



Premier Services Limited

Terms & Conditions of Trade

1. TERMS & CONDITIONS OF SERVICE

The services to be provided in this “Service Level Agreement” shall be subject to the following conditions.

1.1 ENGAGEMENT

1.1.1 The Client engages the Designer to provide the Design Works, and the Designer accepts that engagement, on the following terms and condition.

New Zealand Construction Industry Council Design Guidelines (www.nzcic.co.nz).

1.2.6 “Working Days” means days other than Saturday, Sunday, public holidays, or days from 23 December – 6 January (inclusive).

1.2 DEFINITIONS AND INTERPRETATION

1.2.1 In these Terms and Conditions, the following meanings apply:

1.2.2 “Client” means the client listed in the Project Details.

1.2.3 “Designer” means solely Premier Services Limited and shall exclude in all circumstances, its directors, officers, employees (Licensed Building Practitioners (LBPs)), design agents and affiliates (“designer parties”)

1.2.4 “Fee” means the total fee payable by the Client in consideration for the Design Works services and associated rights as detailed in this Agreement.

1.2.5 “Design Works” means the design services and tasks to be performed, and deliverables to be provided, by the Designer as detailed in this Agreement and (if applicable but not limited to) further described in the

1.3 THE DESIGNERS OBLIGATIONS

1.3.1 The Designer shall provide the Design Works in accordance with the reasonable standard of skill, care and diligence generally exercised by the design profession in New Zealand subject to any financial, physical, time or other constraints imposed by the Client or reasonably resulting from the nature of the engagement.

1.3.2 The Designer shall, where practicable, advise the Client of any matter, circumstance or instruction that may affect the timely delivery or quality of the Design

Works and/or constitute a variation to the Design Works.

- 1.3.3 The Designer shall not make any material change to Design Works approved in writing by the Client except:
- 1.3.4 With the Client's instruction or agreement; or
- 1.3.5 Where site conditions or compliance issues require the Designer to exercise discretion.
- 1.3.6 Any periods of time for delivery of Design Works by the Designer or the Client are indicative estimates only, and any delay shall not entitle the Client to terminate this Agreement or claim remedies.

1.4 THE CLIENTS OBLIGATIONS

- 1.4.1 The Client agrees to:
- 1.4.2 Provide the Designer with a full brief of the project requirements and objectives, together with full information about the site and any other information reasonably requested by the Designer; and
- 1.4.3 Work constructively and in good faith with the Designer to resolve any aspects of the Design Works or the Project, to enable the Design Works to be provided.
- 1.4.4 As maybe required within any land covenants it is solely the Clients obligation to gain any necessary written approval of the developer to the plans for the Design Works.

1.5 LICENCE GRANTED TO CLIENT

- 1.5.1 The Designer grants the Client a licence to use the Design Works for the project.
- 1.5.2 The Client acknowledges that the Designer retains the right to:
 - 1.5.2.a enter the Design Works into design competitions or awards and for their use in any material published in connection with promoting those competitions or awards; and
 - 1.5.2.b use the Design Works to advertise or otherwise promote the Designer's work; and
 - 1.5.2.c use the Design Works for any other purpose within the Designer's business activities.

1.6 CONDITIONS OF LICENSE

- 1.6.1 The licence to use the Design Works begins from the date of full payment of the fee (except where the Designer otherwise gives express written permission).
- 1.6.2 The Designer is not obliged to provide copies of the Design Works in editable formats. Full copies will (at the Designer's discretion) be provided in print or non-editable electronic form.
- 1.6.3 The licence does not apply to incomplete or draft Design Works.
- 1.6.4 The Designer may suspend or revoke the licence if the Client fails to make any payment when due.
- 1.6.5 This licence must not be assigned to any third party without the Designer prior written permission.
- 1.6.6 The Client shall ensure that the Designer is credited in any brochure, advertising material and other promotional materials relating to the Design Works.

