



**KLOX LIMITED**

t/a Klox Business Solutions  
021 027 50930 | [www.klox.co.nz](http://www.klox.co.nz)

● Business Coaching

● Bookkeeping

● Administration

## TERMS OF TRADE FOR KLOX LIMITED

### 1. Definitions

1.1 “Firm” shall mean Klox Limited T/A Klox Business Solutions, its successors and assigns or any person acting on behalf of and with the authority of Klox Limited T/A Klox Business Solutions.

1.2 “Client” means the person/s or any person acting on behalf of and with the authority of the Client requesting the Firm to provide the Services (including but not limited to, instructions or queries via oral and/or written communications such as video chat, telephone calls and/or emails) 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 part of a Trust, shall be bound in their capacity as a trustee; and

(c) includes the Client’s executors, administrators, successors and permitted assigns.

1.3 “Contractor/s” shall mean any person or persons engaged by the Firm to provide specialised work on behalf of the Client.

1.4 “Documentation” means any goods, documents, reports, drawings or materials supplied, consumed, created or deposited incidentally by the Firm in the course of it conducting, or providing to the Client, any Services.

1.5 “Services” means all Services (which includes any advice or recommendations, advertising, brand integration or strategies, etc.) provided by the Firm to the Client at the Client’s request from time to time.

1.6 “Fee” means the Fee payable (plus any Goods and Services Tax (“GST”) where applicable) for the Services as agreed between the Firm and the Client in accordance with clause 5 of this contract.

1.7 “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 interacting with the website, then the Client shall have the right to enable / disable the Cookies first.**



## 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 the Firm, or when the Firm receives instructions from the Client.

2.2 These terms and conditions may only be amended with the consent of both parties in writing and shall prevail to the extent of any inconsistency with any other document or contract between the Client and the Firm.

2.3 The Client acknowledges that, on completion of the Services, the Firm will not be responsible for retaining any of the Client's documents (with the exception of financial records of the Fees charged to the Client, which shall be retained for a period of seven (7) years after which time the documentation will be destroyed). The Client is responsible for backup and retention of all other documentation, including financial records, for the period of seven (7) years, as required by New Zealand law.

2.4 The Client acknowledges and accepts that:

(a) the Firm reserves the right to charge accordingly for time involved in accordance with the Firm's terms and conditions for all requests of verbal, email and/or written advice;

(b) the Firm will communicate electronically (email), unless otherwise instructed and 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. The Client accepts this form of communication maybe subject to inherent hazards in electronic distribution and as such the Firm cannot warrant against delays or errors in transmitting data between the Client and the Firm, and you agree that to the maximum extent permitted by law, the Firm will not be liable for any losses which the Client suffers as a result of internet interruptions, corrupted or intercepted files, or any files that may contain viruses which is beyond the Firm's control and may cause delays or errors in transmitting instructions and/or confirmations;

(c) the Client will ensure that the Firm and/or the Firm's third party Contractor/s is given such information and assistance (including remote access (where required) to any computer systems plus usernames and passwords or any other locations) as the Firm and/or the Firm's third party Contractor/s reasonably requires to enable the Firm to complete any necessary Services;

(d) the Client is responsible for maintaining the confidentiality of their usernames and password and any activities that occur under their account. The Firm and/or the Firm's third party Contractor/s shall not be liable to any person for any issues which may arise as a result of any failure by the Client to protect their usernames and passwords.

2.5 Any advice, recommendation, information, assistance or service provided by the Firm in relation to Services provided is given in good faith, is based on the Firm's own knowledge and experience and shall be accepted without liability on the part of the Firm and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Services.



### **3. Change in Control**

3.1 The Client shall give the Firm 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, contact phone or fax number/s, change in trustees, or business practice). The Client shall be liable for any loss incurred by the Firm as a result of the Client's failure to comply with this clause.

### **4. Services**

4.1 Any initial consultations with the Client will be billable at the Firm's agreed or negotiated hourly rate, until such time that it is agreed under the Letter of Engagement that the Firm will proceed with acting on behalf of the Client. Package plan subscriptions will be considered for a discount in view of any initial meetings conducted and already billed.

