

## KWANTO STANDARD TERMS AND CONDITIONS OF ENGAGEMENT

### 1. DEFINITIONS

“**Agreement**” means the entire contractual agreement entered into between the Client and the Consultant for the provision of the Services and any variations thereof or amendments thereto agreed to by both parties in writing. The Agreement includes any Letter of Engagement, any special conditions of engagement and these Terms of Engagement.

“**Client**” means the entity, company, person or firm cited in the Letter of Engagement as the party engaging the Consultant to perform the Services and undertaking responsibility for payment of the Fee to the Consultant.

“**Consultant**” means Kwanto Limited and its employees, consultants and agents who perform the Services.

“**Deliverables**” means the documents, reports or other items to be delivered by the Consultant to the Client as a result of performing the Services as set out in the Agreement.

“**Fee**” means remuneration specified by the Consultant in a quote or an invoice in respect Services. It includes Reimbursable Expenses.

“**Intellectual Property**” means the ownership of, and copyright in all documents, reports, registered and unregistered designs, drawings, specifications, programs, software, methods, techniques, technology, processes, catalogues, calculations, data, compositions, materials and other property (whether tangible or intangible) confidential information, registered and unregistered trademarks, trade secrets and know-how, produced or used by the Consultant or its pursuant to or in any way whatsoever arising out of the performance of the Agreement.

“**Letter of Engagement**” means a letter setting out the key details of the Client and any other terms in connection with the provision of Services by the Consultant that is to be read in conjunction with these Terms of Engagement.

“**Project**” means any project described in a Letter of Engagement in respect of which the Consultant is to provide Services.

“**Proposal**” means written correspondence from the Consultant to the Client specifying the scope of work, Fee and other terms or conditions applicable to the Agreement.

“**Reimbursable Expenses**” means those expenses specified by the Consultant as expenses associated with the Project or the Services, and may include without being limited to, the cost of travel; accommodation; purchase of specified books; materials, paper, etc.; Internet charges; Government charges and fees; and the like.

“**Representative**” means any representative of the Client with apparent authority or acting with the apparent authority of the Client including, but not limited to the Client’s professional advisers.

“**Services**” means the services to be performed by the Consultant pursuant to the Agreement.

“**Terms of Engagement**” means these terms and conditions of engagement.

### 2. INTERPRETATION

2.1 In the Agreement unless the context otherwise requires the following apply:

- (a) Words denoting the singular number or plural number include the plural number and single number respectively.
- (b) Words denoting any gender shall include all genders.
- (c) Headings are for convenience only and shall not affect interpretation.
- (d) Words denoting individuals shall include corporations and vice versa.
- (e) Reference to a clause, is a reference to a clause of these Terms of Engagement.
- (f) Reference to any act, regulation or by-law shall be deemed to include all amendments thereto and all statutory provisions substituted therefore.

### 3. ENGAGEMENT

3.1 The Client engages the Consultant to perform the Services, and the Consultant agrees to undertake such Services in accordance with this Agreement.

### 4. CLIENT’S OBLIGATIONS

- 4.1 The Client shall advise the Consultant of the name of the persons appointed by the Client to act as the Client’s representative and agrees that the representative shall have the authority to act on behalf of the Client for all purposes in connection with the Agreement.
- 4.2 The Client shall as soon as practicable make available to the Consultant all information and documents and other particulars relating to Client’s requirements for the Project.
- 4.3 The Client shall as soon as practicable make arrangements to enable the Consultant to enter upon the Client’s premises and other lands as necessary to enable the Consultant to perform the Services.
- 4.4 Unless the Agreement specifically states otherwise the Client shall as soon as practicable obtain all approvals, authorities, licences and permits which are required from government and municipal or other responsible authorities for the lawful implementation and completion of the Services.
- 4.5 If the Client becomes aware of any matter, which may change the scope or timing of the Services then the Client shall tender written notice to the Consultant.
- 4.6 The Client acknowledges that the Deliverables are for the Client’s use only and the Client shall release and indemnify the Consultant against the Client’s or any third party’s use of the Deliverables in any manner or for any use not reasonably appropriate to or specified in the scope of the Services.