1.7 NOTICE OF DEFECTS

- 1.7.1 If, during the term of this Agreement or after completion of it, the Client becomes aware of any problem with the Design Works, or non-compliance

with this Agreement, the Client must no later than 30 working days after becoming aware of it, notify the Designer in writing. Failure to do so will be considered a waiver by the Client of any claim it may have against the Designer (in contract, tort (including negligence), equity or otherwise) in relation to the same.

1.8 INTELLECTUAL PROPERTY RIGHTS

- 1.8.1 The Designer does not accept commissions to create copyright works other than to agree to licence Design Works developed and selected by The Designer for delivery to the Client. This overrides section 21(3) of the Copyright Act 1994 in accordance with section 21(4) of that Act.
- 1.8.2 The Client warrants that:
- 1.8.3 Intellectual Property and other information (including designs, concepts, working drawings or 3D models) supplied to The Designer do not breach any third-party Intellectual Property rights; and
- 1.8.4 The Client indemnifies and shall keep indemnified The Designer, its directors, employees and agents, from and against all Losses relating to or arising from the provision of the Services, the designs and/or the products resulting from the Services, or any breach of the Agreement by the Client.

1.9 PRIVACY AND PERSONAL INFORMATION

- 1.9.1 The Designer shall abide by the Privacy Act 1993 and shall take all practical steps to achieve privacy protection.

1.10 FEES AND PAYMENT

- 1.10.1 The Client shall pay the Designer's Fees on the 20th day of the month, as shown on the invoice.
- 1.10.2 The Designer may invoice the Client for Fees monthly, or at the completion of the Design Works.
- 1.10.3 Where this Agreement has been entered into by an agent (or person purporting to be an agent) on behalf of the Client, the agent and Client shall be jointly and severally liable for the payment of all Fees due to the Designer under this Agreement.

1.11 PLAN CHANGES

- 1.11.1.a Plan changes are charged at \$100 + G.S.T per hour. Complete redraws of concept floor plan shall be charged at an hourly \$100 + G.S.T per hour.
- 1.11.1.b A \$100 + G.S.T per hour fee will be added to final cost of plans if any major plan modifications are requested by customer after plans have been completed. (Major plan modifications require multiple plan sheets to be revised.)
- 1.11.1.c After this Agreement is signed, the Client changes the scope of the Design Works required; or
- 1.11.1.d After completion and approval of any concept design, the Client instructs the Designer to alter the Design Works supplied; or
- 1.11.1.e Through no fault of the Designer, the provision of specific Design Works will take longer or require more work than reasonably contemplated.

The Designer shall endeavour to provide advance notice of variations to Fee estimates pursuant to clause 9.11.1.a, 9:11:1. b but failure to do so will not prejudice or affect the Designer's rights under this clause.

- 1.11.2 All fees exclude costs of any engineering, geotechnical engineering, waste-water engineering, fire engineering, surveying, resource consent planners and

any territorial authority costs which may be required to gain compliance. The client shall meet these costs as appropriate with the relevant services provider if needed. The Designer will make every reasonable effort to advise on the need for other consultants' services and on the scope of these services.

- 1.11.3 The Designer may purchase such incidental goods (i.e. office stationery, certificate of title, consent notices) as are reasonably required for us to perform the Design Service. The cost of obtaining such incidental goods and/or services shall be payable by the Client, additional to any estimate or quote.
- 1.11.4 Where the Designer takes over the design services provided by a former designer, the Designer may charge an additional Fee to cover the time spent to correct or accommodate the deficiencies in the previous design services.
- 1.11.5 Where the Fee is calculated on an hourly-rate basis, the Designer shall keep records of time spent and shall make these records available for inspection by the Client on request.
- 1.11.6 The Client may not reduce or withhold payment to the Designer because a third party involved in the Project has not carried out their obligations to the Client.

1.12 LATE PAYMENT

In the event any monies due are not paid in full, the Designer reserves the right to immediately suspend further work for the Client. If Design Works are suspended, the Designer shall not be obliged to resume services until the amount owing, and any costs incurred in relation to the suspension, are paid in full and the Designer has adequate security for future Fees. The Designer will not be liable to the Client or any person for losses arising from suspension of the Design Works.

