

Terms of Business

These Terms of Business set out the terms on which Moore Markhams Hawkes Bay Limited will provide Services to you. These Terms of Business and any Engagement Documentation provided will form the basis of the agreement between you and Moore Markhams Hawkes Bay Limited. These Terms of Business replace and supersede any previous proposals, correspondence, understandings or other communications (written or oral) in relation to the Services to be provided. We will treat you as having accepted these terms if you continue to instruct us after you have been advised of them.

1. SERVICES

- 1.1 The scope of the Services is limited to the work specified in any Engagement Documentation. Either you or Moore Markhams Hawkes Bay Limited may request changes to the Services. We will use reasonable efforts to provide the Services in an efficient and timely manner using all reasonable skill and expertise. We will also use all reasonable efforts to complete the Services within any agreed time frame but time frames are not legally binding.
- 1.2 Our Services are not legal services and do not constitute legal advice.
- 1.3 The Services will be provided solely for your benefit and use. We accept no liability or responsibility to any third party in respect of the Services provided.
- 1.4 In the course of providing the Services, we may provide oral comments or draft documents. You may not rely on such oral comments or draft documents, conclusions or advice as they may be subject to further work and revision. The signed copies of our documentation are the definitive version of our advice or reports, subject to any noted qualification.
- 1.5 Our work will be based on documents and information provided to us or obtained by us in connection with the Services. We will not audit or independently verify the accuracy and completeness of such documentation or information. We do not accept responsibility and will not be liable for any direct or indirect damage or loss caused by errors or omissions in provided or obtained documentation or information.
- 1.6 Legislation changes may take place before our advice is acted upon or may be retrospective in effect. We accept no responsibility to inform you of changes in the law or interpretations affecting advice previously given by us.
- 1.7 Some of the matters on which we may be asked to advise you may have implications for other entities, directors, employees or any other parties. We will not bear any liability to you or any other relevant entities, directors, employees or any other parties in respect of those implications, and you indemnify us from and against any loss or damage suffered or incurred by us arising out of or in connection with any action or claim by any such entities, directors, employees or other parties in this respect.
- 1.8 In the context of Taxation Services (as requested):
 - a) we will advise you of your rights, obligations and options available under Taxation Law. We will also advise you of your rights or options available under Taxation Law with respect to the seeking of a private ruling and the lodging of objections and appeals against adverse positions adopted by the Inland Revenue; and
 - b) we will advise you on the application of Taxation Law, including any possible penalties and other legal tax consequence, so as to allow you to make an informed decision of the course of action to be taken.

2. FEES

- 2.1 Where possible and practicable, we will give you an estimate of our fees prior to the commencement of the Services. Any fee estimate is based on our current understanding of the circumstances and scope of work required, and therefore is not binding on us. Our fees may be adjusted if the Services prove more complex or time consuming than expected.
- 2.2 You agree to pay us:
 - a) the fees for the services plus GST (if applicable);
 - b) our reasonable expenses incurred in connection with the Services, at cost;
 - c) all and any costs and expenses (including internal time costs) that we incur or suffer if we are required to provide information about you or the Services provided to you, in order to comply with, or challenge, any statutory obligation, court order or compulsory process.
- 2.3 Your obligation to pay us the fees and expenses arises at the commencement of the Services after which you will be issued an invoice(s). Fees and expenses will be invoiced as practicable and are payable the 20th of the month following the invoice date.
- 2.4 We may charge interest on amounts which are overdue by more than a month at a rate capped at 5%. If your account remains unpaid and there is no satisfactory explanation for non-payment we may:
 - a) start proceedings to recover the amount owed, plus default interest (if applicable) and any collection costs incurred; and/or
 - b) Suspend or terminate any service for you and will not release your papers and files until all overdue amounts and any interest are paid (if applicable).
- 2.5 If you dispute all or part of an invoice, you (and Moore Markhams Hawkes Bay Limited) agree to seek to resolve the dispute under clause 11. If you dispute part of an invoice, you agree to pay the undisputed part of the invoice as and when it is or becomes due and payable.