### 5. THE CONSULTANT’S OBLIGATIONS

- 5.1 In providing the Services the Consultant shall exercise the degree of skill, care and diligence normally expected of a competent professional subject to any physical, financial, time or other restraints imposed by the Client or necessarily resulting from the nature of the engagement.
- 5.2 The Consultant shall liaise regularly with the Client during the performance of the Services.
- 5.3 If the Consultant considers that the information, documents and other particulars made available to it by the Client are not sufficient to enable it to provide the Services in accordance with the Agreement the Consultant will advise the Client. It is the Client’s responsibility to then provide such further assistance, information, or other particulars as is necessary in the circumstances.
- 5.4 If the Consultant becomes aware of any matter which will change or which has changed the scope or timing of the Services then they shall give notice to the Client of the changes.

### 6. QUOTES AND AUTHORITY TO CARRY OUT WORK

- 6.1 All quotes provided by the Consultant to the Client are valid for 30 days from the date of the quote unless otherwise notified by the Consultant prior to acceptance of the quote by the Client.
- 6.2 Any of the following done by or on behalf of the Client or its Representatives shall constitute acceptance of a quote, acceptance of the Agreement and authority to provide Services:
  - (a) express or implied acceptance of any quote;
  - (b) acceptance of any Services;
  - (c) the Client or its Representatives giving any instructions to the Consultant that are acted upon; or
  - (d) any express or implied authority given to the Consultant to provide Services to the Client.
- 6.3 The Consultant reserves the right by notice to the Client to alter or amend any quote before receipt by the Consultant of acceptance of the quote by the Client.
- 6.4 The Consultant reserves the right, by notice to the Client, to alter any quote at any time prior to the supply of Services where the alteration is due to an increase in the cost to the Consultant of any Services that is beyond the control of the Consultant.

### 7. CLIENT INFORMATION

- 7.1 The Client authorises the Consultant to collect such commercial, financial and personal information about the Client as is necessary for assessing the credit worthiness of the Client or enforcing the Consultant’s rights under the Agreement and further authorises the Consultant to disclose such information to other parties for those purposes.
- 7.2 Where the Client is a natural person, the authority given pursuant to clause 7.1 shall constitute sufficient authority for the purposes of the Privacy Act 1993 and the Client acknowledges that he or she has a right to access the information and request corrections to it.

### 8. CONTRACTORS AND SUPPLIERS

- 8.1 The Consultant assumes no liability in respect of any goods or services provided by a third party supplier or contractor and nothing in this Agreement shall impose upon the Consultant any obligations or responsibility in respect of the obligation of the supplier or contractor to deliver goods or provide services.
- 8.2 The Client shall pay suppliers and contractors directly all amounts in respect of invoices delivered to the Consultant or the Client in respect of good or services relating to the Project supplied by the supplier or contractor. The Client agrees that the Consultant shall be entitled to charge a reasonable handling fee where the Consultant has arranged or administered the services of the supplier or contractor.

