



SPECIAL CONDITIONS – PART A SPECIFIC CONDITIONS OF CONTRACT

Clause references below refer to clauses in the **General Conditions of Contract for Consultancy Services – August 2009**, as may be amended by Part B (Other Special Conditions of Contract) below.

Additional Documents forming part of the Agreement

Additional documents forming part of this Agreement are as set out in *Appendix A, Scope of Services*, “Additional Documents”.

5.1 Time for Payment

The time for payments shall be on or before the 20th of the month following the month of issue of the GST invoice.

6.2 Limitation of Liability

The maximum aggregate amount payable, shall be five times the fee (exclusive of GST and disbursements) with a maximum limit of \$2,000,000, except in respect of weather tightness claims where the maximum aggregate amount payable shall be five times the fee with a maximum limit of \$250,000.

6.4 Duration of Liability

Without limiting any defences a party may have under the Limitations Act 2010, the duration of liability shall be six years.

6.5 Insurance

The minimum amount of public liability insurance required is \$5,000,000 per occurrence. The time for maintaining the public liability insurance will be until the date on which all of the Services have been completed.

12.7 Notices

The address details for notices under this Agreement are as set out in the “*Form of Agreement*”, “Notices”.



SPECIAL CONDITIONS – PART B OTHER SPECIAL CONDITIONS OF CONTRACT

Clause references below refer to clauses in the General Conditions of Contract for Consultancy Services – August 2009, as may be amended by this Part B (Other Special Conditions of Contract).

The said General Conditions of Contract for Consultancy Services are amended as follows:

Section 2: Obligations of the Consultant

2.2 Duty of Care

Clause 2.2 is deleted entirely and replaced with:

“In providing the Services, the Consultant must use the degree of professional skill, care and diligence reasonably expected of a professional consultant that is experienced in performing services similar to the Services for a project of a similar type and size to the subject project.”

2.10 Health and Safety

The words “*Health and Safety in Employment Act 1992 (HSEA)*” are deleted and replaced with “*Health and Safety at Work Act 2015 (HSWA)*”, and all references to “*HSEA*” in clause 2.10 shall be read as references to “*HSWA*”.

Section 4: Personnel

4.3 Key Personnel

Line one of the second paragraph is deleted and replaced with:

“If the Client decides for good reason that one of the Key Personnel or any other person engaged by the Consultant or any Subconsultant in the performance of the Services is unsuitable or is not being made sufficiently available to properly perform the Services in accordance with this Agreement:”

Section 5: Payment

5.2 Disputed and Unpaid Invoices

The words “*at the Consultant’s non-penalty overdraft interest rate*” are deleted and replaced with “*at 2% per annum above the New Zealand 90 day bank bill buy rate*”.

Section 6: Liability and Insurance

6.1 Consultant’s Liability

The second paragraph is deleted and replaced with:

“Neither Party will be liable to the other Party for the other Party’s indirect, consequential or special loss, or loss of profit, however arising, whether under contract, in tort or otherwise.”

6.3 Contributory Conduct

The following words are added at the end of clause 6.3:

“For the avoidance of any doubt the Consultant is responsible to the Client for the services of any Subconsultant, and where the Client is the claiming Party a “third party” for the purposes of this clause 6.3 will not include any Subconsultant or any other person or entity for whom the Consultant is responsible.”

6.5 Insurance

Add the following new paragraph at the end:

“With respect to Public Liability insurance, the Client and its officers, employees and agents will be named under such policy as additional insureds in respect of their vicarious liability for the Consultant’s negligence in relation to the performance of this Agreement.”

Section 9: Copyright of Documents

9.1 Copyright of Documents

The words “, subject to clauses 8.1 and 8.2” are added at the end.

9.2 Copyright of Documents

The words “to the extent reasonably required to enable the Client to make use of the Services or use, adapt, update or amend the Works” are deleted and replaced with:

“in relation to or in connection with this Agreement, the Services, the Works or the subject project, including for the planning, design, engineering, procurement, construction, testing, commissioning, completion, operation, maintenance, repair, replacement, modification, renewal, expansion and/or alteration of the Services, Works or the said project.”

9.4 Copyright of Documents

Clause 9.4 is deleted entirely and replaced with:

“The Consultant does not warrant the suitability of the New Intellectual Property or Pre-existing Intellectual Property for any purpose other than the Services or any other use stated in the Agreement.”

9.6 Copyright of Documents

Clause 9.6 is deleted entirely and replaced with:

“The Ownership of data and factual information collected by the Consultant and paid for by the Client shall, after payment by the Client (such payment being part of the fee), lie with the Client.”

