

Terms of trade

1. Definitions

- 1.1 "Consultant" means Easdale Surveyors 2024 Ltd, its successors and assigns or any person acting on behalf of and with the authority of Easdale Surveyors 2024 Ltd.
- 1.2 "Client" means the person/s acquiring the Services as specified in any invoice, document, or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 "Services" means all Services provided by the Consultant to the Client at the Client's request from time to time.
- 1.4 "Documentation" means any documents, producer statements, design certificates, reports, designs, drawings or other materials provided, utilised or created incidentally by the Consultant in the course of it conducting, or providing to the Client, any Services.
- 1.5 "Proposal" means the letters or other documents prepared by the Consultant and submitted to the Client to describe the scope of Services to be provided, the personnel and equipment proposed to be utilised, and the amount or method of calculation of the Fee and reimbursable expenses.
- 1.6 "Fee" means the price payable for the Services as agreed between the Consultant and the Client in accordance with clause 4 below.
- 1.7 "Site" refers to the specific parcel of land for which the services are being provided. This quote has been prepared for the site held in Record of Title «TitleReference». "Site" includes the entirety of the land area as described by the legal description and/or the physical address provided in the contract documentation. The Site encompasses all boundaries, easements, and any other relevant geographical or legal features as specified in the project's detailed description.

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 the provision of any Services by the Consultant.
- 2.2 These terms and conditions may only be amended with the Consultant's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Consultant.
- 2.3 These terms and conditions may be read in conjunction with any special terms and conditions stipulated in the Consultant's Proposal. If there are any inconsistencies between the two documents, then the terms and conditions contained therein shall prevail.
- 2.4 The Client shall not construe as legal advice, any Documentation provided by the Consultant, or on behalf of the Consultant, during the provision of the Services. It is recommended that the Client seek independent legal advice from an appropriately qualified legal practitioner.
- 2.5 The Consultant's Proposal is merely an invitation to the Client to engage the Consultant's services and is based on information supplied by the Client. The Consultant shall not be liable where information supplied by the Client is incorrect, and the Services are deemed unsuitable for purpose.
- 2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 22 of the Electronic Transactions Act 2002 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Change in Control

- 3.1 The Client shall give the Consultant 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, or business practice). The Client shall be liable for any loss incurred by the Consultant as a result of the Client's failure to comply with this clause.

4. Fee and Payment

- 4.1 At the Consultant's sole discretion, the Fee shall be either:
 - (a) as indicated on invoices provided by the Consultant to the Client in respect of Services provided; or
 - (b) the Consultant's proposed Fee (subject to clauses 4.2 and 4.3) which will be valid for the period stated in the Proposal or otherwise for a period of thirty (30) days. Time charge rates and reimbursable expenses set out in the Proposal are applicable for twelve (12) months from the date of engagement. Where the duration of the Services exceeds this timeframe, the Consultant reserves the right to periodically renegotiate time charge rates and reimbursable expenses at the Consultant's specified intervals.
- 4.2 The Consultant reserves the right to change the Fee:
 - (a) if a variation to the Services (including any change to the scope of Services, documentation, plans, drawings and/or estimates) is requested or changed; or
 - (b) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, any rock, previously stabilised materials, hazardous materials, materials unsuitable for supporting buildings or roads, reinforcing steel, service conduits including pipes, sewer pipes, storm water pipes, power or utility lines, or environmental

- factors outside the control of the Consultant) which are only discovered during the provision of the Services; or
 - (c) in the event of increases to the Consultant in the cost of labour which is beyond the Consultant's control; or
 - (d) where additional costs are incurred by the Consultant due to unexpected delays, or receipt of approvals, consents, or permits, access to an assessment area not being available as was agreed or when pre-arranged.
- 4.3 In addition to the payment of the Fee, the Client shall charge disbursements at a rate identified in the Proposal. The disbursement charge is intended to cover all reasonable expenses incurred by the Consultant internally to the business, for the provision of the Services including, but not limited to, costs for travel (locally), mobile and long distance telephone calls, printing, photocopying and courier costs.
- 4.4 In addition to the disbursements charged in 4.3, the Consultant will on-charge external costs where these have been invoiced to the Consultant. These include but are not limited to, fees charged by Land Information New Zealand (LINZ), fees charged by service providers, and Council fees. The Client shall be entitled to request and receive such evidence as it may reasonably require of the type and amount of such expenses.
- 4.5 At the Consultant's sole discretion, a deposit may be required.
- 4.6 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 Consultant, which may be:
 - (a) on completion of the Services; or
 - (b) by way of progress payments in accordance with the Consultant's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations;
 - (c) for certain approved Clients, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) 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 Consultant.
- 4.7 Payment may be made by electronic/on-line banking, or by any other method as agreed to between the Client and the Consultant.
- 4.8 Unless otherwise stated the Fee does not include GST. In addition to the Fee the Client must pay to the Consultant an amount equal to any GST the Consultant must pay for any provision of Services by the Consultant under this or any other agreement. 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.
- 4.9 No allowance has been made in the Fee for the deduction of retentions. In the event that retentions are made by the Client, the Consultant reserves the right to treat all retentions as placing the Client's account into default.

