drafting of the materials.
- 17.5 NZ Drafting shall retain the original Documentation, including, but not limited to, any CAD drawings and/or designs.

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- 17.6 The Client acknowledges that they may only supply the Documentation (including softcopy) to any third party with the express approval of NZ Drafting in writing.
- 17.7 NZ Drafting may photograph, video or record by any and all means the Project for the duration thereof, and upon completion, for NZ Drafting's own use and for use in exhibitions, or award competitions, or publication in journals.
- 17.8 If the Client publicises or permits the publication of the Project, NZ Drafting must be given full credit for its role in the Project. NZ Drafting details shall be included on any or all Project signboards. If there is no such signboard, then the Client agrees that NZ Drafting may erect a signboard in an agreed location for the duration of the Project and up to thirty (30) days after completion thereof.

18. Confidentiality

- 18.1 Each party agrees to treat all Documentation, information and ideas communicated by the other party as confidential and each agrees not to divulge it to any third party, without the other party's written consent.

19. Default and Consequences of Default

- 19.1 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 NZ Drafting's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 19.2 If the Client owes NZ Drafting any money the Client shall indemnify NZ Drafting from and against all costs and disbursements incurred by NZ Drafting in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, NZ Drafting's collection agency costs, and bank dishonour fees).
- 19.3 Further to any other rights or remedies NZ Drafting may have under this Agreement, if a Client has made payment to NZ Drafting, 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 NZ Drafting under this clause 17.1 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Agreement.
- 19.4 Without prejudice to NZ Drafting's other remedies at law NZ Drafting shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to NZ Drafting shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to NZ Drafting becomes overdue, or in NZ Drafting's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by NZ Drafting;
 - (c) 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
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

20. Cancellation

- 20.1 Without prejudice to any other remedies NZ Drafting may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions NZ Drafting may suspend or terminate the supply of Documentation to the Client. NZ Drafting will not be liable to the Client for any loss or damage the Client suffers because NZ Drafting has exercised its rights under this clause.
- 20.2 NZ Drafting may cancel any Agreement to which these terms and conditions apply or cancel Delivery of Documentation at any time before the Documentation are delivered by giving written notice to the Client. On giving such notice NZ Drafting shall repay to the Client any money paid by the Client for the Documentation. NZ Drafting shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.3 In the event that the Client cancels Delivery of Documentation the Client shall be liable for any and all loss incurred (whether direct or indirect) by NZ Drafting as a direct result of the cancellation (including, but not limited to, any loss of profits).

21. Privacy Policy

- 21.1 All emails, documents, images or other recorded information held or used by NZ Drafting is "**Personal Information**" as defined and referred to in clause 21.3 and therefore considered confidential. NZ Drafting 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. NZ Drafting acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by NZ Drafting that may result in serious harm to the Client, NZ Drafting 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.
- 21.2 Notwithstanding clause 21.1, privacy limitations will extend to NZ Drafting in respect of Cookies where the Client utilises NZ Drafting's website to make enquiries. NZ Drafting 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 NZ Drafting when NZ Drafting sends an email to the Client, so NZ Drafting may collect and review that information ("collectively Personal Information")
- If the Client consents to NZ Drafting's use of Cookies on NZ Drafting's website and later wishes to withdraw that consent, the Client may manage and control NZ Drafting's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 21.3 The Client authorises NZ Drafting or NZ Drafting's agent 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.

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- (b) disclose information about the Client, whether collected by NZ Drafting from the Client directly or obtained by NZ Drafting 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.
- 21.4 Where the Client is an individual the authorities under clause 21.3 are authorities or consents for the purposes of the Privacy Act 2020.
- 21.5 The Client shall have the right to request (by e-mail) from NZ Drafting, a copy of the Personal Information about the Client retained by NZ Drafting and the right to request that NZ Drafting correct any incorrect Personal Information.
- 21.6 NZ Drafting 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 Agreement or is required to be maintained and/or stored in accordance with the law.
- 21.7 The Client can make a privacy complaint by contacting NZ Drafting via e-mail. NZ Drafting 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>.

22. Service of Notices

- 22.1 Any written notice given under this Agreement 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 Agreement;
 - (c) by sending it by registered post to the address of the other party as stated in this Agreement;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Agreement (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 22.2 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.

23. Trusts

- 23.1 If the Client at any time upon or subsequent to entering in to the Agreement is acting in the capacity of trustee of any trust ("Trust") then whether or not NZ Drafting may have notice of the Trust, the Client covenants with NZ Drafting as follows:
 - (a) the Agreement extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust to enter into the Agreement and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or 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 without consent in writing of NZ Drafting (NZ Drafting 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 property.