4.2 The Services shall be as described in the Letter of Engagement or Quotation provided by the Firm to the Client and must be signed or electronically accepted by the Client before the commencement of any Services.

4.3 These terms and conditions are to be read in conjunction with the Firm's Letter of Engagement or Quotation. If there are any inconsistencies between the two documents then the terms and conditions contained therein shall prevail.

### **5. Client's Obligations and Acknowledgements**

5.1 The Client agrees to pay for the Services described in the Letter of Engagement or Quotation.

5.2 The Client shall provide promptly to the Firm all reasonable and necessary assistance, including access to all information which the Firm considers to be relevant to the engagement, so as to enable the Firm to provide the Services. Furthermore, the Client shall update information provided by it to the Firm where there has been a material change to that information which affects the scope of performance by the Firm of the Services.

5.3 Further to clause 5.2, the Client acknowledges and accepts that if there is a delay in the Client or its agents providing such information and the Firm is required to work outside their normal working hours (including but not limited to working through lunch breaks, weekends and/or Public Holidays) in order to meet deadlines as detailed in the Letter of Engagement or Quotation, then the Firm reserves the right to charge additional labour cost (overtime rates will apply), unless otherwise agreed between the parties.

5.4 The Firm may, acting solely as agent on behalf of the Client, engage third-party Contractors, to which the following shall apply:

- (a) the Firm shall be entitled to enter into contracts with such Contractors in the name of the Client;
- (b) the Firm shall have access rights and logins to the Client's data;
- (c) the Firm or the Client shall be responsible for all payments to such Contractors;



(d) where the Firm makes payment of the Contractor's account on behalf of the Client, the Client shall reimburse the Firm for the payment of such accounts, together with an account-handling fee, as per the Firm's specified payment terms.

5.5 The Firm does not warrant the accuracy or quality of the Contractor's work, or warrant that the recommendations of the Contractor are appropriate or adequate, or are fit for their purpose, or that they are not given negligently. The Client agrees that they shall not make any demand on the Firm, or commence any legal proceedings against the Firm, and the Firm shall have no liability, whether in negligence or otherwise, to the Client in relation to any services performed by the Contractor/s.

5.6 The Client shall provide the Firm with a signed Disclosure Document which will duly authorised the Firm to:

(a) communicate with the Client's bankers, solicitors, finance companies, social media and all government agencies to obtain such information as they require in order to provide the Services;

(b) obtain information from the Inland Revenue concerning the Client's tax affairs, and not limited to any one tax type, including Child Support. Information may be obtained by IRD website, phone, email or other mediums of communication.

5.7 Notwithstanding clause 5.4, failure of the Client to provide a signed Disclosure Document shall entitle the Firm to terminate the engagement of the Services in accordance with clause 18.

5.8 The Client acknowledges and agrees that all payments made by the Firm on the Client's behalf will be made in compliance with the Client's credit management policies and procedures as well as all current New Zealand law.

## **6. Fee and Payment**

6.1 At the Firm's sole discretion the Fee shall be either:

(a) as indicated on invoices provided by the Firm to the Client in respect of Services provided; or

(b) (where the Client is on a "**Fixed Plan Packages**"), the Client is required to pay monthly Fees in advance for the on-going provision of the Services to the Firm by Client as stipulated in this agreement; or

(c) the Fee, as at the date of provision of the Services, based on time and expense, at the Firm's current fee structure (as indicated on the Firm's Letter of Engagement or Quotation, which (subject to clause 6.2) shall be binding upon the Firm provided that the Client shall accept it in writing within thirty (30) days).

6.2 The Firm reserves the right to change the Fee in the event of a variation to the Firm's Letter of Engagement or Quotation. Any variation from the plan of scheduled Services (including, but not limited to, any variation as a result of additional Services required at the expressed request of the Client via telephone and or email, internet disruptions or limited access to websites' or social networking tools and/or repair to damaged files due to viruses or illegal hacking), or as a result of increases to the Firm in the cost of labour which are beyond the Firm's control) will be charged for on the basis of the Firm's quotation and will be shown as variations on the invoice. The Client shall be required to respond to any variation submitted by the Firm within ten (10) working days. Failure



to do so will entitle the Firm to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.