1.13 DISPUTE RESOLUTION

Neither party may commence proceedings against the other unless that party has first complied with the following procedure:

- 1.13.1 The complainant must provide written notice detailing the nature of the dispute and both parties must make every reasonable effort to resolve the dispute by negotiation.
- 1.13.2 On receipt of a dispute notice the parties' authorised representatives shall meet (or otherwise communicate, if a meeting is not practicable) and attempt to resolve the dispute through good faith negotiations on a 'without prejudice' basis within five (5) working days of the date of the notice.
- 1.13.3 If the dispute is not resolved under (b) within five (5) working days from the commencement of negotiations under (b), then the dispute shall be escalated to the parties' respective chief executives (or equivalent).
- 1.13.4 Where escalation occurs, the parties' chief executive officers (or equivalent) shall meet (or otherwise communicate if a meeting is not practicable) and attempt to resolve the dispute through good faith negotiations on a 'without prejudice' basis.
- 1.13.5 If, after a further discussion period of two (5) Working Days, the parties remain unable to reach an agreed outcome, the dispute shall be referred to arbitration in accordance with the Arbitration Act 1996 (the "Act"). The decision of the arbitrator is final and binding on the parties.
- 1.13.6 Either party may refer a dispute to arbitration by giving written notice to the other party recording the details

of the dispute and that party's desire to have the matter referred to arbitration.

- 1.13.7 The arbitration shall take place in the city / town of the registered office of the Designer in New Zealand.
- 1.13.8 The arbitrator shall decide the dispute in accordance with the laws of New Zealand and the arbitration shall otherwise be conducted in accordance with the Act.

1.14 INDEMNITY

- 1.14.1 The Client undertakes to indemnify the Designer against all loss, damage, liability, or expense (including costs on a solicitor-client basis):
- 1.14.2 Suffered or incurred because of any breach by the Client of the Agreement or in recovering any moneys due; and
- 1.14.3 Arising out of a claim by a third party against the Designer alleging that the Design Works (excluding original material developed solely by the Designer) infringes any third-party Intellectual Property Rights,

1.15 ELECTRONIC DATA STORAGE

- 1.15.1 The Designer will follow its usual backup procedure (if any) upon the completion of the Design Works. The Designer shall not be liable under any circumstances if unable to produce backups upon the request of the Client.

1.16 TERMINATION

- 1.16.1 The Agreement remains in force until cancelled or terminated in accordance with this clause.
- 1.16.2 The Agreement may be cancelled by written agreement between the parties.
- 1.16.3 Either party may immediately terminate the Agreement if:
- 1.16.4 the other party defaults in performing its obligations under the Agreement and the default, if capable of being remedied, is not remedied within twenty (20) working days after receipt or deemed receipt by the defaulting party of a notice specifying the default and requiring remedy; or
- 1.16.5 the other party defaults in the performance of its obligations under the Agreement and the default is incapable of being remedied.
- 1.16.6 Notwithstanding termination of the Agreement, the Client will be liable to pay The Designer for:
- 1.16.7 Those Services or that portion of the Services performed prior to termination, and any Expenses, not previously invoiced and/or paid for; and
- 1.16.8 Where The Designer has terminated the Agreement following any breach by the Client, any Losses that The Designer has incurred as a result of the breach and/or early termination.

1.17 FORCE MAJEURE

- 1.17.1 Neither The Designer nor the Client will be liable for any failure or delay in complying with any of its obligations under the Agreement (excluding any payment obligation) if:
- 1.17.2 The failure or delay is caused by a Force Majeure Event; and
- 1.17.3 That party uses its best endeavours to mitigate the effects of the Force Majeure Event on that party's obligations; and perform that party's obligations in

respect of the Services which are not affected by the Force Majeure Event.

the client must rely on their own investigations and satisfy themselves in these matters.

1.18 CONSUMER GUARANTEES

- 1.18.1 The Consumer Guarantees Act 1993, or equivalent legislation, may apply to the Design Works provided by the Designer if the Client acquires the Design Works for personal, domestic, or household use or consumption. If this Act applies, nothing in this Agreement will limit or exclude the Client's rights under that Act.
- 1.18.2 If the Client is acquiring the Design Works for business purposes, then the Client's rights are subject to this Agreement only and the Consumer Guarantees Act 1993 shall not apply.