24. Liability Limitations

- 24.1 NZ Drafting's liability to the Client in anyway arising out of, or in connection with, this Agreement and the Services (including in contract, tort, under statute or in equity) shall be limited to damages which under no circumstances shall exceed the amount of Professional Indemnity Insurance cover carried by NZ Drafting.
- 24.2 The Client hereby irrevocably releases NZ Drafting from all claims (including any cost, expense, loss, damage, claim, liability, action or proceeding, whether or not presently ascertained, immediate, future or contingent, and includes legal costs on a full indemnity basis) suffered or incurred by the Client (or any person claiming through or on behalf of the Client) other than to the extent caused or contributed to by:
 - (a) a negligent act or omission of NZ Drafting; or
 - (b) a breach of, or default under this Agreement by NZ Drafting.
- 24.3 The Client's release under clause 24.2 is reduced proportionately to the extent that an act, default or omission of NZ Drafting has caused or contributed to the claim.
- 24.4 Notwithstanding clauses 24.2 and 24.3, NZ Drafting 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 NZ Drafting; or
 - (b) errors occurring during the course of any services which are not provided by, nor the responsibility of, NZ Drafting; or
 - (c) the use of any Documentation or other information of advice without the approval of NZ Drafting.

25. Suspension of Services

- 25.1 Where the Agreement is subject to section 24A of the Construction Contracts Act 2002, the Client hereby expressly acknowledges that:
 - (a) NZ Drafting has the right to suspend work 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 in accordance with clause 6.5 and/or any subsequent amendments or new legislation 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 NZ Drafting by a particular date; and
 - (iv) NZ Drafting has given written notice to the Client of its intention to suspend the carrying out of work under the construction Contract.
 - (b) if NZ Drafting suspends work, it:

- (i) is not in breach of the Agreement; 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 Agreement; and
 - (iv) keeps its rights under the Agreement including the right to terminate the Agreement; 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 NZ Drafting exercises the right to suspend work, the exercise of that right does not:
- (i) affect any rights that would otherwise have been available to NZ Drafting under the Contract and Commercial Law Act 2017; 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 NZ Drafting suspending work under this provision;
- (d) due to any act or omission by the Client, the Client effectively precludes NZ Drafting from continuing the Services or performing or complying with NZ Drafting's obligations under this Agreement, then without prejudice to NZ Drafting's other rights and remedies, NZ Drafting may suspend the Services immediately after serving on the Client a written notice specifying the payment default or the act, omission or default upon which the suspension of the Services is based. All costs and expenses incurred by NZ Drafting as a result of such suspension and recommencement shall be payable by the Client as if they were a variation.
- 25.2 If pursuant to any right conferred by this Agreement, NZ Drafting suspends the Services and the default that led to that suspension continues un-remedied subject to clause 20.1 for at least ten (10) working days, NZ Drafting shall be entitled to terminate the Agreement, in accordance with clause 20.

26. General

- 26.1 Any dispute or difference arising as to the interpretation of these terms and conditions, or as to any matter arising hereunder, shall be submitted to, and settled by, arbitration in accordance with the Arbitration Act 1996 or its replacement(s).
- 26.2 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.
- 26.3 These terms and conditions and any agreement to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of Tauranga, New Zealand.
- 26.4 Subject to the CGA, NZ Drafting 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 NZ Drafting of these terms and conditions (alternatively NZ Drafting's liability shall be limited to damages which under no circumstances shall exceed the Fee of the Services).
- 26.5 NZ Drafting may licence and/or assign all or any part of its rights and/or obligations under this Agreement without the Client's consent.
- 26.6 The Client cannot licence or assign without the written approval of NZ Drafting.
- 26.7 NZ Drafting may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Agreement by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of NZ Drafting's sub-contractors without the authority of NZ Drafting.
- 26.8 The Client agrees that NZ Drafting may amend their general terms and conditions for subsequent future agreements 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 NZ Drafting to provide Services to the Client.
- 26.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, 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 NZ Drafting.
- 26.10 Both parties warrant that they have the power to enter into this Agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Agreement creates binding and valid legal obligations on them.
- 26.11 This Agreement constitutes the entire Agreement between the parties with respect of the subject matter and contains all of the representations, undertakings, warranties, covenants and agreements of the parties. This Agreement supersedes all prior negotiations, contracts, arrangements, understandings and agreements with respect to such subject matter. There are no representations, undertakings, warranties, covenants or agreements between the parties express or implied except as contained in this Agreement.