3. YOUR OBLIGATIONS

- 3.1 You agree to:
 - a) provide all information, documents and resources that we reasonably require to enable us to provide the Services including arranging access to third parties, your premises and systems, and providing reasonable working facilities for us (where applicable);
 - b) provide us with accurate and complete information and update us should there be any material change to any previously supplied information;
 - c) ensure that appropriate back up, security and virus checking procedures are in place for any computer facilities you provide;
 - d) make senior staff available for consultation on request;
 - e) provide us with all reasonable and necessary assistance in a timely manner, including making timely decisions.
- 3.1 You acknowledge that information that you make available and known by our Directors or employees who are not engaged in performing the Services, shall not be deemed to have been made available to the individuals within Moore Markhams Hawkes Bay Limited who are engaged in the provision of the Services.
- 3.2 Except as required by law, you must not provide our completed work in respect of the Services to any third party without our written consent. We accept no liability or responsibility to any third party in respect of the Services provided. You indemnify us for any loss we suffer or incur as a result of any distribution to, use of, or reliance on any work provided to a third party.
- 3.3 We advise and you acknowledge that:
 - a) you are responsible for the accuracy and completeness of the information provided by you;
 - b) any advice given to you is only an opinion based on the actual knowledge of your particular circumstances of individuals within Moore Markhams Hawkes Bay Limited who are engaged in the provision of the Services; and
 - c) a taxpayer has obligations under self-assessment to keep full and proper records in order to facilitate the preparation of accurate returns.

4. TAX RETURNS

- 4.1 All taxation returns (including but not limited to income tax and goods and services tax) are subject to examination by the Inland Revenue. You may be requested to produce documents, records or other evidence to substantiate items shown on the relevant taxation returns.
- 4.2 You as the taxpayer have the ultimate responsibility for the correctness of your return(s). As such you acknowledge that:
 - a) the responsibility for the accuracy and completeness of your return(s) remains with you;
 - b) you are responsible for any penalties and interest the Inland Revenue charges for incorrect or false returns;
 - c) you are responsible for paying the correct amount of tax on time and as such, you are responsible for any penalties and interest the Inland Revenue charges for late or underpaid tax; and
 - d) the preparation by us of your return(s) does not constitute a tax audit and cannot be relied on as such.

5. CONFIDENTIALITY

- 5.1 Both parties agree to protect and keep confidential any Confidential Information (information designated as confidential or reasonably expected to be confidential based on its content or circumstances of disclosure but not including any information that is publicly available) that is given by one party to the other.
- 5.2 Either party may disclose Confidential Information:
 - a) to its insurers or legal advisors, provided that such persons agree or are otherwise required to ensure that the Confidential Information remains confidential;
 - b) to the extent required to do so by law; or
 - c) to the extent required for the proper performance of the Services.
- 5.3 Provided we do not disclose any Confidential Information, we may cite the performance of the Services to clients as an indication of our experience.

5.4 You agree that we may aggregate your information and use and disclose that information in a non-identifiable form as part of research and advice, including benchmarking.

5.5 You must not use our name or logo on any websites or in any public statement, without obtaining our prior written consent. You must not make any public statement about us or the Services without our prior consent.

6 PRIVACY OF PERSONAL INFORMATION & ELECTRONIC COMMUNICATION

6.1 We will collect, store and disclose any Personal Information (as defined in the *Privacy Act 1993*) provided to us in accordance with the *Privacy Act 1993* for the purposes outlined in our Privacy Policy (available on request).

6.2 If you provide us with any Personal Information of a third party, you confirm that you have collected that information in accordance with the *Privacy Act 1993*.

6.3 You authorise us to communicate with you electronically from time to time, including sending you Commercial Electronic Messages (as defined in the *Unsolicited Electronic Messages Act 2007*) and by agreeing to these terms of business you consent to such communications. If you have any doubts about the authenticity of any communication or document purportedly sent by us, please contact us immediately.

6.4 Electronically transmitted information cannot be guaranteed to be secure or virus or error free and consequently such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. We will not be liable to you in respect of any error, omission or loss of confidentiality arising from or in connection with the electronic communication of information to you.

7 INTELLECTUAL PROPERTY

7.1 Unless we agree otherwise, in writing, we retain ownership of all Intellectual Property, including but not limited to, all documentation, systems, materials, methodologies and processes owned by us or created in the course of us performing the Services. If we provide any of this Intellectual Property to you for your use, you acknowledge that it is not your property, was developed for our purposes and without consideration of any purpose(s) for which you might use it, is made available on an "as is" basis for your use only and must not be distributed to or shared with any third party. We make no representations or warranties as to the sufficiency or appropriateness of the Intellectual Property for any purpose for which you or a third party may use it.

