



NOVO GROUP LIMITED - TERMS OF ENGAGEMENT

- 1 These Terms of Engagement ("these Terms") apply except where we otherwise agree with you in writing.

Application of these Terms

- 2 These Terms apply to all matters commenced after we have sent you these Terms. You do not need to sign these Terms; you accept these Terms each time you engage us on a new matter.
- 3 In these Terms, "we", "us" and "the Consultant" means Novo Group, "you" and "the Client" means the person instructing Novo Group, and "the Services" means the professional consultancy services that you have engaged us to provide.
- 4 We can change these Terms at any time. Any amended terms will apply to all matters commenced after we have sent you those amended terms.
- 5 The Client and the Consultant agree that where any Services are acquired for the purposes of a business the provisions of the Consumer Guarantees Act 1993 are excluded in relation to those Services. However, nothing in this Agreement shall restrict, negate, modify or limit any of the Client's rights under the Consumer Guarantees Act 1993 where the Services acquired are of a kind ordinarily acquired for personal, domestic or household use or consumption and the Client is not acquiring the Services for the purpose of a business.
- 6 In providing the Services, the Consultant must use the degree of skill, care and diligence reasonably expected of a professional consultant providing services similar to the Services.
- 7 The Client shall provide to the Consultant, free of cost, as soon as practicable following any request for information, all information in the Client's power to obtain which may relate to the Services. The Consultant shall not, without the Client's prior consent, use information provided by the Client for purposes unrelated to the Services. In providing the information to the Consultant, the Client shall ensure compliance with the Copyright Act 1994 and shall identify any proprietary rights that any other person may have in any information provided.
- 8 As soon as either Party becomes aware of anything that will materially affect the scope or timing of the Services, the Party must notify the other Party in writing and where the Consultant considers a direction from the Client or any other circumstance is a variation the Consultant shall notify the Client accordingly.
- 9 The Client may order variations to the Services in writing or may request the Consultant to submit proposals for variations to the Services.

Confidentiality and Privacy

- 10 We must hold in strict confidence all information about you or your business that we acquire through our work for you. However, we may disclose such information if we are authorised by you or where we must do so by law.
- 11 We are not required to disclose information to you that we obtain through acting for other clients or from prospective clients.



- 12 For the purpose of facilitating the efficient running of Novo Group Limited, you authorise us to collect all information we may require from any third parties and authorises those third parties to release that information to us.
- 13 You agree that this information may be passed to a third party or to any other person to facilitate collection of debts from you.
- 14 Such information will be accessible to any of our employees and agents who need access to it for the efficient running of our business. You may request access to and correction of this information at any time. We will comply with all requirements under the Privacy Act 2020

Conflicts of Interest

- 15 We may act for other clients whose commercial interests differ from yours. However, we will not do that without your consent where:
 - a. another client's instructions are substantially related to any active matter we are engaged on for you; or
 - b. we hold confidential information about you that is relevant to another client's instructions, you would be disadvantaged if that information was disclosed to that other client and there is a real risk of disclosure.
- 16 We may address any risk of disclosure by establishing an information barrier. Any information barrier will restrict access to your hard copy files and electronic documents. It will ensure that the only Novo Group staff able to access your hard copy or electronic documents are those working for you on your matters.

Our Fees

Fees and Disbursements

- 17 Our professional fees are required to be fair and reasonable having regard to the circumstances of the matter and the nature of the Services. We reserve the right to apply higher or varied rates in circumstances that require:
 - a. the provision of urgent or out-of-hours Services;
 - b. advice or deliverables of significant strategic, commercial, or reputational value;
 - c. the allocation of senior personnel or specialist expertise; or
 - d. the prioritisation of your work over other client commitments.
- 18 Our hourly rates are reviewed on 1 April and 1 October, annually. Among other things, this review accounts for the promotion of our staff through their respective experience levels.
- 19 We may:
 - a. require you to provide security for our expected fees or for expected disbursements as a condition of our engagement, or continued engagement, by you; or
 - b. require you to enter into a cancellation fee arrangement for major instructions which may not proceed, but which require us to make staff or resources available to you for an extended period.



- 20 If you require us to comply with any electronic billing or online billing platform requirements, you must advise us of all such requirements within five days of receiving these Terms. We may charge you a fee to recover our costs of complying with your particular billing requirements.
- 21 Other disbursements (for example LINZ fees, travel expenses, copying and printing beyond routine requirements, etc) are charged separately to other fees and charges, and are itemised on our invoices.

