

AG SQUARED CONSULTING LIMITED
TERMS OF TRADE

In these Terms of Trade (**Terms**) we have used **we, us, and our** to refer to AG Squared Consulting Limited and **you** to refer to our Customer. By ordering Work from us, you agree to these Terms to the exclusion of your terms (if any).

1. DEFINITIONS

- 1.1 In these Terms unless the context otherwise requires:
Intellectual Property includes all intellectual property rights (including without limitation copyright, patent and design rights, drawings, documents, data, ideas, procedures and calculations).
Statement of Work means a written document, whether called a statement of work, order, quote, scope of services, work request or other similar name, that has been agreed between the parties and that sets out (subject to any agreed change requests) the scope of Work that is to be provided by us.
Work means our performance of any services performed by, or to be performed by, us as described in any Statement of Work.
- 1.2 The rule of construction known as the contra proferentem rule does not apply to these Terms.
- 1.3 References to **us** include our employees, contractors and agents.
- 1.4 Words referring to the singular include the plural and vice versa.
- 1.5 Any reference to a party includes:
(a) that party's executors, administrators, or permitted assigns; or
(b) if a company, limited partnership, or any other body corporate, its successors or permitted assigns or both.
- 1.6 Clause headings are for reference only.
- 1.7 References to clauses are references to clauses of these Terms.
- 1.8 References to money will be New Zealand currency.
- 1.9 Expressions referring to **writing** will be construed as including references to words printed, typewritten or otherwise visibly represented, copied or reproduced.
- 1.10 References to statutory provisions will be construed as references to those provisions as amended or re-enacted or as their application is modified by other provisions from time to time.

2. PERFORMANCE OF WORK

- 2.1 We will:
(a) perform the Work with reasonable skill, care and diligence in a professional manner;
(b) endeavour to ensure that the Work is performed in accordance with any time frames agreed in writing with you;
(c) liaise with you during the course of performing the Work in accordance with your reasonable requirements.
- 2.2 You will give reasonable assistance to enable us to perform the Work by:
(a) giving clear instructions;
(b) promptly providing any information or content required from you for us to complete the Work;
(c) ensuring that the Work and products derived from the Work are fit for the purpose you intend to use them for and meet any appropriate statutory, regulatory, governmental and industry and environmental controls, standards or practices.
- 2.3 If we have given you a time frame for completion of the Work, unless agreed in writing to the contrary such time frame is approximate only and is not deemed to be of the essence of the contract.

3. ESTIMATES

- 3.1 Unless stated otherwise, any price we give you for Work is an estimate (**Estimate**) on a plus GST basis of the anticipated cost for us to complete that Work. The Estimate is subject to clause 4 below.
- 3.2 If we provide an Estimate:
(a) the Estimate is open for acceptance for seven days after it is dated unless withdrawn by us prior to acceptance; and
(b) we will not commence the Work until you have accepted the Estimate in writing.

4. FEES

- 4.1 Notwithstanding any Estimate given, unless we have agreed in writing to be bound by a set price for the Work, you will pay to us the relevant fees (**Fees**) for the Work. Our Fees are generally based on the time expended to complete the Work and which are charged at our usual hourly rates, but are subject to adjustment by other relevant factors. Such relevant factors include:
(a) the importance of the Work to you, and the results achieved;
(b) the urgency and circumstances in which the Work is undertaken, and any time limits imposed, including those time limits imposed by you;
(c) the degree of risk assumed by us, including the amount or value or any property involved;

- (d) the complexity of the Work and the difficulty or novelty of the questions involved;
(e) the possibility that the acceptance of the particular retainer will preclude future clients engaging us;
(f) the reasonable costs of running our consultancy practice;
(g) any estimate provided; and
(h) the fees customarily charged in the market and locality for similar consultancy services.

4.2 The Fees and all prices are plus GST and other taxes which are payable by you in New Zealand dollars.

4.3 Disbursements incurred by us on your behalf may include a reasonable mark-up by us.

4.4 In the event these Terms are terminated in accordance with clause 14 prior to completion of the Work, you must immediately pay us all Fees owing at the termination date.