6.3 The Firm shall be reimbursed for all expenses reasonably and properly incurred in connection with the provision of the Services, except where such expenses are specifically stated in the Letter of Engagement, or in writing by the Firm, as being non-reimbursable. All reimbursable expenses (e.g. travel-call-outs, multiple site visits, credit checking (where applicable), communications, couriers, etc.) will be charged at the cost involved (excluding GST) to the Firm, plus an administration fee of ten percent (10%) thereof.

6.4 At the Firm's sole discretion, a non-refundable deposit may be required.

6.5 Time for payment for the Services being of the essence, the Fee will be payable by the Client on the date/s determined by the Firm, which may be:

(a) on completion of the Services;

(b) by way of instalments in accordance with the Firm's payment schedule/packages of either three (3), six (6) or twelve (12) months;

(c) the date specified on any invoice or other form as being the date for payment; or

(d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Firm.

6.6 Payment will be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Client and the Firm.

6.7 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 the Firm, nor to withhold payment of any invoice because part of that invoice is in dispute.

6.8 Unless otherwise stated the Fee is in New Zealand Dollars does not include GST. In addition to the Fee the Client must pay to the Firm an amount equal to any GST the Firm must pay for any provision of Services by the Firm to the Client under this or any other contract. 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.

6.9 All disputes on invoices will be raised within seven (7) calendar days. If no dispute has been raised within this time frame, the Client agrees that the invoice is correct.

## **7. Fixed Plan Packages**

7.1 The Fixed Plan Package shall continue for an agreed term and, upon expiration of this term, will continue on a monthly basis thereafter, unless cancelled by way of the Client providing the Firm with fourteen (14) days' written notification of its intention to do so. Following receipt of notice from the Client, the provision of the Services to the Client by the Firm shall cease at the end of the notification



period and the Client must reimburse the Firm (on a pro rata calculation basis) for any use of the Services above its Fixed Plan Package allowance.

## **8. Provision of Services**

8.1 The Firm shall exercise reasonable skill, care, diligence and any other statutory requirements in the performance of the Services in accordance with the ethics of the Bookkeeping profession.

8.2 Any time specified by the Firm for provision of the Services is an estimate only and the Firm will not be liable for any loss or damage incurred by the Client as a result of any delay. 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. In the event that the Firm is unable to provide the Services as agreed solely due to any action or inaction of the Client then the Firm shall be entitled to charge a reasonable fee for re-providing the Services at a later time and date.

8.3 Where applicable:

- (a) the Firm reserves the right to charge the Client the cost of any credit check performed;
- (b) the Firm will require signed authority to administer the Client's bank accounts if agreed to as part of the scope of the Services;
- (c) Clients may be restricted to "Read Only" access to bank accounts or relinquish access to debit or credit cards;
- (d) invoices for payment to the Firm will always require Client written approval before payment is actioned; and
- (e) should any of the above criteria be refused by the Client, the Firm shall have the right to terminate any engagement for Services without any liability on the Firm's behalf as a result of exercising their rights under this clause.

8.4 Once the Services are engaged and then delayed by the Client for any reason will result in payment for any invoices already issued for Services completed becoming immediately due and payable. The Firm shall reserve the right to charge a re-engagement Fee for the remainder of the Services outstanding, the Firm shall not be held liable for any damages, losses or costs incurred by the Client due to specific deadlines because of any such delays.

## **9. Risk**

9.1 Irrespective of whether the Firm retains ownership of any Documentation all risk for such items shall pass to the Client as soon as such items are delivered to the Client and shall remain with the Client until such time as the Firm may repossess the Documentation. The Client must insure all Documentation on or before delivery.

