

# Global Terms of Business

These International Terms of Business and the Letter of Engagement together form the agreement (the **Contract**) between Novelli Limited (**Novelli, we, our, us**) and all addressees of the Letter of Engagement (**you, your**). If there is any conflict between these terms and the Letter of Engagement, the Letter of Engagement will prevail. Unless otherwise agreed in writing, any further work we may carry out in connection with this service will be carried out as part of this Contract.

## 1. Goods and Services

1.1. We will provide the services described in the Letter of Engagement (the **Services**). The nature of the Services may also include contract manufacturing goods (the **Goods**) designed by us to promote a campaign (the **Campaign**) or project (the **Project**) as outlined in the Letter of Engagement.

1.2. Unless specifically stated to the contrary in the Letter of Engagement:

- (i) we may allocate appropriate staff to perform the Services and may replace any personnel named in the Letter of Engagement with personnel of similar skill;
- (ii) timetabled dates are intended for planning and estimating purposes only and are not contractually binding;
- (iii) we reserve the right to supply 5% above or below the quantity of Goods ordered and the actual quantity delivered will be the quantity invoiced; and
- (iv) we are not responsible for the work of any other person who you engage to perform work in conjunction with our Services.

## 2. Your responsibilities

2.1. You agree that:

- (i) you will use the results of the Services only for the purpose of the Project or Campaign;
- (ii) we will use our partner manufacturers to produce the Goods in the event that the Project or Campaign eventuates (subject to clause 3.5); and
- (iii) you will advise all of our personnel who visit your premises of what is required of them in relation to health and safety in relation to safety equipment, emergency evacuations, the reporting of accidents and hazards and other matters.

2.2. You are responsible for determining that the scope of the Services is sufficient to meet your needs and that the Goods are fit and suitable for the purpose for which they are required.

## 3. Fees and disbursements

3.1. Unless otherwise agreed, our Services fees (**Services Fee**) are calculated on the basis of time spent and on the level of skill and responsibility involved in providing the Services. In particular:

- (i) goods and services tax (**GST**) will be added to the Services Fee and Goods where applicable; and
- (ii) unless otherwise agreed in writing by us, all prices are exclusive of freight, insurance, travel and delivery charges.

3.2. Our invoices are due for payment in full by the 20th day of the month following delivery of the invoice. If payment is not received, we reserve the right to suspend provision of the Services or supply of Goods and/or charge interest on the outstanding amount at a rate of 7% from the due date until the date that the invoices are repaid in full and recover all costs associated with the collection process.

3.3. Any fee estimate is given in good faith but is not contractually binding.

3.4. In the event that you do not progress with the Project or Campaign, we reserve the right to invoice you for the time and costs that we have incurred to provide the Services to you and recover any disbursements that we may have incurred in connection with the Services. Our charge out rates are available upon request.

3.5. In the event that you progress with the Project or Campaign using our designs developed in connection with the Services, but wish to engage another third party manufacturer to produce the Goods, we reserve the right to invoice you the higher of (a) the time and cost that we have incurred in relation to that Project or Campaign at our standard charge out rates, and (b) our reasonable expectation of loss of profits as a result of your decision to use a third party manufacturer.

## 4. Confidentiality

4.1. Subject to any need to make disclosures required by law or professional ethical obligation, both parties agree that information or documents received by or provided to the other for the purposes of the Contract and provision of the Services, or are marked confidential or are manifestly confidential (confidential information) will be treated as confidential, except if the information:

- (i) is or becomes generally available to the public other than by a breach of the obligations under the Contract,
- (ii) is known to the parties prior to entering into the Contract, or
- (iii) is received from a third party who owes no obligation of confidence in respect of the information.

4.2. You agree that we may disclose confidential information:

- (i) for the purpose of providing the services and on a "need to know" basis, to our personnel (including contractors and sub-contractors)

involved in the provision of the Services, and to our insurers or legal advisors;

- (ii) once a completed project is no longer confidential, we may cite the performance of the Services to clients and prospective clients as an indication of our experience;
- (iii) to the extent necessary or desirable to enable us to carry out your instructions;
- (iv) to the extent required by law; and
- (v) if necessary to meet any legal request from a New Zealand or overseas governmental agency.

4.3. We use contractors or suppliers located in New Zealand and overseas to assist us in providing the Services to you and in our internal functions. You agree that we may transfer information provided to us by you or on your behalf (including personal information and confidential information) to those contractors and suppliers, provided they are bound by confidentiality obligations.

## 5. Intellectual property rights

5.1. Intellectual property rights in all documentation, systems, materials, methodologies, deliverables and processes (tools) brought to and utilised by us in relation to the Services or created in the course of providing the Services, and in all working papers and reports, will at all times vest in and be owned by us.

5.2. Nothing in this Contract transfers or shall be deemed to transfer any intellectual property developed by us in connection with the Services to you.

