

Paul Enoka Chartered Accountants Limited – Terms & Conditions of Trade

1. Definitions

- 1.1 "Agent" shall mean Paul Enoka Chartered Accountants Limited its successors and assigns or any person acting on behalf of and with the authority of Paul Enoka Chartered Accountants Limited.
- 1.2 "Client" shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by the Agent to the Client.
- 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 "Services" shall mean all Services (including any documentation) supplied by the Agent to the Client and includes any advice or recommendations and are as described on the invoices, quotation, work authorisation or any other forms as provided by the Agent to the Client.
- 1.5 "Price" shall mean the price payable for the Services as agreed between the Agent and the Client in accordance with clause 3 of this contract.

2. Acceptance

- 2.1 Any instructions received by the Agent from the Client for the supply of Services and/or the Client's acceptance of Services supplied by the Agent shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of the Agent.
- 2.4 The Client shall give the Agent not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by the Agent as a result of the Client's failure to comply with this clause.
- 2.5 On completion of any Services the Agent will retain any documents for a period of seven (7) years after which the documents will be destroyed unless otherwise requested by the Client.

3. Services

- 3.1 The Services shall be as described in the letter of engagement provided by the Agent to the Client.
- 3.2 These terms and conditions are to be read in conjunction with the Agent's letter of engagement. If there are any inconsistencies between the two documents then the terms and conditions contained in this document shall prevail.

4. Price And Payment

- 4.1 At the Agent's sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by the Agent to the Client in respect of Services supplied; or
 - (b) the Agent's quoted Price (subject to clause 4.2) which shall be binding upon the Agent provided that the Client shall accept the Agent's quotation in writing within thirty (30) days.
- 4.2 The Agent reserves the right to change the Price in the event of a variation to the Agent's quotation.
- 4.3 At the Agent's sole discretion payment for approved Clients shall be made by instalments in accordance with the Agent's payment schedule.
- 4.4 Time for payment for the Services shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be fourteen (14) days following the date of the invoice.
- 4.5 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card, or by direct credit, or by any other method as agreed to between the Client and the Agent.
- 4.6 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

5. Delivery Of Services

- 5.1 At the Agent's sole discretion any courier or freight costs are:
 - (a) included in the Price;
 - (b) or in addition to the Price;
 - (c) or for the Client's account.
- 5.2 The failure of the Agent to deliver shall not entitle either party to treat this contract as repudiated.
- 5.3 The Agent shall not be liable for any loss or damage whatsoever due to failure by the Agent to deliver the Services (or any of them) promptly or at all, where due to circumstances beyond the control of the Agent.

6. Risk

- 6.1 If the Agent retains ownership of the Services nonetheless, all risk for the Services passes to the Client on delivery.

7. Title

- 7.1 The Agent and Client agree that ownership of the Services shall not pass until:
 - (a) the Client has paid to the Agent all amounts owing for the particular Services; and
 - (b) the Client has met all other obligations due by the Client to the Agent in respect of all contracts between the Agent and the Client.
- 7.2 Receipt by the Agent 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 Agent's ownership or rights in respect of the Services shall continue.
- 7.3 It is further agreed that:
 - (a) until such time as payment for the Services has been received in full the Agent may give notice in writing to the Client to return to the Agent any documentation provided to the Client as part of the Agent'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 Agent when requested then the Agent or the Agent'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 Agent will not be liable for any reasonable loss or damage suffered as a result of any action by the Agent under this clause.

8. Errors And Omissions

- 8.1 The Client shall inspect the Services on delivery and shall within fourteen (14) days of delivery notify the Agent of any alleged defect, shortage in quantity, errors, omissions or failure to comply with the description or quote. The Client shall afford the Agent an opportunity to inspect the Services within a reasonable time following delivery 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 defect or damage.
- 8.2 For defective Services, which the Agent has agreed in writing that the Client is entitled to reject, the Agent's liability is limited to either (at the Agent's discretion) replacing the Services or rectifying the Services provided that the Client has complied with the provisions of clause 8.1.

9. Consumer Guarantees Act 1993

- 9.1 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 supply of Services by the Agent to the Client.