9.2 The Firm reserves its right to seek compensation or damages for any damage, destruction or loss suffered in relation to the Documentation as a result of the Client's failure to insure in accordance with clause 6.1.



9.3 The Firm shall not be held liable for any loss, corruption, or deletion of files or data (including, but not limited to any data stored on the Cloud by the Firm on behalf of the Client and/or the unintended introduction of viruses) resulting from the Services provided by the Firm, once the Contractor has completed the Client's requirements online and signed out. It is the sole responsibility of the Client to back-up any data which they believe to be important, valuable, or irreplaceable prior to the Firm providing the Services. Any damage to data files due to the likes of viruses or illegal hacking will be subject to an additional cost for repair in accordance with clause 6.2.

## **10. Search Engine Optimisation (SEO)**

10.1 Although the Firm shall use their knowledge and experience to gain the best results possible, the Firm gives no guarantee of the quality of visitor or the position/page rank or volume of visits to the Client's website, or warranty that the such website will be effective in promoting the Client's business or result in any increase in sales of the products/services of the Client.

10.2 The Client accepts that a SEO may change their policies and systems at any time and such, the Firm shall not be held liable for any fluctuations, changes or removal of your listing from a SEO.

## **11. Website and Social Media**

### *11.1 Client's Responsibilities:*

(a) The Client will ensure that the Firm is given such information and assistance (including access to computer systems, hosting account, disk space, create databases or a Website and applications (including but not limited to, a social media page), and other locations to complete a branding or other project) as the Firm reasonably requires to enable, the Firm to construct and maintain the Website.

(b) Subject to clause 18.1, the Client shall supply access to any computer system, usernames and passwords required to remove data and/or sites for failure to comply with these terms and conditions.

(c) It shall be the Client's responsibility to ensure that any specific requirements they may have for mobile web browsers is included in the brief, as, unless otherwise specified therein, the choice of web browsers and technology used in the development of the Web Site shall be at the sole discretion of the Firm. In the event that additional Services are requested, or required in order to meet any specific requirements for mobile web browsers, after the Firm has commenced work on the Web Site, shall be treated as a variation to the Price, and a strict estimation of further work required shall be submitted to the Client for approval before proceeding with the variation work.

(d) the Firm will not be responsible for, and accepts no liability for, any deficiency or alleged deficiency in the Web Site which is attributable to any third-party products and/or services used by the Firm in creation of the Web Site and/or social medial platform.

### *11.2 Maintenance:*

(a) Subject to sub-clause (b), the Firm will provide the Maintenance Services in accordance with the maintenance terms set out in the Firm's maintenance schedule.



(b) The Client will procure all necessary authorisations, licences and consents to enable the Firm to have access to the Web Site in order to provide the Maintenance Services.

(c) Should the Client during development of or after handover of the Web Site, attempt to update, edit or alter the Web Site pages, infrastructure, source files or the Web Site's architecture, time that the Firm provides to repair pages shall be treated as additional work.

11.3 *Public Access*: the Client understands that by placing information on the Website, such information may be accessible to all internet users. The Firm does not (unless expressly requested by the Client) limit or restrict access to such information, nor protect such information from copyright infringement or other wrongful activity. The Client assumes full responsibility for their use of the Services, and it is the Client's sole responsibility to evaluate the accuracy, completeness and usefulness or all opinions, advice, services, and other information, and the quality and merchantability of all Services provided by the Firm, or on the internet generally.

## **12. Title**

12.1 The Firm and the Client agree that where it is intended that the ownership of Documentation is to pass to the Client that such ownership shall not pass until:

(a) the Client has paid the Firm all amounts owing for the Services; and

(b) the Client has met all other obligations due by the Client to the Firm in respect of all contracts between the Firm and the Client.

12.2 Receipt by the Firm 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 and until then the Firm's ownership or rights in respect of the Documentation, and this contract, shall continue.