## 6. Delivery and ownership of Goods

6.1. Goods shall be deemed to be delivered when delivered to the care and control of you or your representative (meaning your employee, agent, related company as defined in section 2(3) of the Companies Act 1993, or contractor). If you or your representative fails or refuses to take or accept delivery, then the Goods shall be deemed to have been delivered when we were willing and able to deliver them.

6.2. We may deliver Goods by instalments and each instalment shall be deemed to be a separate contract under the same provisions as the Contract. If we fail to deliver one or more instalments this will not entitle you to repudiate the Contract.

6.3. Ownership to any Goods or Services remains with us until payment is received in full.

6.4. In the event of non-payment, we shall be entitled without prejudice to any right we has at law or inequity to enter the place where the Goods are stored whether your premises or property or the premises or property of the third party, for the purpose of recovering and taking possession of the Goods supplied.

## 7. Security Interest

7.1. You grant a security interest to us in each and every part of the Goods supplied by us as security for payment for that part and of each other part or parts of the Goods supplied ("your indebtedness and obligations"). For the purposes of section 36(1)(b) of the Personal Property Securities Act 1999 ("**PPSA**"), and to ensure maximum benefit and protection for us by virtue of section 36(1)(b)(iii) of the PPSA, you confirm and agree that you grant to us, as security for the your indebtedness and obligations in relation to the Goods, a security interest in all of your present and after-acquired property and any item or kinds of personal property which is or comprises proceeds of any present and after-acquired property which has been supplied by us to you. For the avoidance of doubt, any property which is or comprises items or kinds of personal property in or to which you have rights and which has not been supplied by us to you shall be excluded from this provision.

7.2. You shall do anything that we reasonably require to ensure that we have a perfected security interest in all of the Goods and a purchase money security interest in each part of the Goods to the extent of the purchase price for that part.

7.3. We may allocate amounts received from you in any manner we determine, including in any manner required to preserve any purchase money security interest we have in any Goods.

7.4. You shall reimburse us for all costs and/or expenses incurred or payable by us in relation to registering, maintaining or releasing any financing statement in respect of any security interest under the Contract.

7.5. You waive the right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interest.

7.6. You agree that:

- (i) nothing in section 114(1)(a), 133 and 134 of the PPSA shall apply to any Contract, or the security under any Contract, and waives your rights under sections 121, 125, 129 and 131 of the PPSA; and
- (ii) you have received a copy of these Terms and in particular that each Contract constitutes a "security agreement" for the purposes of the PPSA, and that we may register a financing statement in respect of any security interest under the Contract.

## 8. Warranties and contracting-out

8.1. To the fullest extent permissible at law, all representations, terms, warranties, guarantees, or conditions whether implied by statute, common law or custom of the trade or otherwise, including, but not limited to,

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implied warranties, guarantees or conditions of merchantability and/or fitness for a particular purpose, are excluded.

- 8.2. The parties agree to contract out of the provisions of the Consumer Guarantees Act 1993 (“CGA”) and the Fair Trading Act 1986 (“FTA”) to the extent permitted by the CGA and the FTA (including the statutory guarantees and implied terms, covenants and conditions contained in the CGA and sections 9, 12A and 13 of the FTA) and acknowledge that the parties are “in trade” and you acquire Goods and/or Services for business purposes and all provisions of the Contract shall be read as modified to the extent necessary to give effect to that intention.
- 8.3. We will (subject to clause 8.5) repair or make good any defects in materials and workmanship in Goods arising within 3 months from the date of delivery. No claim shall be accepted by us under such warranty unless written notice of the claim is received by us within 10 days after the defect is discovered nor shall any claim be accepted if:
  - (i) the defect is due to or resulting from damage or misuse or negligent maintenance or care while in your or your representative’s possession;
  - (ii) the defect is due to defective instructions or plans supplied by you or your representative;
  - (iii) any attempt to repair the Goods is made by any person or persons not authorised by us to effect those repairs;
  - (iv) the Goods have been dismantled or modified without the approval of us; or
  - (v) the Goods have not been stored, maintained or used in a proper manner.
- 8.4. In any event, we shall not be obliged to carry out any work to make good any defects nor be under any liability under this clause for so long as you are in default in relation to any payment or in the performance of any obligation under any Contract.
- 8.5. If any Goods supplied to us by other manufacturers are the subject of a claim under clause 8.3, you shall be entitled to such benefits as we may receive under any warranty given by that manufacturer to us to the extent that we are able to pass these benefits on to you. However, our obligation to repair or make good under clause 8.3 does not apply to Goods which are not manufactured by us.
- 8.6. You agree that in relation to the services and the Contract the client relationship is solely with us. Accordingly, you agree not to bring a claim of any nature against any shareholder, director, employee, contractor or sub-contractor of ours.
- 8.7. Clause 8.6 is for the benefit of our shareholders, directors, employees, contractors, sub-contractors who may enforce this clause under the Contract and Commercial Law Act 2017, Part 2, Subpart 1.