## **9. PAYMENT FOR SERVICES**

- 9.1 The Client shall pay the Consultant the Fee and Reimbursable Expenses as provided in, and at the times and in the manner set out in the Agreement.
- 9.2 Unless otherwise agreed in writing between the Client and the Consultant, all amounts payable by the Client shall be paid within seven (7) calendar days of the relevant invoice being mailed to the Client. Late payment shall constitute a default and the Client shall pay default interest on overdue amounts from the date payment falls due to the date of the payment at a rate equal to the Consultant's overdraft rate plus 5%.
- 9.3 The Client acknowledges that quotes, estimates and Fees are determined using a number of factors related to the value of the work performed. The following factors are taken into account: the skill, specialised knowledge and responsibility required; the importance of the matter to Client and the result achieved; the urgency and circumstances in which the work is transacted; the complexity of the issue and the difficulty or novelty of work involved; and the time expended on the work; the number and importance of the documents being prepared or perused.
- 9.4 If the Client disputes the whole or any portion of the amount claimed in an invoice submitted by the Consultant the Client shall pay the portion not in dispute and shall notify the Consultant in writing of the reasons for disputing the invoice within seven (7) day of the invoice or otherwise the Client shall be deemed to have accepted all amounts claimed in the invoice.
- 9.5 If the Client disputes any amount pursuant to clause 9.4 the parties shall attempt to reach agreement by negotiation. If the parties are unable to reach agreement within fourteen (14) days of the Client's notice, the dispute shall be determined in accordance with the Agreement.
- 9.6 The Consultant calculates the Fee for the Services provided under the Agreement on the assumption that the Services are to be provided under circumstances normally pertaining to the type of work in question. The Client agrees that if the Consultant is required to perform the Services in circumstances other than those normally pertaining to such work, or if there is a change in the scope, timing or order of the Services, the Consultant shall be entitled to additional payment. The Consultant shall calculate the amount of additional payment by the Client in consultation with the Client and the Consultants and it shall be reasonable in the circumstances.
- 9.7 The Client shall pay the Consultant's costs and expenses arising from the delayed or non-payment of fees by the Client including, without limitation, legal, administrative, arbitration, mediation or collection costs.

## **10. INSURANCE AND LIMITATION OF LIABILITY**

- 10.1 The liability of the Consultant to the Client in respect of the Services shall be limited to the lesser of five times the value of the Fees (exclusive of GST and disbursements) or the sum of \$100,000. The Consultant undertakes to take all reasonable endeavours to maintain a policy of professional indemnity insurance at all relevant times during the provision of the Services.
- 10.2 Neither the Client nor the Consultant shall be considered liable for any loss or damage resulting from any occurrence unless a claim is formally made within six years from completion of the Services.

## **11. DISPUTE DETERMINATION**

- 11.1 If the parties are in dispute with each other regarding any matter arising out of the Agreement, then either party may, by notice in writing served on the other, require that such dispute be resolved by the determination of an independent third party acceptable to all parties.
- 11.2 If the parties cannot agree on an independent third party within fourteen (14) days of the date of service then the President of the Auckland District Law Society shall choose such an independent third party. The third party who has been agreed upon or appointed shall act as an expert and not as an arbitrator and his decision shall be final and binding upon the parties.

## **12. TERMINATION OF SERVICES**

- 12.1 The Client may by notice in writing served on the Consultant terminate the Services under the Agreement:
- (a) If the Consultant is in breach of the terms of the Agreement and the breach has not been remedied within twenty-eight (28) days (or longer period as the Client may allow) of the service by Client on the Consultant of a notice requiring the breach to be remedied; or
- (b) If the Client serves on the Consultant a notice requiring that the Agreement be terminated on a date specified in the notice.
- 12.2 The Consultant may by notice in writing served on the Client terminate the Agreement:
- (a) If the Client is in breach of any part of the Agreement and the breach has not been remedied within twenty-eight (28) days (or such longer period as the Consultant may allow) of the service by the Consultant on the Client of a notice requiring the breach to be remedied; or
- (b) If the Consultant serves on the Client a notice requiring that the Agreement be terminated on a date specified in the notice.
- 12.3 Termination shall be without prejudice to any claim that either party may have against the other in respect of any breach to or of the Agreement, which occurred prior to the date of termination.
- 12.4 If the Client terminates the engagement of the Consultant for any reason other than for breach of the Agreement, the Consultant shall be entitled to payment for the Services carried out and costs committed by the Consultant during the period up to and including the date of termination. In addition, the Client shall pay to the Consultant a cancellation fee equal to 10% of the total Fee in respect of the Project.