12.3 It is further agreed that:

(a) until such time as payment for the Services has been received in full the Firm may give notice in writing to the Client to return to the Firm any documentation provided to the Client as part of the Firm's Services. Upon such notice being given the rights of the Client to obtain ownership or any other interest in the Services shall cease; and

(b) if the Client fails to return documentation to the Firm when requested then the Firm or the Firm's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises where the documentation is situated as the invitee of the Client and take possession of the documentation, and the Firm will not be liable for any reasonable loss or damage suffered as a result of any action by the Firm under this clause.

## **13. Defective Services**

13.1 The Client shall within three (3) days of provision of the Services notify the Firm of any alleged defect, shortage in quantity, errors, omissions or failure to comply with the description or quote. The Client shall afford the Firm an opportunity to review the Services within a reasonable time following such notification if the Client believes the Services are defective in any way. If the Client shall fail to comply with these provisions, the Services shall be conclusively presumed to be in accordance with the terms and conditions and free from any errors or omissions.





13.2 For defective Services, which the Firm has agreed in writing that the Client is entitled to reject, the Firm's liability is limited to either (at the Firm's discretion) replacing the Services or rectifying the Services provided that the Client has complied with the provisions of clause 13.1.

#### **14. Consumer Guarantees Act 1993**

14.1 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 do not apply to the provision of Services by the Firm to the Client.

#### **15. Use of Reports and Advice**

15.1 Any advice that the Firm gives to the Client, its employees or agents is for the Client's exclusive use and must be used only for the purpose described in the Letter of Engagement or Quotation.

15.2 Unless the Firm gives the Client prior written consent, the advice:

(a) must not be used or disclosed for any other purpose, referred to in any document or made available to any other person, except the Client's lawyers or other professional advisor assisting in the Services; and

(b) may not be relied upon by any other party other than the Client.

15.3 The Firm is not responsible to any other party other than the Client, who is provided with or obtains a copy of the Firm's advice.

15.4 The Firm's advice may, on occasion, be given to the Client in draft form or orally only on the basis that the Client may not rely on advice in that form. Accordingly, the Firm shall not be responsible if the Client or any other party relies on the advice or chooses to act, or refrains from acting, on the basis of any draft advice or oral comments or advice.

15.5 The Client acknowledges that the signed copy of the Firm's final advice is the definitive version.

15.6 Sometimes circumstances may change after the Firm has provided their final advice to the Client. If this happens the Firm will not update any final advice it has provided to the Client under these terms and conditions. If the Client would like the Firm to update their final advice, they must contact the Firm and both parties can discuss a suitable term of engagement with the Client.

#### **16. Confidentiality / Intellectual Property**

16.1 Both the Client and the Firm agree to treat all information and ideas communicated to it by the other confidentially and agree not to divulge them to any third party, without the other party's written consent. The parties will not copy any such information supplied, and will either return it or destroy it (together with any copies thereof) on request of the other party.

16.2 It shall be the Client's responsibility to ensure the security and confidentiality of their account and must not allow any unauthorised use of such by any third party. The Client will be liable for any infringement of these terms and conditions in respect of the Client's account, irrespective of whether such infringement is by the Client or any authorised or unauthorised third party.



16.3 Exceptions to clause 16.1 will be disclosures to legal advisers, disclosures required by law, and disclosures necessary for the proper performance of the Services.

16.4 Unless recorded in writing otherwise (and signed by both parties to this contract), where the Firm has developed a website, software, spreadsheets, training materials, databases, proposals, tender documents and other electronic tools (“Tools”) in providing the Services for the Client, then the copyright therein shall remain vested in the Firm, and shall only be used by the Client at the Firm’s discretion.

16.5 The Client warrants that any software, spreadsheets, databases, electronic tools, instructions, images, or documentation provided by the Client to the Firm will not cause the Firm to infringe any copyright, patent, registered design or trademark in the execution of the Client’s order and the Client agrees to indemnify the Firm against any action taken by a third party against the Firm in respect of any such infringement.

16.6 The Client acknowledges that any software / online services provided by the Firm belong to the publishers and the Client is granted access to use the software / online services. The Client gives the Firm the right to access the software / online services using the Client’s and/or administration login for the purposes of completing the Services, complying with IRD instructions or in the case of non-payment to restrict or block the Client’s access to the software / online services.

