

Fusion5 Standard Terms & Conditions for the Provision of Consulting Services

1. Introduction

These standard business terms apply to all services that we perform for you. Our services may be described in an Engagement Letter, a Work Order or an email.

2. Our responsibilities

2.1 Fusion5 Limited (collectively referred to as "Fusion5", "us" or "we") will:

- (a) use all reasonable commercial efforts to complete the Services described in the engagement letter within the set time;
- (b) perform the Services with due care, competence and diligence, however the quality of our Services will depend on input from you; and
- (c) provide the personnel required to fulfil the Services and comply with your reasonable security requirements, corporate policies and procedures.

2.2 We reserve the right to substitute new personnel for any personnel assigned to you from time to time where any assigned personnel become unavailable due to illness, leave or circumstances outside Fusion5's control.

3. Your responsibilities

You agree to instruct us and give Fusion5 each of the following (as and when they are ordinarily reasonably required to perform the Services):

- (a) information – Fusion5 is entitled to rely on the accuracy of that information without independently verifying it. That is so whether the information is provided by you, your representatives, or your advisers;
- (b) access - to files, records and information technology systems, to premises and to people (whether management or staff) with relevant skills and experiences; and
- (c) resources - you agree to provide the resources to ensure timely approval, development and sign-off of all reports, specifications, software and other deliverables.

4. Changes and delays

4.1 From time to time you may request that we implement a change to the Services ("Change") including, without limitation:

- (a) a change to the scope of the Services; or
- (b) a change in the prioritisation or manner in which we are performing the Services.

4.2 On receipt of your request for a Change, we will prepare a proposed variation order in such form as we determine ("Variation Order"). Within 7 days of receipt of a Variation Order you must either:

- (a) reject the Variation Order;
- (b) approve the Variation Order; or

(c) notify us of any modifications to the Variation Order in which case we shall use reasonable commercial efforts to resolve the items in question within a further 7 days.

4.3 We will not implement any Change until a Variation Order has been mutually agreed in writing by the Parties.

4.4 Fusion5 will not be liable for any failure or delay in performing the Services if that failure or delay arises from anything beyond its control - including the untimely performance by you of your obligations. If the delay is substantial, we may elect to terminate this Agreement.

5. Fees and Expenses

5.1 You agree to pay Fusion5 without deduction or set-off the fees set out in the Engagement Letter for the provision of Services by the 20th of the month following our rendered invoice ("Due Date").

5.2 You agree to pay by the Due Date:

- (a) all reasonable expenses and charges incurred by Fusion5 in the provision of the Services including but not limited to travel, meals and accommodation and any costs associated with shipping, transportation, handling and storage of any products or other expenses

properly incurred;

- (b) any mutually agreed fees and expenses for scope increases or related services pursuant to any agreed Variation Order; and
- (c) any tax, duty or charge including without limitation any sales, use, excise, goods or services tax ("GST"), consumption based or value added tax, stamp duty, withholding tax and other taxes, duties or charges of whatever kind (including any fine or penalty) that may be levied, assessed, charged, payable or collected in connection with this Agreement (excluding tax on Fusion5 income) and any increase in such taxes, GST, duties or charges.

5.3 Fusion5 is entitled to review fees quoted or substitute nominated personnel, if you do not proceed with the engagement within 30 days of the Engagement Letter, or if we are still performing the Services more than 12 months from the commencement date of this Agreement

6. Interest

6.1 Unless the invoice is in dispute, we reserve the right to perform no further work for you until all outstanding invoices are paid in full. If you dispute any item contained in an invoice, you must give us notice within the 14 days of receipt of the relevant invoice and pay on time any amounts not in dispute. Both Fusion5 and you must try to resolve the disputed items in 14 days. If it is not resolved the procedures in clause 15 will be applied.