9.7 Delivery of Documents

A new clause is added as follows:

“On completion of the Services, as well as promptly following any request from the Client from time to time, the Consultant must deliver to the Client all Documents in respect of the Services. Documents means, to the extent applicable to the Services, drawings, including statutory compliance documentation, CAD drawings, specifications, reports, project specific manuals, plans, results, studies, calculations data and any other design documents or design information (whether in physical or electronic form), prepared by or on behalf of the Consultant in respect of the Services. Any other documents or information required by the Client will be as described in the Scope of Services. Following delivery of any Documents, the Consultant will not be liable for any re-use of, or any changes to those Documents by the Client or any other person without the Consultant’s prior written approval.”

Section 10: Disputes

10 Disputes

Clause 10 is deleted entirely and replaced with:

“The Parties shall attempt to resolve any dispute between them in relation to this Agreement, or any matter arising from it, by way of good faith discussions in the first instance. If the dispute has not been resolved within 10 working days of the dispute being notified by one Party to the other, then the dispute will, should a Party wish to pursue the dispute, be determined by mediation. If the Parties then fail to resolve the dispute by way of mediation within a reasonable period, then either Party may refer the dispute to arbitration in accordance with the following:

- (a) the arbitration will be conducted by a sole arbitrator in accordance with the Arbitration Act 1996 and will not be an international arbitration as defined by that Act;*

- (b) *the sole arbitrator is to be appointed by a panel of two representatives acting unanimously, one each appointed by the Client and the Consultant;*
- (c) *in the event that such representatives have not agreed upon an arbitrator within 10 working days of the dispute being referred to arbitration the arbitrator will be appointed by the then President of the New Zealand Law Society or his or her nominee;*
- (d) *the seat and location of the arbitration will be at a location in New Zealand determined by the Client; and*

Nothing in this clause prejudices either Party's right to institute court proceedings to seek injunctive or urgent declaratory relief in respect of any dispute, and the Consultant will not suspend the Services during any dispute (but subject to clause 12.15)."

Section 12: General Provisions

12.1 Law and Currency

Clause 12.1 is deleted entirely and replaced with:

"This Agreement is governed by New Zealand law, the New Zealand courts have (non-exclusive) jurisdiction in respect to this Agreement subject to clause 10, and all amounts are payable in New Zealand dollars."

12.5 Advertising

The words *"or otherwise wishes to promote its involvement in the subject project"* are added at the end.

12.6 Reporting

The words *" , or as set out in Appendix A"* are added at the end.

12.9 Survival of Provisions

The phrase *"and 10, 11 and 12"* is added after the reference to "9".

12.15 Suspension of all or part of the services

A new clause 12.15 is added as follows:

"The Client may suspend the performance of the Services by the Consultant at any time by written notice to the Consultant. As soon as such notice is received by the Consultant, the Consultant will stop the performance of the Services.

Suspension of the performance of the Services will not prejudice or affect the accrued rights or claims and liabilities of the Parties.

Where the Services are suspended other than for the default of the Consultant, the Client will pay the Consultant for Services provided to the date of suspension and also pay any reasonable costs incurred by the Consultant solely as a result of such suspension and the Consultant will take all reasonable steps to minimise all such costs.

Where the Services are suspended for the default of the Consultant, the Client will not be responsible for any costs or losses resulting from any such suspension.

Where the Services remain suspended for a continuous period of more than three months in circumstances where the suspension was not the result of a default of the Consultant, the Client will, in its sole discretion, either terminate the Agreement or withdraw the suspension, or agree with the Consultant a further extension of the suspension."

12.16 Contracts (Privity) Act 1982

A new clause 12.16 is added as follows:

“Where the Ministry of Education (the Sovereign in right of the Government of New Zealand acting by and through the Secretary for Education) is not the Client under this Agreement, the Consultant acknowledges and accepts that, pursuant to section 4 of the Contracts (Privity) Act 1982, the rights and benefits under this Agreement accrue to, and will be enforceable by, the Ministry of Education. For the avoidance of any doubt, there will be no double recovery in this regard from the Consultant under this Agreement in respect of the same matter as a result of the Ministry of Education enforcing its rights as beneficiary under that Act. Except to the extent this Agreement expressly provides otherwise, this Agreement is not intended to (and will not) confer any rights on any person or entity not a party to it, either pursuant to the Contracts (Privity) Act 1982 or otherwise.”

12.17 Counterparts

A new clause 12.17 is added as follows:

“This Agreement may be executed in counterparts (including facsimile or electronic PDF copies of counterparts) and, provided that each Party has duly executed a counterpart, the counterparts together will constitute a binding and enforceable agreement between the Parties.”

12.18 Entire Agreement

A new clause 12.18 is added as follows:

“This Agreement constitutes the entire agreement between the Client and the Consultant for the performance of the Services by the Consultant. This Agreement supersedes all previous negotiations, representations and warranties except as may be expressly incorporated in this Agreement. For the avoidance of any doubt, this provision is not intended to and nor will it limit or prejudice any rights or remedies of a Party at law, equity or otherwise in relation to or in connection with the Agreement, and nor will it supersede or replace any pre-existing written contracts between the Client and the Consultant (such as any panel or master contract in respect of the provision of professional services).”