16.7 Whether the Firm or the Client retains the copyright in relation to Tools which are specifically developed for the Client shall be as is agreed, recorded in writing, and signed by both parties to this contract.

## **17. Default and Consequences Of Default**

17.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of three and one half percent (3.5%) per calendar month (and at the Firm’s sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

17.2 If the Client owes the Firm any money the Client shall indemnify the Firm from and against all costs and disbursements incurred by the Firm in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Firm’s collection agency costs, and bank dishonour fees).

17.3 Further to any other rights or remedies the Firm may have under this contract, if a Client has made payment to the Firm, 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 the Firm under this clause 17, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client’s obligations under this contract.

17.4 Without prejudice to the Firm’s other remedies at law the Firm shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Firm shall, whether or not due for payment, become immediately payable in the event that:

(a) any money payable to the Firm becomes overdue, or in the Firm’s opinion the Client will be unable to meet its payments as they fall due; or



(b) the Client has exceeded any applicable credit limit provided by the Firm;

(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.

## **18. Cancellation / Termination of Services**

18.1 Without prejudice to any other remedies the Firm may have, if at any time the Client is in breach of any obligation (including those relating to payment), the Firm may suspend or terminate the provision of Services (including where applicable cancellation of third party subscription services, effective immediately, if the Firm is making payment on behalf of the Client and where the Client becomes in default of reimbursement of such monies) to the Client and any of its other obligations under the terms and conditions. The Firm will not be liable to the Client for any loss or damage the Client suffers because the Firm has exercised its rights under this clause.

18.2 Either party may terminate the Services by providing the other party with a minimum of thirty (30) days' notice in writing, subject to the conditions of clause 18.3 and 18.4. The Firm reserves the right to discontinue all Services on receipt of such written notice. All current invoices issued up to and including the cancellation date shall become immediately due and payable and it shall be the Client responsibility to make the necessary arrangements required.

18.3 The Firm may cancel any contract to which these terms and conditions apply or cancel provision of the Services at any time before the Services are completed by giving written notice to the Client. On giving such notice the Firm shall repay to the Client any sums paid in respect of the Fee, less any amounts owed by the Client to the Account for Services already provided. The Firm shall not be liable for any loss or damage whatever arising from such cancellation.

18.4 In the event that the Client cancels provision of the Services, the Client shall be liable for any loss incurred by the Firm (including, but not limited to, any loss of profits) up to the time of cancellation.

## **19. Employees of the Firm/Non Solicitation**

19.1 The Client agrees that during the term of the contract and for a period of six (6) months following the termination of the contract for any reason, the Client will not:

(a) attempt to encourage or persuade any contractor/s, employee or consultant of the Firm to terminate their contract or employment with the Firm or utilise in any way an employee or past employee of the Firm (other than through the Firm); and

(b) the Client acknowledges that the restraints are fair and reasonable for the proper preservation of the goodwill of the business of the Firm.

19.2 The Client agrees that if clause 19.1 is contravened the Client agrees to pay a placement fee equal to fifteen percent (15%) of the employee's annual salary as a fee as agreed by the parties prior to the appointment of the candidate. The Client agrees that this placement fee is also applicable if the Client engages the Firm's employees through a different labour hire company.



## 20. Privacy Policy

20.1 All emails, documents, images or other recorded information held or used by the Firm is Personal Information as defined and referred to in clause 28.3 and therefore considered confidential. The Firm acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 (“the Act” including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act and any statutory requirements where relevant in a European Economic Area “EEA” then the EU Data Privacy Laws (including the General Data Protection Regulation ‘GDPR’ (Collectively, “EU Data Privacy Laws”). The Firm acknowledge that in the event it becomes aware of any data breaches and/or disclosure of the Client’s Personal Information, held by the Firm that may result in serious harm to the Client, the Firm will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.