- 6.2 In the event that any fees, expenses or other charges under this Agreement remain unpaid by the Due Date, without prejudice to any other rights and remedies, Fusion5 reserves the right to charge interest from the Due Date on overdue invoices without further notice equal to the lesser of:
- (a) 4% per annum; or
 - (b) the maximum rate allowed by law.
- 6.3 You acknowledge and agree that the interest charged under clause 6.2 is a genuine pre-estimate of Fusion5's cost of funding such overdue amounts and is not a penalty.
- 7. Confidentiality**
- Both Fusion5 and you agree to take reasonable steps to maintain (within our respective organisations) the confidentiality of any proprietary or confidential information of the other.
- 8. Intellectual Property Rights**
- 8.1 Nothing in this Agreement affects the Intellectual Property Rights of either Party that existed prior to the commencement of this Agreement.
- 8.2 All rights or title to or interest in any Intellectual Property Rights created by Fusion5, its employees, agents or sub-contractors either independently or in connection with this Agreement (including without limitation any future Intellectual Property Rights) will vest immediately on their creation in Fusion5.
- 8.3 Fusion5 grants you a non-exclusive, non-transferable, perpetual, irrevocable, fully paid up license to use any Intellectual Property Rights referred to in clause 8.2 solely for your internal business purposes on payment in full to Fusion5 of all fees due any payable under this Agreement.
- 8.4 You acknowledge that Fusion5 owns its knowledge, experience and know-how developed in the course of performing the Services. Nothing in this Agreement will restrict Fusion5 from:
- (a) the use of any ideas, concepts, know-how or techniques which either party, individually or jointly, develops or discloses under this Agreement; or
 - (b) developing materials for itself or for others or providing services that are competitive with any Intellectual Property Rights created as a result of the Services, irrespective of their similarity to the Intellectual Property Rights created by Fusion5 under this Agreement.
- 9. Indemnity for liability to third parties**
- 9.1 You agree to indemnify Fusion5 against all Loss (including any GST payable by Fusion5 on amounts paid by you under this indemnity) incurred by Fusion5 in respect of any claim by a third party which is related to, arises out of, or is in any way associated with this Agreement
- 9.2 Fusion5 will notify you as soon as practicable of any claim for which it proposes to claim against you under the indemnity in this clause. On your admission of the indemnity obligations, we will act in accordance with your directions regarding the claim or demand, including seeking leave to withdraw from any litigation so you may in your own name and expense conduct the litigation.
- 10. Limitation of liability**
- The Customer and Fusion5 agree that in no event will any party's total aggregate liability for damages under or in connection with this Agreement, regardless of the form of action, exceed two times the billed value of services or \$200,000, whichever is lower. In no event will any party be liable for consequential, indirect, special, incidental or other similar damages, even if such party foresees or has been advised of the possibility of those damages.
- 11. Termination**
- 11.1 Without prejudicing any rights hereunder either party shall be entitled to terminate this Agreement immediately by notice in writing:
- (a) if the other Party has committed a material breach of this Agreement and fails to remedy the breach within forty-five (45) days after receipt of written notice requesting that such material breach is rectified and no such rectification takes place; or
 - (b) if a Party becomes Insolvent.
- 11.2 Without prejudicing any rights hereunder Fusion5 will be entitled to terminate this Agreement immediately by notice in writing if you fail to pay any amount (including without limitation any fees or expenses) by the Due Date for payment under this Agreement.
- 12. Governing law & jurisdiction**
- All aspects of the Services and this Agreement are governed by, and construed in accordance with, the laws of New Zealand.
- 13. Non-Solicitation**
- The Parties undertake that during the course of this Agreement and for a period of six months following its expiration or the conclusion of the Services, they will not:
- (a) solicit or entice a staff member or contractor that performs the Services, from the other; or
 - (b) employ or engage any such person in any way.
- Solicitation of staff will involve a one off payment equal to a three months standard salary.



14. Relationship

We will provide the Services as an independent contractor. Nothing shall be construed to create a partnership, joint venture or other relationship between us. No Party has the right, power or authority to oblige or bind the other in any manner.

15. Escalation and Dispute Resolution

15.1 Any question or difference which may arise concerning this agreement shall in the first instance be referred to the Parties' respective contract managers for discussion and resolution. If the matter is not resolved at this level, the matter shall be referred to the next level of the Parties' management who must meet within two weeks to attempt to resolve the matter. If the matter is not resolved at that meeting, the escalation shall continue through two more levels of management of each Party. If the unresolved matter is having a serious effect on the Services, the Parties will use reasonable commercial endeavours to reduce the elapsed time in completing the process.

15.2 If the matter cannot be resolved through the escalation process in clause 16.1, the Parties will submit to mediation before having recourse to any other dispute resolution process. Written notice of the dispute will be given for it to be submitted to mediation before a mediator chosen by the Parties or, where the parties cannot agree, by the Lawyers Engaged in Alternative Dispute Resolution (LEADR). The Parties will use their best endeavours to settle the dispute promptly. The mediation will be conducted according to the LEADR Mediation Guidelines to the extent that they do not conflict with the provisions of this clause. If the dispute is not resolved within 60 days after notice of the dispute is given pursuant to this clause 16.2, the mediation will terminate.

16. General

16.1 Fusion5 may perform the Services with its own personnel or any of its affiliates or with sub-contractors. Fusion5 shall be solely responsible for the performance of the Services and all other responsibilities under this Agreement.

16.2 The Parties agree that no clause in this Agreement or in any Engagement Letter is intended expressly or by implication or other inference to purport to confer a benefit or right of action upon any third party.

16.3 This Agreement comprises the entire agreement between the Parties and supersedes any prior understandings, representations or agreements.

17. Definitions

In this Agreement:

Insolvent in relation to a Party means:

- (a) the passing by that Party of a resolution for winding up or a winding-up order being made against it or going into administration; or
- (b) a receiver, receiver and manager, or administrator is appointed or an encumbrancer takes possession of any or all of its assets; or
- (c) the Party is unable to pay its debts within the meaning of the Companies Act of New Zealand or it ceases or threatens to cease to carry on its business or enters into a composition with its creditors.

Intellectual Property Rights means all intellectual property rights in New Zealand and throughout the world, including without limitation patents, copyright, rights in circuit layouts, registered designs, trade or service marks, trade, business or company names and any right to have confidential information kept confidential, trade secrets, ideas, concepts, materials, know-how and techniques.

Loss means liabilities, claims, costs and expenses;

Party means each of Fusion5 and Fusion5's client under this Agreement and Parties means both of them; and

Products means any products to be supplied by Fusion5 to you in accordance with the engagement letter or any project charter relating to the Services including but not limited to hardware, software and documentation.



Signed for and on behalf of [CUSTOMER]

Signature: _____

Print Name: _____

Position: _____

Date: _____

Signed for and on behalf of Fusion5 Limited

Signature: _____

Print Name: _____

Position: _____

Date: _____