7.2 You agree that we can use your logos and marks on our work, unless you tell us otherwise.

8 DOCUMENTS

8.1 We will keep your file and documents (which may contain personal information about you) for the minimum period stipulated by any relevant legislation, after which we may destroy your file and documents in a confidential manner. You may instruct us in writing at any time to deliver to you (or to a nominee) the original or electronic copy of any documents (as the case may be). We will deal with any such request in accordance with our Privacy Policy.

8.2 If we are provided with custody of any documents by you or on your behalf, including share registers or constitution documents, those documents will be retained during the course of our relationship (unless their earlier return is requested), at the end of which the file and documents will be returned to you unless separate arrangements have been made.

8.3 We, at our absolute discretion, may retain copies of any documents we have prepared or received in relation to providing the Services, in accordance with our Privacy Policy.

8.4 We reserve the right to exercise a lien over any documents and files belonging to you which may be in our possession.

9 LIMITATION OF LIABILITY

9.1 Subject to clauses 9.2 and 9.4, our liability for loss or damage arising out of or in connection with the Services, whether arising from breach of contract, tort (including, without limitation, negligence), breach of statutory duty or otherwise, is limited to an amount equal to five times the fees payable by you for the Services ("Liability Cap").

9.2 However, the Liability Cap does not apply to the extent prohibited by the *Companies Act 1993* or any other law.

9.3 To the extent permitted by law, if, under any applicable New Zealand Professional Standards Legislation, our maximum liability for loss or damage arising out of or in connection with the Services would be:

- a) a higher amount than the Liability Cap, then the liability Cap will not apply and our maximum liability will be calculated in accordance with the New Zealand Professional Standards Legislation; or
- b) a lower amount than the Liability Cap, then the Liability Cap will not apply and our maximum liability will be calculated in accordance with New Zealand Professional Standards legislation.

9.4 To the extent permitted by law, we exclude all liability to you for loss of profits, loss of revenue, loss of opportunity, business interruption, loss of data, failure to realise anticipated savings or benefits, and for any other indirect or consequential loss or damage (whether or not we knew or had been advised of the possibility of such loss or damage) including, without limitation, costs and expenses, arising in any way out of or in connection with the Services.

9.5 If you make any claim against us for loss arising out of or in connection with the Services or this agreement, liability for your loss and any amount you may recover will be apportioned having regard to the respective responsibility for the loss.

9.6 To the extent permitted by the Companies Act, you will indemnify and hold harmless Moore Markhams Hawkes Bay Limited our respective directors and employees from and against all liabilities, losses, claims, costs, damages or expenses that may result from any actions, claims or asserted rights of action by third parties (including, without limitation, those based on negligence) arising out of or in connection with the Services or any use by you of any deliverable under this agreement, and you will indemnify or reimburse us (at our election) for all costs and expenses (including legal fees on a solicitor/client basis) incurred by us in connection with any such action, claim or asserted right of action.

9.7 Subject to clause 9.9, we have not made any, and to the extent permitted by law we exclude, all warranties, conditions or guarantees of any nature in respect of the Services or the satisfactory conclusion of the Services or with respect to the economic, financial or other results which you may experience as a result of the Services.

9.8 Where warranties, conditions or guarantees or any other rights are implied in this agreement, or otherwise conferred by the *Consumer Guarantees Act 1993* or other laws, and it is not lawful or possible to exclude them, then those warranties, conditions or guarantees or other rights will (but only to the extent required by law) apply to this agreement. To the extent permitted by law, we limit our liability in respect of such warranties, conditions or guarantees to, at your option, the supply of the Services again or the payment of the cost of having the Services supplied again.

9.9 To the extent permitted by law (including the Companies Act), our directors and employees shall have no liability to you, whether for breach of contract, tort (including, without limitation, negligence), breach of statutory duty or otherwise, arising in any way out of or in connection with the Services. You agree not to bring any claim (whether in contract, tort (including, without limitation, negligence), breach of statutory duty or otherwise) arising in any way out of or in connection with the Services against any of our directors or employees personally. This will not limit or exclude any liability we may have for their acts or omissions. This clause is expressly for the benefit of our directors and employees, and you agree that each such person is entitled to rely on this clause as if they were parties to this agreement. We are also entitled to bring proceedings to enforce this clause on behalf of our directors and employees.

10 GENERAL AUTHORITY

10.1 You agree that we will have a general authority to deposit funds belonging to you (including income tax and GST refunds) to our trust account.