5. Provision of the Services

- 5.1 The Consultant shall be entitled to claim an extension to the term of the contract in the event of delays resulting from any matter whatsoever which is not entirely under the control of the Consultant. These matters shall include, but are not limited to delays caused by:
 - (a) response(s) to information request(s) made by the Consultant to the Client, or any third party, not being available when expected or required;
 - (b) approval authorities response times for requests for preliminary decisions, information;
 - (c) changes to the design brief being requested by the Client (including failure by the Client to make a selection);
 - (d) time taken by any approval authority for the granting of relevant approvals, consents, or permits;
 - (e) the proposed site not being available when agreed or pre-arranged;
 - (f) any other variation to the contract.
- 5.2 The Consultant may provide the Services by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.3 The Client (at their own cost) shall provide to the Consultant in advance all relevant and necessary information, documents and particulars concerning the provision of the Services, including but not limited to, information from other professionals and advisors as required, any onsite hazardous materials and underground utilities, and the Consultant shall be entitled to rely on such information.
- 5.4 Any time specified by the Consultant for provision of the Services is an estimate only and the Consultant will not be liable for any loss or damage incurred by the Client as a result of late provision. 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 Consultant is unable to provide the Services as agreed solely due to any action



or inaction of the Client then the Consultant shall be entitled to charge a reasonable fee for re-providing the Services at a later time and date.

6. Exclusions and Limitations

- 6.1 The Consultant relies on information provided by the Client, and information from regulatory agencies. While an assessment of data reliability is made, the Consultant shall not be responsible, or liable, for errors in any data obtained from the Client or regulatory agencies, statements from the Client or third parties, or any matter outside the scope of the Services to be provided by the Consultant;
- 6.2 The Consultant makes no representation that the proposed site is suitable or is not suitable for any particular use and makes no representation that it may be so lawfully used under planning law.

7. Nominated Consultants

- 7.1 Unless otherwise agreed, the Consultant will not act as agent on behalf of the Client. The Client shall enter into contracts with all other consultants and shall be responsible for all payments to such consultants.
- 7.2 In the event that the Consultant makes payment of the consultant's account on behalf of the Client, the Client shall reimburse the Consultant for the payment of such account, together with an account-handling fee of 20% of the value of the other consultant's invoice(s).
- 7.3 The Consultant does not warrant the accuracy or quality of the consultants' work or warrant that the recommendations of the consultants 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 Consultant, or commence any legal proceedings against the Consultant, and the Consultant shall have no liability, whether in negligence or otherwise, to the Client in relation to any services performed by the consultants.

8. Risk

- 8.1 Irrespective of whether the Consultant retains ownership of any Documentation, all risk for such items shall pass to the Client as soon as such items are provided to the Client and shall remain with the Client until such time as the Consultant may repossess the Documentation in accordance with clause 10.4(c). The Client must insure all Documentation on or before provision.
- 8.2 The Consultant 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 8.1.

9. Compliance with Laws

- 9.1 The Client and the Consultant shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services, including but not limited to, relevant occupational health and safety laws and any other safety standards or legislation.
- 9.2 The Client shall obtain (at the expense of the Client) all permits, licenses and approvals that may be required for the Services and provide right of entry for the Consultant (and subcontractors) to carry out the Services.