## 9. Liability limitation

- 9.1. Our liability for any loss or damage that you suffer caused by our breach of contract, tort (including negligence), or other actionable wrong of any kind shall be limited as follows:
  - (i) we will not be liable for any consequential or indirect loss or loss of profit;
  - (ii) whilst we will make every effort to ensure that the Goods are supplied on time, we shall have no liability for any loss, damage or liability sustained through late delivery of products from any cause including negligence and dates for delivery are given in good faith and are not to be treated as a condition of sale or purchase;
- 9.2. Our liability for loss shall in no circumstances exceed the amount of the lower of (a) 3 times the total fees paid in relation to the Project or Campaign, or (b) 1,000,000.
- 9.3. Subject to clause 10, no legal proceedings may be commenced later than two years after the date on which the party bringing the claim became aware or ought reasonably to have become aware of the facts giving rise to the claim.
- 9.4. In any event, no legal proceedings may be commenced more than four years after the date on which the facts giving rise to the claim occurred.

## 10. Privacy

- 10.1. Personal information, as defined under the Privacy Act 1993, is collected by and will be held by us. Such personal information (whether contained in the Trade Credit Application or Letter of Engagement or otherwise obtained) is provided and may be held, used and disclosed for the following purposes:
  - (i) administering, whether directly or indirectly, our contracts and enforcing our rights thereunder;
  - (ii) marketing goods and services provided by us;
  - (iii) ascertaining at any time your creditworthiness and obtaining at any credit reports, character references or credit statements; and
  - (iv) enabling us to notify any credit agency of any application for credit or default on to any obligation of the customer to us and enabling us to provide that personal information to any credit agency so that credit agency can maintain effecting accounting records.
- 10.2. You agree to comply with the New Zealand Privacy Act 1993 and with any legislation governing the use of the information, when providing us with such information. We agree to cooperate with each other in addressing our respective privacy obligations in connection with the services.
- 10.3. We each agree to take reasonable precautions to protect our own information technology systems, including implementing reasonable

procedures to guard against viruses and unauthorised interception, access, use, corruption, loss or delay of electronic communications.

## 11. Other Engagements

- 11.1. Nothing in this Contract prevents us from providing services to other clients provided that we take reasonable steps to ensure that each client’s confidential information is not disclosed to other clients.
- 11.2. Subject to the requirement to treat confidential information as confidential any workpapers, database, system, technique, methodology, idea, concept, information or know-how developed in the course of the Contract may be used by us in any way we deem appropriate, including for our clients, without any obligation to account to you.
- 11.3. This Contract is separate from other engagements that we may perform for you or for other clients and we have no obligation to utilise knowledge gained from such other engagements when performing the services under this Contract.

## 12. Termination of Contract

- 12.1. The Contract may be terminated by either party by written notice, in which case you will pay us for all Services provided up to the date of termination.
- 12.2. Where you terminate the Contract before we have completed the Services, you will pay any additional costs that we incur in connection with the early termination (if any).
- 12.3. The provisions of the Contract which expressly or by implication are intended to survive its termination or expiry will survive and continue to bind both parties, including clause 3 (fees).

## 13. Sub-contractors selected by you

- 13.1. Where you are using third parties in connection with the services to be provided in accordance with this Contract, you will ensure that you have appropriate agreements with them. Unless agreed otherwise in the Letter of Engagement, you will be responsible for the management of those third parties and the quality of their input and work.
- 13.2. Where you require us to contract the services of a sub-contractor specified by you, you will accept responsibility for the work to be performed by such sub-contractor. We will not be responsible or liable to you or to any other person for the work performed by, or for any act, omission, default or neglect of, such sub-contractor. In the above circumstances, you will be responsible and liable for, and will indemnify us against and from, any liability which we may incur to any person and against all claims, demands, proceedings, damages, losses, costs and expenses made against, suffered or incurred by us, directly or indirectly as a result of or in connection with the work performed by any such sub-contractor.

## 14. Miscellaneous

- 14.1. Neither party may assign, transfer, charge or otherwise deal with its rights or obligations under the Contract without the prior written consent of the other party, except that each may transfer its respective rights and obligations to a partnership or legal entity authorised to take over all or part of its business.
- 14.2. Neither party will be liable to the other for any failure to fulfil obligations caused by circumstances outside its reasonable control, including fire, flood, earthquake, lightning or storm.
- 14.3. The Contract forms the entire agreement between the parties, except where the parties have expressly agreed otherwise. To the extent permissible by law all warranties, conditions, representations and liabilities or terms other than those expressly stated are excluded.
- 14.4. If any term of the Contract is held to be invalid the enforceability of the remainder of the Contract will not be affected.

## 15. Resolving disputes

- 15.1. The Contract is governed by New Zealand law.
- 15.2. In the event of any dispute arising between us and you, such dispute shall in the first instance be referred to mediation for resolution. If the dispute is not resolved through the mediation process within 30 days of referral to mediation, the New Zealand Courts will have exclusive jurisdiction, over all claims that may arise out of or in connection with the Contract.
- 15.3. Each party hereby irrevocably waives any claim that an action is brought in an inconvenient forum, or that the New Zealand Courts do not have jurisdiction.