10.2 Funds in our trust account will be handled according to the rules of CAANZ including the professional standards issued by the NZICA Council. To the extent permitted by those rules and the professional standards, we may apply funds held in trust in satisfaction of amounts owing to us by you.

11 GENERAL

Engagement team

We will use reasonable efforts to ensure that individuals named in the Engagement Letter are available to perform the Services. We may replace or reassign any individual with another of similar skill.

Contractors and third parties

We reserve the right to employ contractors to provide some or all of the Services, and any reference to our staff/employees includes such contractors. We will remain liable to you for any of the Services that are provided by our contractors. From time to time we, and our third party contractors may engage external IT service providers (including in relation to 'cloud computing' services) in the performance of services under this engagement. You authorise us and our third party contractors to disclose information relating to your affairs to all such external IT service providers as we or our third party contractors may choose to engage.

Relationship with other clients

We provide services to other clients, some of whom may be in competition with you or have interests which conflict with your own. We are not prevented or restricted by virtue of our relationship with you under this agreement from providing services to other clients.

Our relationship with you

You acknowledge and agree that our relationship with you is that of an independent contractor. Neither party may claim or make any representation whatsoever to any third party that it is an agent of, or in partnership with, the other party and each party acknowledges that is

has no power or authority to bind the other in respect of any matter whatsoever and it will not represent to any person that it has such power or authority.

Waiver

A failure or delay by a party in exercising a power or right given to it under this Contract does not operate as waiver of that power or right, nor does a single or partial exercise of a power or right prevent any other or further exercise of it. A waiver by a party of a power or right given to it under this agreement does not affect any other provisions or terms of this agreement.

Conflict of Interest

If, after we commence Services, we identify or are made aware of any actual or potential conflicts of interest which would affect our ability to provide the Services to you, we will evaluate the conflict and apply appropriate safeguards to manage it (if applicable). You acknowledge that if we are unable to resolve or manage such conflict, we may need to terminate our agreement.

Health and Safety

Under section 34 of the Health and Safety at Work Act 2015 (Act) all persons conducting a business or undertaking (PCBU) who are parties to the work must as far as reasonably practicable, consult, cooperate and coordinate activities with all other PCBU's who have a duty in relation to the same work. We undertake to work with you to meet our joint obligations as a PCBU to consult, co-operate and coordinate our activities in relation to the scope of services set out in our engagement letter.

Term and Termination

- a) This agreement commences on the commencement date stated in any Engagement Documentation. If no commencement date is specified, the agreement commences on the date of acceptance (as specified in the Engagement Documentation), or the date on which the Services commenced, whichever is earlier.
- b) Subject to any statutory provisions that apply to the Services, either party may terminate this agreement at any time by giving at least 14 days written notice. On termination, you shall immediately pay on request all fees and expenses due in respect of the Services provided up to the date of termination and, unless the agreement is terminated for cause, you will pay our reasonable costs and expenses incurred in connection with the termination of the agreement.
- c) Termination of the agreement shall be without prejudice to any of the parties' accrued rights. The following clauses continue to apply after termination of the agreement: 5, 6, 7, 8 and 9. The terms of the agreement which expressly or by implication are intended to survive its termination or expiry will survive and continue to bind the parties.

Governing Law

This agreement shall be governed by and interpreted in accordance with the laws of New Zealand and the Courts of New Zealand shall have exclusive jurisdiction in relation to any claim, dispute or difference concerning the agreement and any matter arising from it.

Disputes

If any dispute arises, prior to commencing legal proceedings, the parties must attempt to resolve the dispute in good faith through Moore Markhams Hawkes Bay Limited's internal dispute resolution process.

Force majeure

Neither party will be liable to the other for any delay or failure to fulfil their obligations (excluding payment obligations) under this agreement to the extent that any such delay or failure arises from causes beyond their control, including but not limited to fire, flood, acts of God, acts or regulations of any governmental authority, war, riot, terrorist activities, strikes, lockouts and industrial disputes.

No assignment

Unless otherwise permitted under this agreement, neither party may transfer, charge or otherwise seek to deal with its rights or obligations under this agreement without prior written consent of the other party.

Validity of terms and severance

If any provision of this agreement is held to be invalid, in whole or in part, such provision shall be deemed not to form part of and will be severed from, the agreement. The enforceability of the remainder of the agreement will not be affected.