10. Title

- 10.1 The Client acknowledges and agrees that the Client's obligations to the Consultant for the provision of the Services shall not cease until:
- (a) the Client has paid the Consultant all amounts owing for the particular Services; and
- (b) the Client has met all other obligations due by the Client to the Consultant in respect of all contracts between the Consultant and the Client.
- 10.2 Receipt by the Consultant 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 Consultant's ownership or rights in respect of this agreement shall continue.
- 10.3 The Client agrees that the Consultant has legal and equitable right to title in the Services (ownership) until the Fee is paid. The Consultant at its discretion may not release any report producer statement or certification (but at its discretion may provide a draft report as proof of delivery of Services) until the Fee has been paid. As long as ownership in the Services is retained by the Consultant, the Client will inform any third party that the Services are identifiable as the property of the Consultant.
- 10.4 It is further agreed that:
- (a) the Client is only a bailee of the Documentation and must return the Documentation to the Consultant on request.
- (b) the Client holds the benefit of the Client's insurance of the Documentation on trust for the Consultant and must pay to the Consultant the proceeds of any insurance in the event of the Documentation being lost, damaged or destroyed. The production of these terms and conditions by the Consultant shall be sufficient evidence of the Consultant's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with the Consultant to make further enquiries.
- (c) the Client irrevocably authorises the Consultant to enter any premises where the Consultant believes the Documentation are kept and recover possession of the Documentation.

11. Personal Property Securities Act 1999 ("PPSA")

- 11.1 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 Documentation and collateral (account) - being a monetary obligation of the Client for Services - previously provided

by the Consultant to the Client (if any) and that will be supplied in the future by the Consultant to the Client.

11.2 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 Consultant 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 Consultant 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 Consultant; and
- (d) immediately advise the Consultant of any material change in its business practices.
- 11.3 The Consultant and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 11.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 11.5 Unless otherwise agreed to in writing by the Consultant, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 11.6 The Client shall unconditionally ratify any actions taken by the Consultant under clauses 11.1 to 11.5.

12. Security and Charge

- 12.1 In consideration of the Consultant 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).
- 12.2 The Client indemnifies the Consultant from and against all the Consultant's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Consultant's rights under this clause.

13. Client's Disclaimer

- 13.1 The Client hereby disclaims any right to rescind or cancel any contract with the Consultant or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by the Consultant and the Client acknowledges that the Services are bought relying solely upon the Client's skill and judgment.

14. Errors and Omissions

- 14.1 The Client shall inspect the Services on completion and shall within seven (7) days of such time (being of the essence) notify the Consultant of any alleged defect, error or omission, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Consultant an opportunity to inspect 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 presumed to be free from any defect or damage. For defective Services, which the Consultant has agreed in writing that the Client is entitled to reject, the Consultant's liability is limited to either (at the Consultant's discretion) rectifying or re-providing the Services.

15. Consumer Guarantees Act 1993

- 15.1 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 Consultant to the Client.

16. Intellectual Property

- 16.1 The Consultant shall retain ownership of the copyright to all Documentation produced by the Consultant during the course of the Services. The Client shall only have a licence to use such Documentation for the purpose of the individual brief supplied, and the Proposal accepted, by the Client and is not entitled to any additional use without the Consultant's express approval in writing.
- 16.2 If the Client is in breach of any obligation under these terms and conditions (including those relating to payment), the Consultant may revoke the licence referred to in clause 16.1.
- 16.3 The Client warrants that all designs, specifications or instructions given to the Consultant will not cause the Consultant to infringe any patent, registered design or trademark in the execution of the Client's order, and the Client agrees to indemnify the Consultant against any action taken by a third party against the Consultant in respect of any such infringement.
- 16.4 The Client agrees that the Consultant may (at no cost) use for the purposes of marketing or entry into any competition, any Documentation which the Consultant has created, or any multimedia of the Services completed by the Consultant, for the Client.
- 16.5 If during the course of providing the Services, the Consultant develops, discovers, or first reduces to practice a concept, product or process which is capable of being patented, then:
- (a) such concept, product or process shall be and remain the property of the Consultant, and the Client shall not use, infringe or otherwise appropriate the same without first obtaining the written consent of the Consultant;
- (b) the Client shall be entitled to a royalty free licence to use the same during the course of the Services.



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 two and a half percent (2.5%) per calendar month (and at the Consultant'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 Consultant any money the Client shall indemnify the Consultant from and against all costs and disbursements incurred by the Consultant in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Consultant's collection agency costs, and bank dishonour fees).
- 17.3 Without prejudice to any other remedies the Consultant may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Consultant may suspend or terminate the provision of Services to the Client. The Consultant will not be liable to the Client for any loss or damage the Client suffers because the Consultant has exercised its rights under this clause.
- 17.4 Without prejudice to the Consultant's other remedies at law the Consultant shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Consultant shall, whether or not due for payment, become immediately payable if:
- any money payable to the Consultant becomes overdue, or in the Consultant's opinion the Client will be unable to make a payment when it falls due;
 - the Client becomes insolvent or bankrupt, 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
 - 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

- 18.1 The Consultant 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 Consultant shall repay to the Client any sums paid in respect of the Fee, less any amounts owing by the Client to the Consultant for Documentation already provided. The Consultant shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 18.2 In the event that the Client cancels the Services the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Consultant as a direct result of the cancellation (including, but not limited to, any loss of profits).