5. TERMS OF PAYMENT

- 5.1 We may require you to pay a deposit, being an advanced payment for the Work, before we commence the Work.
- 5.2 Payment for the Work (and any associated expenses and disbursements) is due on the 14th day following the date of our invoice (**Due Date**).
- 5.3 If you do not make payment on the Due Date, you are in default and must pay default interest at the rate of 14% per annum, which will accrue on a daily basis on the total amount outstanding from the Due Date to the date of payment in full.
- 5.4 Notwithstanding clause 5.3, if payment is outstanding for 7 days from the Due Date, we may suspend performing the Work until the date of payment in full (subject always to clause 5.5). You must pay in cash for any Work done by us until payment is made in full (together with any accrued interest).
- 5.5 We may notify you at any time that we have ceased to carry out the Work on credit. This cessation does not relieve you for amounts owing up to the date on which the contract is terminated.
- 5.6 Payment of all money will be without set-off or deduction of any kind.
- 5.7 We will apportion payments to outstanding accounts as we think fit.

6. COMMISSIONS

- 6.1 We may, in the course of providing the Work, introduce you to third-party suppliers, contractors or service providers (**Third Party Suppliers**).
- 6.2 Any goods or services supplied by a Third Party Supplier are to be provided under a separate contract between you and the relevant Third Party Supplier. To the maximum extent permitted by law, we do not warrant, guarantee or assume responsibility for the performance, quality or suitability of any goods or services supplied by a Third Party Supplier.
- 6.3 Where we introduce a Third Party Supplier to you, we may receive a commission, referral fee or other benefit from the Third Party Supplier in connection with goods or services supplied to you as a result of that introduction (**Commission**).
- 6.4 You acknowledge and agree that:
(a) we may receive a Commission without further disclosure of the amount or calculation of that Commission; and
(b) receipt of a Commission does not give rise to any obligation on us to account to you for that Commission or to reduce the Fees payable by the you under these Terms.

7. WARRANTIES

- 7.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986, and other statutes may impose warranties, conditions or obligations on us which cannot by law (or which can only to a limited extent by law) be excluded. We exclude all such imposed warranties, conditions or obligations to the extent permitted by law and exclude any warranty, condition or obligation imposed or implied under common law, equity or otherwise.
- 7.2 Where you acquire services from us for the purposes of a business:
(a) the parties acknowledge and agree that:
(i) you are acquiring the services covered by these Terms for the purposes of a business in terms of sections 2 and 43(2) of the Consumer Guarantees Act 1993;
(ii) the services are both supplied and acquired in trade from the purposes of the Fair Trading Act 1986 and the parties agree to contract out of sections 9 (Misleading and deceptive conduct

- generally), 12A (Unsubstantiated representations), and 13 (False or misleading representations); and
- (b) you agree that all warranties, conditions, and other terms implied by the Consumer Guarantees Act 1993 or sections 9, 12A, and 13 of the Fair Trading Act 1986 are excluded from these Terms to the fullest extent permitted by law and the parties further acknowledge and agree that it is fair and reasonable that the parties are bound by this clause.
- 8. LIMITATION OF LIABILITY**
- 8.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where you acquire Work from us for the purposes of a business in terms of sections 2 and 43 of that Act.
- 8.2 Except to the extent that the law prevents us from excluding liability and as expressly provided for in clause 8.4, we will not be liable for any loss or damage or liability of any kind whatsoever (including consequential loss or lost profit or business) whether suffered or incurred by you or another person and whether in contract, or tort (including in negligence), or otherwise and whether such loss or damage arises directly or indirectly from Work provided by us to you.
- 8.3 You will indemnify us against all claims and loss of any kind whatsoever however caused or arising which is brought by any person in connection with any matter, act, omission, or error by us, our agents or employees in connection with the Work.
- 8.4 To the extent that we are liable for any reason for any loss suffered or liability incurred by you arising from any breach of these Terms or for any other reason, such liability is limited to the amount of Fees charged to you in the six months prior to the date on which the breach occurred or first occurred. If you make a claim in writing to us in relation to the services provided under the Work, we may, in our discretion, re-perform the services, or refund the amount of those services to you, provided that:
- (a) the claim must be made in writing to us within fourteen (14) days of the services being provided; and
 - (b) you must supply the date and number of any invoice relating to the Work; and
 - (c) we must have a reasonable opportunity to inspect the Work.
- 9. INTELLECTUAL PROPERTY**
- 9.1 In respect of Intellectual Property used in or arising from the performance of the Work:
- (a) all pre-existing Intellectual Property the subject of an Intellectual Property right resides with the owner as at the date of these Terms (whether you or us); and
 - (b) any new Intellectual Property will be dealt with in accordance with clause 10.
- 9.2 If any Work is to be undertaken based on your designs, you warrant that the undertaking of the Work by us will not infringe any third party's Intellectual Property rights and you indemnify us against any loss, liability, costs and expenses in the event of any claim being made that the Work infringes any patent, copyright or other rights of any other person.
- 10. INTELLECTUAL PROPERTY OWNERSHIP**
- 10.1 Subject to clauses 9.1(a) and 10.4 we are and will remain the exclusive owner everywhere in the world of all Intellectual Property rights and interests (including copyright and all other statutory and common law rights and interests) in the Work, and any other work performed by us for you, as first owner of those Intellectual Property rights and interests.
- 10.2 We will retain exclusive worldwide ownership at all times of our artistic styles, methods of working, techniques, ideas, skills and know-how.
- 10.3 You must not attribute the Work to anyone other than us or remove any of our trade marks, signatures, logos or similar from our Work.
- 10.4 On payment of all amounts owing to us in accordance with these Terms, we assign to you the copyright in the final form of any Work which we have specifically created for you for the countries and for the purposes as specified in the description of the Work, or if not specified, for the countries and for the purposes which would be reasonably expected in light of the nature of your request for the Work.
- 11. PRIVACY OF INFORMATION**
- 11.1 You authorise us:
- (a) to collect, retain and use information about you from any person for the purpose of assessing your creditworthiness;