## **13. CONFIDENTIALITY AND INTELLECTUAL PROPERTY**

- 13.1 Neither the Client nor the Consultant shall disclose any details or information in any form provided to it on a confidential basis, during or after the term of the Agreement, without the prior written approval of the providing party. The above provision shall not apply to technical information and data that is generally available to the public or was in the Client's, the Consultant's or the Consultants' control or possession prior to the date of the Agreement.
- 13.2 The Intellectual Property produced by the Consultant in performing the Services shall be and remain the absolute property of the Consultant. The Consultant shall be at liberty to use, apply, exploit, register, protect or otherwise turn to account the Intellectual Property in such manner as it deems fit.
- 13.3 The Client shall be granted a license by the Consultant to use the Deliverables for the Client's intended purpose indicated in the Agreement. The Client shall not suffer or permit any of its employees to copy, remove or modify the Deliverables or the Intellectual Property incorporated therein for any other use. The Client shall not suffer or permit any of its employees to divulge to any party any information with respect thereto or with respect to the Consultant and the Consultants' work, business, clients, facilities or operations without the prior consent of the Consultant in writing.

## **14. GENERAL MATTERS**

- 14.1 The Agreement shall be governed by and construed in accordance with the laws for the time being in force in New Zealand and the parties agree to submit to the jurisdiction of the courts thereof.
- 14.2 If any clause or part thereof of the Agreement is held by a court to be invalid or unenforceable such clause or part thereof shall be deemed deleted from the Agreement and the Agreement shall otherwise remain in full force and effect.
- 14.3 Neither party shall assign or otherwise transfer any of its rights or obligations pursuant to the Agreement whether in whole or in part without the prior written consent of the other party.
- 14.4 The Client and the Consultant each binds himself and his partners, successors, executors, administrators, assigns and legal representatives to the other party to this Agreement and to the partners, successors, executors, administrators, assigns and legal representatives of the other party in respect to all covenants and obligations of this Agreement.
- 14.5 Neither the Client nor the Consultant shall assign any right or obligation under the Agreement without the written consent of the other party. Unless specifically stated to the contrary in any written consent to an assignment, no assignment shall release or discharge the assignor from any obligation under the Agreement.
- 14.6 The Consultant shall perform the Services to the extent that it is within its control. The Consultant shall be excused from the performance of the Services and the agreed delivery date or any other time limit shall be extended by a period reasonable under the circumstances if the performance of the Services is prevented or delayed by any cause beyond the Consultant's reasonable control which, without in any way limiting the generality of the foregoing, shall include acts of God, lightning strikes, natural disasters, riots, acts of war, accidents, embargo or requisition (acts of government), or delays in the performance of its subcontractors caused by any such circumstances as referred to in this Agreement.
- 14.7 All matters associated with the termination or resolution of disputes in accordance with this Agreement, must be in writing between the Consultant and the Client.
- 14.8 A notice purported to be served under this Agreement shall be deemed to have been properly served if the same is in writing and is sent to the usual business address of the recipient by mail, facsimile message, email or personal delivery for which a receipt is obtained.
- 14.9 Where the Services are supplied to the Client for business purposes the Consumer Guarantees Act 1993 shall not apply.
- 14.10 The Consultant may in its absolute discretion vary or amend any of the provisions of these Terms of Engagement from time to time. The most current version of these Terms of Engagement shall be kept on the Consultant's website and the Client acknowledges that it shall be bound by the most current version of the Terms of Engagement.
- 14.11 The Consultant has not and will not during the term of this Agreement or at any time after it, assume any obligation as the Client's Agent or otherwise which may be imposed upon the Client from time to time pursuant to the Health and Safety in Employment Act 1992 arising out of the engagement. The Client and the Consultant agree that for the purposes of that Act, the Consultant will not be the person who controls the place of work in terms of the Act.