19. Privacy Act 1993

- 19.1 The Client authorises the Consultant or the Consultant's agent to:
- access, collect, retain and use any information about the Client;
 - (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
 - for the purpose of marketing products and services to the Client.
 - disclose information about the Client, whether collected by the Consultant from the Client directly or obtained by the Consultant 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.
- 19.2 Where the Client is an individual the authorities under clause 19.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 19.3 The Client shall have the right to request the Consultant for a copy of the information about the Client retained by the Consultant and the right to request the Consultant to correct any incorrect information about the Client held by the Consultant.

20. Limitation of Liability

- 20.1 The Consultant undertakes to act in all professional matters as a faithful consultant to the Client, whose interests will be watched over with skill and care. Notwithstanding, the Consultant shall only be liable to the Client for the consequences of any negligent act, omission or statement of the Consultant, and then only to the extent and limitations referred to herein and the Proposal.
- 20.2 The loss and damage for which the Consultant is so liable, and the recompense to be made by the Consultant to the Client for such liability as specified in clause 20.1, shall be limited to a maximum aggregate amount payable (whether in contract, tort or otherwise, in relation to claims, damages, liability, losses or expenses), of five times the Fee (exclusive GST and disbursements) with a maximum limit of \$NZ500,000.
- 20.3 The liability of the Consultant shall cover only direct loss or damage in respect of the Services, or other matters arising directly from the scope of the Services agreed in the Proposal, and then only to the maximum limit specified as per clause 20.2. All references herein to loss or damage shall be deemed to exclude loss or damage sustained by any third party in respect of which the Client is liable and responsible (as between the Client and the third party) whether by statute, contract tort or otherwise.
- 20.4 The liability of the Consultant to the Client shall expire twelve (12) months from the issue of the last invoice relevant to the particular Services, unless in the meantime the Client has made a claim in writing to the Consultant, specifying a

negligent act, omission or statement said to have caused alleged loss or damage sustained or sustainable.

- 20.5 Notwithstanding clauses 20.1 to 20.4, the Consultant shall not be liable for any loss or damage sustained or sustainable by a Client in relation to:
- errors occurring in plans, designs or specifications not created or prepared by the Consultant;
 - errors occurring during the course of any services which are not provided by, nor the responsibility of, the Consultant;
 - the use of any Documentation or other information of advice without the approval of the Consultant.

21. Dispute Resolution

- 21.1 All disputes and differences between the Client and the Consultant touching and concerning this agreement 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.

22. Construction Contracts Act 2002

- 22.1 The Client hereby expressly acknowledges that:
- the Consultant has the right to suspend the Services within five (5) working days of written notice of its intent to do so if a payment claim is served on the Client, and:
 - the payment is not paid in full by the due date for payment and no payment schedule has been given by the Client; or
 - a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
 - the Client has not complied with an adjudicator's notice that the Client must pay an amount to the Consultant by a particular date; and
 - the Consultant has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction contract.
 - if the Consultant suspends the Services, it:
 - is not in breach of contract; and
 - is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Client or by any person claiming through the Client; and
 - is entitled to an extension of time to complete the contract; and
 - keeps its rights under the contract including the right to terminate the contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
 - if the Consultant exercises the right to suspend the Services, the exercise of that right does not:
 - affect any rights that would otherwise have been available to the Consultant under the Contractual Remedies Act 1979; or
 - enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of the Consultant suspending the Services under this provision.

23. General

- 23.1 The failure by the Consultant to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Consultant'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.
- 23.2 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 North Shore District Court of Auckland, New Zealand.
- 23.3 The Consultant shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Consultant of these terms and conditions (alternatively the Consultant's liability shall be limited to damages which under no circumstances shall exceed the Fee).
- 23.4 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 Consultant nor to withhold payment of any invoice because part of that invoice is in dispute.
- 23.5 The Consultant may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 23.6 The Client agrees that the Consultant may amend these terms and conditions at any time. If the Consultant makes a change to these terms and conditions, then that change will take effect from the date on which the Consultant notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for the Consultant to provide any Services to the Client.
- 23.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, earthquake, or other event beyond the reasonable control of either party.
- 23.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent, and that this agreement creates binding and valid legal obligations on it.

