

TERMS & CONDITIONS OF SERVICE



BETWEEN:

DATED:

MILLGROVE CONSULTANTS LIMITED ('the Consultant')

And

_____ ('the Customer')

The parties agree to be bound by the following terms and conditions of trade:

1. WORK FOR CUSTOMER ONLY

- 1.1. Any work carried out by the Consultant pursuant to the instructions of the Customer is for the sole benefit of the Customer. Where any such work includes the commission of a report, the report is prepared solely and exclusively for the benefit of the Customer to whom this report is addressed, and based on the instructions and scope set by that Customer.
- 1.2. Where the Customer commissions a report from the Consultant, the report may not be distributed or disclosed, or relied upon by, any other party without the prior written consent of the Consultant.
- 1.3. Where the report is distributed or disclosed, or relied upon by, any other party without the prior written consent of the Consultant in breach of clause 1.2, the Customer agrees to indemnify and hold harmless the Consultant from any third-party liability arising out of or in connection to the report.

2. SCOPE

- 2.1. The parties agree the Consultant is to provide services in accordance with the Estimate provided by the Consultant to the Customer, together with such other incidental services as the Consultant may consider necessary for the proper performance of the work, and such other services as may be agreed in writing between the parties.
- 2.2. The Customer acknowledges that the Consultant is not liable for any work which fall outside the Consultant's scope of work as provided in subclause 2.1.

3. LIMITATIONS OF WORK

- 3.1. The Customer acknowledges that in carrying out its work the Consultant may from time to time be subject to situational limitations including but not limited to:
 - 3.1.1. Physical access restraints;
 - 3.1.2. Provision to Consultant of incomplete or inaccurate information and materials;
 - 3.1.3. Interference and/or obstruction from other works or contractors on site;
 - 3.1.4. Directions of the Customer;
 - 3.1.5. Weather conditions;
 - 3.1.6. Any delays caused by a third-party;
 - 3.1.7. Any other matters which might reasonably interfere with the Consultant's ability to complete its work.

4. CLAIMS & DISPUTES

- 4.1. Should any claim or dispute arise in connection with work undertaken by the Consultant, it must be notified to the Consultant in writing within 10 working days of the date on which the Consultant has advised the Customer of completion of work.
- 4.2. In the event the Consultant and the Client are unable to reach an agreement in relation to the dispute, the parties agree that, either of them shall have the right to give to the other notice that the matter is to be referred to mediation in Auckland by a mediator who is a member of the LEADR in Auckland.

5. NO WARRANTIES

- 5.1. The Customer acknowledges that Consultant makes no warranty or representation concerning the completeness, accuracy or reliability of the information or opinions expressed or implied in any report or otherwise conveyed to the Customer. To the fullest extent permitted by law, any such warranties or representations are expressly excluded.
- 5.2. Any report, advice or opinion of the Consultant is a guide only and is representative of the Consultant's opinion of the observable conditions and is based solely on the information provided to the Consultant. Any opinions provided by the Consultant in this report are for information purposes only and may differ from the opinions of others. This report does not constitute a guarantee, warranty, or insurance policy.

6. LIABILITY

- 6.1. The Consultant shall not be liable, and its employees or contractors shall not be liable, to the Customer, the Customer's agents or any other person for any direct, indirect, incidental or consequential damage or loss of any nature howsoever caused (whether based in tort (including negligence), contract or otherwise) including, but not limited to, loss of profit, loss of sales opportunity, damage to equipment or property (including any costs or loss relating to any invasive inspection) or any other claim whatsoever arising directly or indirectly or in any way attributable to the performance or non-performance of the Consultant's services or other obligations arising from or relating to the work contemplated in the Estimate.
- 6.2. Without limiting the operation of subclause 6.1, insofar as the Consultant may be found liable to the Customer or any other person in connection with its work, for any loss, damage or injury arising directly or indirectly from any cause, the liability of the Consultant for all claims made shall, in all cases, be limited to the lesser of the \$50,000.00 or an amount which is five times the Consultant's fee for the relevant work.
- 6.3. Should a Customer raise multiple claims against the Consultant in relation to separate works, the Consultant's combined liability for all claims shall be limited to the lesser of the \$50,000.00 or an amount which is five times the Consultant's fee for the relevant combined work.

7. INDEMNITY

- 7.1. The Customer shall at all times indemnify the Consultant in respect of all actions, proceedings, damages, costs, claims, demands, payments, losses or expenses, special or consequential (including legal expenses on a solicitor and client basis), which may be paid, incurred or suffered by the Consultant in connection with

services provided or as a direct or indirect result of the Customer's unauthorised disclosure of the Consultant's report, or the reliance or attempt to rely on any report by any other party, or any claims made against the Consultant (whether by the Customer or a third party) for damages or other relief excluded or disclaimed by law.

8. SEVERABILITY

8.1. Should a Court of competent jurisdiction determine and declare that any portion of these terms and services is void, voidable, illegal, invalid, or unenforceable, in whole or in part, such provision or part shall be severed from these terms and the remaining provisions and portions shall remain in full force and effect.

9. PAYMENT

9.1. Payment in full without any deduction whatsoever, whether by way of set off, counterclaim or otherwise, shall be made no later than the 20th of the month following the invoice to the Customer, or otherwise as per any agreed payment terms in respect of the work carried out.

9.2. 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 the Consultant's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

9.3. If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Consultant from and against all costs and disbursements incurred by the Consultant in pursuing the debt including legal costs on a solicitor and own client basis and the Consultant's collection agency costs.

9.4. Should the Consultant require further reports from third parties the Consultant shall confer with the Customer and obtain their agreement before commissioning any further reports. The Customer agrees that they shall be liable to pay for any third-party reports and that they shall reimburse the Consultant for any payments made by them in relation to the reports (if required). If the Consultant arranges these reports, then they shall be entitled to charge for any time or attendances they may have in relation to the third party and they shall also be entitled to charge a margin of 10% on the third parties' invoice.

10. FORCE MAJEURE

10.1.

If the Consultant by reason of any matter beyond its control - including, without limitation, any act of God, strike, lockout or other interference with work, war (declared or undeclared), blockade, disturbance, lightning, fire, earthquake, storm, flood, explosion, governmental or quasi-governmental restraint, expropriation, prohibition, intervention, embargo, unavailability or delay in availability of supplies, equipment or transport, refusal or delay in obtaining governmental or quasi-governmental approvals, consents, permits, licenses, authorities or allocations - is unable to perform in whole or in part any obligation under these terms and conditions, the Consultant shall be relieved of that obligation under these terms and conditions to the extent and for the period that it is not reasonably able to perform and the Consultant shall not in any way be liable to the Customer in respect to such inability.