1.19 DESIGNER NOT LIABLE FOR LOSSES

- 1.19.1 Subject to Clause 9.16.8, the Designer shall not be liable for:
- 1.19.2 any loss or damage arising by reason of any delay in the completion or delivery of the Design Works; or
- 1.19.3 any loss of profits; or
- 1.19.4 any indirect or consequential loss of whatever nature; or
- 1.19.5 any loss resulting from any errors or omissions arising from incorrect information provided by the Client, Third Party, or failure by the Client to provide information, or an oversight or a misinterpretation of a Client's verbal instructions. This clause shall include information held by the territorial authority whether supplied by The Client or otherwise.

1.20 LIABILITY OF DESIGNER LIMITED

- 1.20.1 Subject to Clause 9.17, the Designer's liability to the Client for any and all costs, loss or damage suffered by the Client, however caused (including negligence), arising out of or connected with the performance or failure of performance of any Design Works supplied by the Designer shall not exceed the maximum aggregate amount payable, whether in contract, tort or otherwise, of be five times the Fee (exclusive of GST and disbursements).
- 1.20.2 The Designer is not responsible for the acquisition, or liable for the accuracy and validity, of any consents, licences, permits and authorisations required to lawfully undertake the project and/or construct the property, unless otherwise agreed between the parties in writing.
- 1.20.3 The Designer does not warrant as to the subsoil stability of any site and, as to the nature and extent of foundations requirements which may vary from site to site. All conceptual work are completed under the assumption of "Good Ground" as defined by NZS3604:2011.
- 1.20.4 Any Site Investigation Reports, Geotechnical Reports and/or any scala penetrometer test results relating to the site supplied to The Designer will be viewed in good faith and on the basis that they are indicative (not conclusive) of ground conditions at the time of inspection. Should any site investigation reports, geotechnical reports and/or any scala penetrometer test results require that further investigations are to be carried out and/or foundations are to be designed by a suitably qualified, experienced, registered engineer

1.21 REMEDIAL SERVICES

Where the Client has engaged the Designer to take over or complete the design services provided to the Client by a third party:

- 1.21.1.a The Client shall enable the Designer to confer with the previous designer and review the previous services provided, and the Designer will notify the Client if it is necessary to remedy deficiencies in the previous services.
- 1.21.1.b The Client acknowledges that the Designer is not responsible for any services and work carried out prior to the commencement of this Agreement or carried out by other parties (at any time).

Except as expressly provided above and to the maximum extent permitted by applicable law, The Designer shall not be liable for any damages whatsoever (including, without limitation, damages for lost revenues, loss of business profits, business interruption, loss of business information, or other pecuniary loss, or any direct, indirect, special, incidental, punitive, exemplary or consequential damages of any nature) arising out of or in relation to remedial services as described in Clause 9.21.1.b.

1.22 HEALTH AND SAFETY

- 1.22.1 The Designer has not and will not during the terms of this Agreement or at any time after it assume any obligation as the Client's agent or otherwise which may be imposed on the Client from time to time pursuant to the Health and Safety at Work Act 2015.

1.23 MISCELLANEOUS

- 1.23.1 This Agreement shall not be assigned or transferred without the prior written consent of the Designer and;
- 1.23.2 Without limiting any defences a party may have under the Limitation Act 2010, neither party shall be considered liable for any loss or damage (whether in contract, tort (including negligence), equity, statute or otherwise), resulting from any occurrence unless a claim is formally made on a Party within 6 years from the completion of the Design Works and;
- 1.23.3 This Agreement shall be construed in accordance with and governed by the laws of New Zealand and the Parties submit to the non-exclusive jurisdiction of the New Zealand courts in respect of all matters relating to this Agreement and;
- 1.23.4 Currency amounts are in New Zealand dollars unless otherwise stated, and all communications between the parties must be in English.

Premier Services Limited

(Premier Services Limited – Version SLA 21a)

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