10. Default & Consequences Of Default

- 10.1 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 one half percent (2.5%) per calendar month (and at the Agent's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 10.2 In the event that the Buyer's payment is dishonoured for any reason the Buyer shall be liable for any dishonour fees incurred by the Agent.

- 10.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify the Agent from and against all costs and disbursements incurred by the Agent in pursuing the debt including legal costs on a solicitor and own client basis and the Agent's collection agency costs.
- 10.4 Without prejudice to any other remedies the Agent may have, if at any time the Client is in breach of any obligation (including those relating to payment), the Agent may suspend or terminate the supply of Services to the Client and any of its other obligations under the terms and conditions. The Agent will not be liable to the Client for any loss or damage the Client suffers because the Agent has exercised its rights under this clause.
- 10.5 If any account remains overdue after thirty (30) days then an amount of the greater of \$20.00 or 10.00% of the amount overdue (up to a maximum of \$200) shall be levied for administration fees which sum shall become immediately due and payable.
- 10.6 Without prejudice to the Agent's other remedies at law the Agent shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Agent shall, whether or not due for payment, become immediately payable in the event that:
 - (a) any money payable to the Agent becomes overdue, or in the Agent's opinion the Client will be unable to meet its payments as they fall due; or
 - (b) 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
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

11. Cancellation

- 11.1 The Agent may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are delivered by giving written notice to the Client. On giving such notice the Agent shall repay to the Client any sums paid in respect of the Price. The Agent shall not be liable for any loss or damage whatever arising from such cancellation.
- 11.2 In the event that the Client cancels delivery of Services the Client shall be liable for any loss incurred by the Agent (including, but not limited to, any loss of profits) up to the time of cancellation.

12. Privacy Act 1993

- 12.1 The Client and the Guarantor/s (if separate to the Client) authorises the Agent to:
 - (a) collect, retain and use any information about the Client and/or Guarantors, for the purpose of assessing the Client's and/or Guarantors creditworthiness or marketing products and services to the Client and/or Guarantors; and
 - (b) disclose information about the Client and/or Guarantors, whether collected by the Agent from the Client and/or Guarantors directly or obtained by the Agent 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 and/or Guarantors.
- 12.2 Where the Client and/or Guarantors are an individual the authorities under clause 12.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 12.3 The Client and/or Guarantors shall have the right to request the Agent for a copy of the information about the Client and/or Guarantors retained by the Agent and the right to request the Agent to correct any incorrect information about the Client and/or Guarantors held by the Agent.

13. Security And Charge

- 13.1 Despite anything to the contrary contained herein or any other rights which the Agent may have howsoever:
 - (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Agent or the Agent's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that the Agent (or the Agent's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
 - (b) should the Agent elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify the Agent from and against all the Agent's costs and disbursements including legal costs on a solicitor and own client basis.
 - (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Agent or the Agent's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 13.1.

14. Lien

- 14.1 Where the Client has left any of the Client's documentation with the Agent for the Agent to provide any Services in relation to that documentation and the Agent has not received or been tendered the whole of the Price, or the payment has been dishonoured, the Agent shall have:
 - (a) a lien on the documentation; and
 - (b) the right to retain the documentation whilst the Agent is in possession of the documentation until such time as payment has been made in full; and
 - (c) the lien of the Agent shall continue despite the commencement of proceedings, or judgment for the Price having been obtained; and
 - (d) the Agent 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.

15. Liability Limitations

- 15.1 In the event of any breach of this contract by the Agent the remedies of the Client shall be limited to damages. Under no circumstances shall the liability of the Agent exceed the lesser of five times the value of the fees or the sum of one hundred thousand dollars (\$100,000).
- 15.2 The Client agrees to indemnify the Agent, 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 15.1 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 Agent.
- 15.3 The Agent shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Agent of these terms and conditions.

16. General

- 16.1 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.
- 16.2 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 courts of New Zealand.
- 16.3 The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by the Agent.
- 16.4 The Agent may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 16.5 The Agent reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Agent notifies the Client of such change.
- 16.6 The provisions of the Contractual Remedies Act 1979 shall apply to this contract as if section 15(d) were omitted from the Contractual Remedies Act 1979.
- 16.7 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.
- 16.8 The failure by the Agent to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Agent's right to subsequently enforce that provision.