20.2 Notwithstanding clause 20.1, privacy limitation will extend to the Firm in respect of Cookies where transactions for purchases/orders transpire directly from the Firm’s website. The Firm agrees to display references 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 available to the Firm when the Firm sends an email to the Client, so the Firm may collect and review that information (“collectively Personal Information”).

In order to enable/disable the collection of Personal Information by way of Cookies, 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 proceeding with a purchase/order via the Firm’s website.

20.3 The Client authorises the Firm or the Firm’s agent to:

(a) access, collect, retain and use any information about the Client;

(i) (including 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.

(b) disclose information about the Client, whether collected by the Firm from the Client directly or obtained by the Firm 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.

20.4 Where the Client is an individual the authorities under clause 20.1 are authorities or consents for the purposes of the Privacy Act 1993.

20.5 The Client shall have the right to request the Firm for a copy of the information about the Client retained by the Firm and the right to request the Firm to correct any incorrect information about the Client held by the Firm.



## **21. Personal Property Securities Act 1999 (“PPSA”)**

21.1 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 collateral (account), being a monetary obligation of the Client to the Firm for Services previously provided (if any) and that will be provided in the future by the Firm to the Client.

21.2 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 the Firm may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;

(b) indemnify, and upon demand reimburse, the Firm for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any registration made thereby;

(c) not register a financing change statement or a change demand without the prior written consent of the Firm.

21.3 The Firm and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.

21.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

21.5 Unless otherwise agreed to in writing by the Firm, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.

21.6 The Client shall unconditionally ratify any actions taken by the Firm under clauses 21.1 to 21.5.

## **22. Security and Charge**

22.1 In consideration of the Firm agreeing to provide 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, 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).

22.2 The Client indemnifies the Firm from and against all the Firm’s costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Firm’s rights under this clause.

22.3 The Client irrevocably appoints the Firm and each director of the Firm as the Client’s true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 22.1 including, but not limited to, signing any document on the Client’s behalf.



## **23. Lien**

23.1 Where the Client has left any of the Client's documentation with the Firm for the Firm to provide any Services in relation to that documentation and the Firm has not received or been tendered the whole of the Fee, or the payment has been dishonoured, the Firm shall have:

(a) a lien on the documentation; and

(b) the right to retain the documentation whilst the Firm is in possession of the documentation until such time as payment has been made in full; and

(c) the lien of the Firm shall continue despite the commencement of proceedings, or judgment for the Fee having been obtained; and

(d) the Firm shall be under no obligation to release the documentation to the Client if the Client is in default of payment except as may be required by any law or statute.

## **24. Liability Limitations**

24.1 The Firm shall be under no liability whatsoever to the Client for any indirect loss, consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Firm of these terms and conditions; alternatively, the Firm's liability shall be limited to damages which under no circumstances shall exceed the value of Fees paid by the Client to the Firm in connection with the Services in question, five hundred dollars (\$500), whichever is the lesser.

24.2 The Client agrees to indemnify the Firm, its partners, associates, employees, contractors and any other person who may be sought to be made liable in excess of the limit of liability described in clause 24.1 in respect of any activity arising from or connected with these terms in respect of any claim of whatever kind, including negligence, that may be made by any person, and any costs and expenses that may be incurred by the Firm.

24.3 Furthermore, the Client agrees to indemnify the Firm against all direct, indirect and consequential loss, damages, costs (including, but not limited to legal fees), fines, penalties and the like of which the Firm may become liable in connection with any Services provided to the Client within ten (10) days after the Client becomes aware of such loss, damages, costs, fines, penalties and the like.

24.4 The Client acknowledges that the Firm is not a Chartered Accountant and that the use of the Firm's Services, does not constitute the receipt of accounting or taxation advice.