Estimates and Indications of Fees

- 22 Any estimate we provide is a guide only, not a fixed quotation.
- 23 Our estimates and other indications of our fees (such as a schedule of rates) are limited to our professional fees and do not include New Zealand GST, other fees or disbursements unless expressly stated.

Payment

- 24 We will send interim invoices to you, usually monthly. We will also send an invoice to you on the completion of our Services.
- 25 Where this Agreement has been entered by an agent (or a person purporting to act as agent) on behalf of the Client, the agent and Client shall be jointly and severally liable for payment of all fees and expenses due to the Consultant under this Agreement.
- 26 If there is more than one person instructing Novo Group, each person is jointly and severally liable for payment in due time of all our invoices and other charges.

Non-Payment of Fees

- 27 You must pay our invoices on the due date regardless of whether:
 - a. we have agreed to address the invoice to a third party;
 - b. you have a right of indemnity or recovery from a third party;
 - c. a third party disputes or seeks an assessment of our invoice; or
 - d. you receive any funds from the third party for payment of our invoice.
- 28 If an invoice is not paid when due, you agree and acknowledge that we may:
 - a. charge you interest on any overdue invoice at a rate 2% above the Consultant's overdraft rate prevailing on the date payment is due;
 - b. elect not to do any further work for you, and we may retain custody of your documents, until all your invoices are paid in full;
 - c. recover from you in full any actual costs we incur in seeking to recover the amounts from you, including the fees of any collection agency, and our own fees.
- 29 Where the nature of the Services is such that it is covered by the Construction Contracts Act 2002 (CCA) and the Consultant has issued a payment claim in accordance with the CCA, the provisions of the CCA shall apply. In all other cases, if the Client, acting reasonably, disputes an invoice, or part of an invoice, the Client must promptly give the reasons for withholding the disputed amount and pay any undisputed amount in accordance with clause 23.



- 30 Where Services are carried out on a time charge basis, the Consultant may purchase such incidental goods and/or Services as are reasonably required for the Consultant to perform the Services. The cost of obtaining such incidental goods and/or Services shall be payable by the Client. The Consultant shall maintain records which clearly identify time and expenses incurred.

Liability

- 31 Where the Consultant breaches this Agreement, the Consultant is liable to the Client for reasonably foreseeable claims, damages, liabilities, losses or expenses caused directly by the breach. The Consultant shall not be liable to the Client under this Agreement for the Client's indirect, consequential or special loss, or loss of profit, however arising, whether under contract, in tort or otherwise.
- 32 The maximum aggregate amount payable, whether in contract, tort or otherwise, in relation to claims, damages, liabilities, losses or expenses, shall be five times the fee (exclusive of GST and disbursements) with a minimum of \$100,000 and a maximum limit of \$NZ500,000.
- 33 Without limiting any defences a Party may have under the Limitation Act 2010, neither Party shall be considered liable for any loss or damage resulting from any occurrence unless a claim is formally made on a Party within 6 years from completion of the Services.
- 34 The Consultant shall take out and maintain for the duration of the Services a policy of Professional Indemnity insurance for the amount of liability under clause 28. The Consultant undertakes to use all reasonable endeavours to maintain a similar policy of insurance for six years after the completion of the Services.
- 35 If either Party is found liable to the other (whether in contract, tort or otherwise), and the claiming Party and/or a Third Party has contributed to the loss or damage, the liable Party shall only be liable to the proportional extent of its own contribution.

Data Protection and Privacy

- 36 Each party to the contract will comply with the data protection legislation, including the Privacy Act 2020, applicable to itself, in relation to any personal data shared in connection with the Contract. We agree to cooperate with each other in addressing our respective privacy obligations in connection with the services. You will not provide the Consultant with personal data unless the personal data is required for the performance of the Contract. In respect of any personal data shared with the Consultant, you confirm you have the necessary authority for the Consultant to use it in accordance with the Contract, and that data subjects have been given necessary information regarding its use. Each party may process personal data for the purposes of:
- a. Performing the Contract;
 - b. Security, quality and risk management activities;
 - c. Complying with any requirement of law, regulation or a professional body of which it is a member;
 - d. Administering, managing and developing its business and services;
 - e. Providing information about itself and its range of services



- 37 Each party may transfer personal data shared with it to any of its affiliates or contractors or subcontractors or suppliers in relation to any set of the purposes set out in clause 32. Some of these recipients may be located outside the country or territory where the personal data originated or the data subjects are located. Each party may transfer the personal data only where it has the lawful basis to do so and any appropriate contractual or comparable safeguards required by applicable data protection legislation are in place to protect the personal data being transferred.

