

# Finnz Chartered Accountants – Terms of Trade

## 1. Definitions

- 1.1 "Firm" shall mean Finnz Limited trading as Finnz Chartered Accountants, its successors and assigns or any person acting on behalf of and with the authority of Finnz 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 Firm to the Client.
- 1.3 "Services" shall mean all Services (including any documentation) supplied by the Firm 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 Firm to the Client.
- 1.4 "Price" shall mean the price payable for the Services as agreed between the Firm and the Client in accordance with clause 3 of this contract.

## 2. Acceptance

- 2.1 Any instructions received by the Firm from the Client for the supply of Services and/or the Client's acceptance of Services supplied by the Firm 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 Firm.
- 2.4 The Client shall give the Firm 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, email address, or phone numbers). The Client shall be liable for any loss incurred by the Firm as a result of the Client's failure to comply with this clause.
- 2.5 On completion of any Services the Firm 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 Firm to the Client.
- 3.2 These terms and conditions are to be read in conjunction with the Firm'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 Firm's sole discretion, the Price shall be either:
  - (a) as indicated on invoices provided by the Firm to the Client in respect of Services supplied; or
  - (b) the Firm's quoted Price (subject to clause 4.2) which shall be binding upon the Firm provided that the Client shall accept the Firm's quotation in writing within thirty (30) days.
- 4.2 The Firm reserves the right to change the Price in the event of a variation to the Firm's quotation. Any variation from the plan of scheduled Services (including, but not limited to, any variation as a result of additional Services required at the expressed request of the Client) will be charged for on the basis of the Firm's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 4.3 At the Firm's sole discretion a deposit may be required.
- 4.4 At the Firm's sole discretion:
  - (a) payment shall be due on delivery of the Services; or
  - (b) payment shall be due before delivery of the Services; or
  - (c) payment for approved Clients shall be made by instalments in accordance with the Firm's payment schedule; or
  - (d) payment for approved Clients shall be 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.
- 4.5 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 seven (7) days following the date of the invoice.
- 4.6 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 Firm.
- 4.7 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 Any time specified by the Firm for delivery of the Services is an estimate only and the Firm will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Services to be supplied at the time and place as was arranged between both parties. In the event that the Firm is unable to supply the Services as agreed solely due to any action or inaction of the Client then the Firm shall be entitled to charge a reasonable fee for re-supplying the Services at a later time and date.

## 6. Risk

- 6.1 All risk for the Services passes to the Client on delivery.

## 7. Title

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

## 8. Errors And Omissions

- 8.1 The Client shall inspect the Services on delivery and shall within seven (7) days of delivery notify the Firm of any alleged defect, shortage in quantity, errors, omissions or failure to comply with the description or quote. The Client shall afford the Firm 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 errors or omissions.
- 8.2 For defective Services, which the Firm has agreed in writing that the Client is entitled to reject, the Firm's liability is limited to either (at the Firm's discretion) replacing the Services or rectifying the Services provided that the Client has complied with the provisions of clause 8.1.

## 9. Confidentiality / Intellectual Property

- 9.1 Both the Client and the Firm agree to treat all information and ideas communicated to it by the other confidentially and agree not to divulge them to any third party, without the other party's written consent. The parties will not copy any such information supplied, and will either return it or destroy it (together with any copies thereof) on request of the other party.
- 9.2 Exceptions to clause 9.1 will be disclosures to legal advisers, disclosures required by law, and disclosures necessary for the proper performance of the Services.
- 9.3 Where the Firm has developed software, spreadsheets, training materials, databases, proposals, tender documents and other electronic tools in providing the Services for the Client, then the copyright in those software, spreadsheets, training materials, databases, proposals, tender documents and other electronic tools shall remain vested in the Firm, and shall only be used by the Client at the Firm's discretion.
- 9.4 The Client warrants that any software, spreadsheets, databases, other electronic tools or instructions provided by the Client to the Firm will not cause the Firm to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Firm against any action taken by a third party against the Firm in respect of any such infringement.
- 9.5 Whether the Firm or the Client retains the copyright in relation to original work which is specifically developed for the Client shall be as is agreed, recorded in writing, and signed by both parties to this agreement.

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## 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 Firm's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 10.2 If the Client owes the Firm any money the Client shall indemnify the Firm from and against all costs and disbursements incurred by the Firm in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Firm's collection agency costs, and bank dishonour fees).
- 10.3 Without prejudice to any other remedies the Firm may have, if at any time the Client is in breach of any obligation (including those relating to payment), the Firm may suspend or terminate the supply of Services to the Client and any of its other obligations under the terms and conditions. The Firm will not be liable to the Client for any loss or damage the Client suffers because the Firm has exercised its rights under this clause.
- 10.4 Without prejudice to the Firm's other remedies at law the Firm shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Firm shall, whether or not due for payment, become immediately payable in the event that:
- any money payable to the Firm becomes overdue, or in the Firm's opinion the Client will be unable to meet its payments as they fall due; or
  - 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
  - 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 Firm 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 Firm shall repay to the Client any sums paid in respect of the Price. The Firm 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 Firm (including, but not limited to, any loss of profits) up to the time of cancellation.

## 12. Privacy Act 1993

- 12.1 The Client authorises the Firm or the Firm'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 Firm from the Client directly or obtained by the Firm 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.
- 12.2 Where the Client is an individual the authorities under clause 12.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 12.3 The Client shall have the right to request the Firm for a copy of the information about the Client retained by the Firm and the right to request the Firm to correct any incorrect information about the Client held by the Firm.

## 13. Personal Property Securities Act 1999 ("PPSA")

- 13.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- these terms and conditions constitute a security agreement for the purposes of the PPSA; and
  - a security interest is taken in all Services previously supplied by the Firm to the Client (if any) and all Services that will be supplied in the future by the Firm to the Client.
- 13.2 The Client undertakes to:
- 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 Firm may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - indemnify, and upon demand reimburse, the Firm for all expenses incurred in registering a financing statement or financing change

statement on the Personal Property Securities Register or releasing any Services charged thereby;

- not register a financing change statement or a change demand without the prior written consent of the Firm; and
  - immediately advise the Firm of any material change in its business practices of selling the Services which would result in a change in the nature of proceeds derived from such sales.
- 13.3 The Firm and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 13.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 13.5 Unless otherwise agreed to in writing by the Firm, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 13.6 The Client shall unconditionally ratify any actions taken by the Firm under clauses 13.1 to 13.5.

## 14. Lien

- 14.1 Where the Client has left any of the Client's documentation with the Firm for the Firm to provide any Services in relation to that documentation and the Firm has not received or been tendered the whole of the Price, or the payment has been dishonoured, the Firm shall have:
- a lien on the documentation; and
  - the right to retain the documentation whilst the Firm is in possession of the documentation until such time as payment has been made in full; and
  - the lien of the Firm shall continue despite the commencement of proceedings, or judgment for the Price having been obtained; and
  - the Firm 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 Firm the remedies of the Client shall be limited to damages. Under no circumstances shall the liability of the Firm exceed the lesser of five times the value of the fees or the sum of one hundred thousand dollars (\$100,000) or (alternatively the Firm's liability shall be limited to damages which under no circumstances shall exceed the Firm's Professional Indemnity Insurance in place).
- 15.2 The Client agrees to indemnify the Firm, 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 Firm.
- 15.3 The Firm shall be under no liability whatsoever to the Client for any indirect loss and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Firm 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 Firm.
- 16.4 The Firm may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 16.5 The Firm 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 Firm notifies the Client of such change.
- 16.6 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.
- 16.7 The failure by the Firm to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Firm's right to subsequently enforce that provision.