24.5 Where the Firm is providing bookkeeping, financial, training, administration, consultancy and/or marketing Services to the Client, the Client acknowledges that:

(a) any bookkeeping Services provided by the Firm are limited by financial information supplied by the Client. The Client must supply complete and accurate information promptly at the times agreed upon in order for the Firm to undertake the Services, and the Firm shall be entitled to rely on the accuracy of any such information provided by the Client;

(b) the Firm shall not express any opinion with regard to the accuracy of the material supplied by the Client or its suitability of purpose. The Firm is under no obligation to take active steps to identify



weaknesses in the Client's internal accounting system, errors, illegal acts or other irregularities (including, but not limited to non-compliances with law, or fraud). Any irregularities identified by the Firm may be brought to the attention of the Client;

(c) the Services provided do not include an audit or review of the Client's financial information and statement, and accordingly the Firm is not responsible for the accuracy of any Documentation prepared by the Firm where such Documentation relies upon the accuracy of any information provided by the Client.

24.6 The Client acknowledges and accepts that the Firm 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 the Firm in the formation and/or administration of this contract; and/or

(b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Firm in respect of the Services.

24.7 In the event such an error and/or omission occurs in accordance with clause 24.6, and is not attributable to the negligence and/or wilful misconduct of the Firm; the Client shall not be entitled to treat this contract as repudiated nor render it invalid.

24.8 Information, feedback and discussions do not substitute for the Client's independent judgement and experience nor expert or legal advice. The Firm's focus is to assist the Client in making informed decisions about their business by providing objective feedback. Any application of recommendations provided by the Firm is at the Client's discretion. The Firm does not warrant or guarantee the success or outcome resulting from the provision of the Services in any particular circumstances, for the Client or the Client's business.

#### **CLIENT'S ACKNOWLEDGMENT OF THE LIMITED LIABILITY OBLIGATION**

The Client acknowledges and accepts that the Firm has discussed the limitation of liability created by clause 24 and that the Firm has advised the Client that they may wish to obtain legal advice on all questions arising from the terms and conditions herein and/or Services provided, in particular, the limitation of liability provisions, because they may impact on the Client's legal rights. The Firm cannot offer legal advice but merely offer recommendations based on their knowledge and experience for the Services provided.

The Firm will accept no liability whatsoever for any indirect and/or consequential loss and/or expense suffered by the Client arising out of a breach should the Client choose not to follow this recommendation.

*Client's Initials* \_\_\_\_\_

#### **25. Dispute Resolution**

25.1 All disputes and differences between the Client and the Firm touching and concerning this contract shall be referred to arbitration under a single arbitrator agreed upon by both parties, or failing agreement, by two arbitrators (one to be appointed by each party) and their umpire



(appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1996.

25.2 Each party shall be liable for its own costs associated with and incurred through the process of arbitration.

## **26. Service of Notices**

26.1 Any written notice given under this contract 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 contract;
- (c) by sending it by registered post to the address of the other party as stated in this contract;
- (d) if sent by email to the other party's last known email address.

26.2 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.

## **27. Trusts**

27.1 If the Client at any time upon or subsequent to entering in to the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Firm may have notice of the Trust, the Client covenants with the Firm as follows:

- (a) the contract 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 contract 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 the Firm (the Firm 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.

## **28. General**

28.1 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.

28.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Christchurch Courts of New Zealand.

28.3 The Firm may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.

28.4 The Client cannot licence or assign without the written approval of the Firm.

28.5 The Firm may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Firm's sub-contractors without the authority of the Firm.

28.6 The Client agrees that the Firm may amend these terms and conditions by notifying 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 the Firm to provide Goods and Services to the Client.

28.7 The Client agrees that during the term of the contract and for a period of six (6) months following the termination of the contract for any reason, the Client will not:

(a) attempt to encourage or persuade any Contractor/s, employee or consultant of the Firm to terminate their contract or employment with the Firm; and

(b) the Client acknowledges that the restraints are fair and reasonable for the proper preservation of the goodwill of the business of the Firm.

28.8 The Client agrees that the Firm may amend these terms and conditions at any time. If the Firm makes a change to these terms and conditions, then that change will take effect from the date on which the Firm notifies the Client of such change in writing or by Email. The Client will be taken to have accepted such changes if the Client makes a further request for the Firm to provide Services to the Client, or if Services already rendered continue without written dispute received from the Client within three (3) days of such written notification.

28.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.

28.10 Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them.