Electronic Services and Communication

- 38 We will not be liable for any damage or loss caused by, or in connection with, or as a consequence of:
- a. corruption, interference or interception of, or viruses or other defects in, any electronic communication;
 - b. a legitimate email not being read by its intended recipient as a result of that email being blocked by an email security system.
- 39 If you request, and we agree, to provide any person with electronic access to our systems, it is your responsibility to manage that person's access and use of our systems. You must notify us of any change to that person's permission to access any information.
- 40 We may add you to our database so that you will receive newsletters and invitations to events that we consider may be useful to you. You may let us know if you do not want to receive that correspondence.

Documents

- 41 We may destroy:
- a. any hard copy document where we have an electronic copy;
 - b. any document (hard copy or electronic) after seven years following the completion of your matter.
- 42 We must, on request, provide to you all the documents we hold to which you are entitled, provided that:
- a. we may take a complete copy of them;
 - b. we will provide the documents to you only after you have paid all of our invoices on all matters and all of the costs associated with provision of the documents, including the cost of any reasonably necessary review of the documents, on a time and attendance basis;
 - c. where we hold any document for multiple clients, we will not provide the original to any person unless all those clients authorise us to do so;
 - d. you will not be entitled to documents created for our benefit, for example drafts of documents not sent to you or any third party, internal Novo Group communications (save where they record communications with you or a third party), research and preparatory materials, internal Novo Group financial records and documents.



Intellectual Property

- 43 Intellectual property prepared or created by the Consultant in carrying out the Services, and provided to the Client as a deliverable, ("New Intellectual Property") shall be jointly owned by the Client and the Consultant. The Client and Consultant hereby grant to the other an unrestricted royalty-free license in perpetuity to copy or use New Intellectual Property. The Clients' rights in relation to this New Intellectual Property are conditional upon the Client having paid all amounts due and owing to the Consultant in accordance with clauses 20-26. Intellectual property owned by a Party prior to the commencement of this Agreement (Pre-existing Intellectual Property) and intellectual property created by a Party independently of this Agreement remains the property of that Party. The Consultant accepts no liability for the use of New Intellectual Property or Pre-existing Intellectual Property other than to the extent reasonably required for the intended purposes.
- 44 The Consultant has not and will not assume any duty imposed on the Client pursuant to the Health and Safety at Work Act 2015 ("the Act") in connection with the Agreement. However, Novo Group will comply with its own obligations under the Act.

Termination

- 45 Your instructions will be deemed to have been completed, and our engagement terminated, at the conclusion of our work for you under that instruction, or three months from the last date that any work was recorded against the file (whichever is the earlier).
- 46 If our engagement is terminated, we will have no further obligation to update you, advise you of any matter or provide any further services to you. These Terms will otherwise continue to apply to the engagement notwithstanding its termination.
- 47 The Client may suspend all or part of the Services by notice to the Consultant who shall immediately make arrangements to stop the Services and minimise further expenditure. The Client and the Consultant may (in the event the other Party is in material default that has not been remedied within 14 days of receiving the other Party's notice of breach) either suspend or terminate the Agreement by notice to the other Party. If the suspension has not been lifted after 2 months the Consultant has the right to terminate the Agreement and claim reasonable costs as a result of the suspension. Suspension or termination shall not prejudice or affect the accrued rights or claims and liabilities of the Parties.
- 48 The Parties shall attempt in good faith to settle any dispute themselves but failing that by mediation.
- 49 This Agreement is governed by the New Zealand law, the New Zealand courts have jurisdiction in respect of this Agreement, and all amounts are payable in New Zealand dollars.

Entire Agreement

- 50 The Contract forms the entire agreement between the parties. To the extent permissible by law all warranties, conditions, representations and liabilities or terms other than those expressly stated are excluded. If any term of the Contract is held to be invalid the enforceability of the remainder of the Contract will not be affected.