- (b) to disclose information about you:
 - (i) to any person who guarantees, or who provides insurance, or who provides any other credit support, in relation to your obligations to us;
 - (ii) to such persons as may be necessary or desirable to enable us to exercise any power or enforce or attempt to enforce any of our rights, remedies and powers under these Terms.

12. CONFIDENTIALITY

- 12.1 You will at all times treat as confidential all non-public information and material received from us and must not publish, release, or disclose the same without our prior written consent. For clarity, confidential information includes any new Intellectual Property and prices.

13. COSTS

- 13.1 You must pay our costs (including legal costs, as between solicitor and client) of and incidental to the enforcement or attempted enforcement of our rights, remedies and powers under these Terms.

14. FORCE MAJEURE

- 14.1 We will not be liable for any failure or delay to perform the Work if the failure or delay arises directly or indirectly from a cause reasonably beyond our control.

15. TERMINATION

- 15.1 We may terminate these Terms:
- (a) by giving one month's written notice to you; or
 - (b) in accordance with any relevant Statement of Work.
- 15.2 You may terminate these Terms:
- (a) by giving us three month's written notice; or
 - (b) in accordance with any relevant Statement of Work.
- 15.3 If you:
- (a) fail to pay any monies owing on the Due Date;
 - (b) become insolvent, bankrupt, enter into liquidation, receivership, voluntary administration, are wound up or struck off or reasonably appear to be unable to pay your debts as they fall due;
 - (c) or otherwise breach these Terms,
- we may:
- (d) suspend supply of the Work,
 - (e) charge default interest in accordance with clause 5.3; and/or
 - (f) immediately terminate these Terms by notice in writing to you.

16. DISPUTES

- 16.1 The parties must use reasonable endeavours to resolve any and all claims or disputes (a **Dispute**) arising under these Terms by negotiation. If a Dispute is settled following negotiations under this clause 16.1, such settlement shall be recorded in writing and be signed by parties, whereupon it shall be final and binding on the parties.
- 16.2 Any claim or dispute arising under these Terms will be determined by arbitration under the Arbitration Act 1996 if the parties are unable to resolve such dispute themselves within one (1) month of the dispute arising. However, nothing in this clause prevents either party from taking immediate steps to seek any equitable relief before the New Zealand Courts.

17. MISCELLANEOUS

- 17.1 Unless expressly provided for elsewhere in these Terms, any notice may be given by phone, in person, posted, or sent by text message, SMS or email to you.
- 17.2 To the extent of any inconsistency between these Terms and a Statement of Work, we may decide whether these Terms or a Statement of Work should prevail.
- 17.3 Any provision which by its nature is intended to survive the termination or expiration of these Terms will survive the termination or expiration of these Terms or completion of the Work.
- 17.4 We reserve the right to vary these Terms by either providing you with notice of the same or posting the updated terms on our WEBSITE. In either event, those varied terms will apply in respect of any Work commenced after the effective date of the variation. These Terms, and any variations, will not have retrospective effect.
- 17.5 These Terms are governed by and construed according to the laws of New Zealand and the parties, subject to clause 16, submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of any dispute or proceeding arising out of these Terms.
- 17.6 You must not subcontract or assign any of your rights, powers or obligations under these Terms.