

Tasman Gowland Surveyors Conditions of Engagement

Obligations of the Firm

1. Tasman Gowland Surveyors Limited (“the Firm”) must perform the Services using reasonable skill, care and diligence subject to any financial, physical, time or other restraints imposed by the Client or necessarily resulting from the nature of the project.

The Firm may subcontract parts of the Services with the prior written consent of the Client. The subcontracting of any parts of the Services shall not relieve the Firm from any liability or obligation under the Agreement.

Obligations of the Client

2. The Client shall provide to the Firm, free of cost, as soon as practicable following request, all information requested which is within the Client’s power to obtain.
3. The Client must co-operate with the Firm and not obstruct the proper performance of the Services, including allowing the Firm reasonable access to the site and other locations associated with the Services.
4. As soon as the client becomes aware of anything that will materially affect the scope or timing of the Services, the Client must inform the Firm in writing.

Payment

5. All fee estimates supplied to the Client by the Firm will be provided based on the request by the Client for the work carried out and as detailed within the written estimate/quote. Any work or services provided outside the original contract or quote not originally detailed in the quote or contract will be completed and invoice separately on discussion and agreement with the Client.
6. Upon request from the Firm the Client shall immediately pay the Firm all disbursements and external expenses incurred, paid or payable by the Firm on behalf of the Client.
7. The Firm may charge the Client, generally by way of monthly progress claims, on the agreed fee basis, or if no basis of charging has been agreed, the Firm may charge the Client a fair and reasonable fee. The Firm may also render interim fee accounts.
8. The Client shall pay the invoice amounts in full and not later than 21 days following the issue of the tax invoice for the Services rendered to the Client by the Firm. If any account is in dispute, the undisputed portion of the account shall be payable in accordance with the normal terms of payment as described herein. Payment of the disputed portion may be withheld provided the matter is brought to the Firm’s attention as soon as it is discovered. A letter of explanation setting out the particulars of this dispute should be sent to the Firm within 7 days of the dispute arising.
9. If any payment is overdue by 14 days or more the Firm may demand payment within 7 days. If the Client does not pay within 7 days the Firm does not have to supply any more Services.
10. If any payment is not made as provided above, without prejudice to any other rights and remedies the Firm may have in respect of recovery of the unpaid amounts, the amount or amounts unpaid shall be liable to carry interest, from the original due date to the date of payment, at the rate equal to 2% pa above the Firm’s overdraft rate.
11. The Client shall pay all costs, expenses and charges including legal costs on a solicitor and own client basis that are incurred by the Firm in recovering any money owing to it by the Client.

Liability and Insurance

12. Limit of Liability

12.1 Notwithstanding any other provision of this agreement, the liability of the Firm for damages or losses (in contract, tort or otherwise, including negligence) in any way connected with the Services or the project is the lesser of five times the value of the fees or \$100,000. (In addition, the Firm will only be liable for direct loss or damage).

12.2 The Firm will not be liable for any damage or loss resulting from or connected with Services or the project that may be made unless proceedings are commenced within six years of the Services being performed.

12.3 The Firm will not be liable for any damage or losses in any way connected with the Services or the project if the Firm stops supplying Services under clause 9 of this agreement.

12.4 If the Client has engaged the Firm to perform Services which the Client has contracted to provide to a third party (the Principal) the Firm's liability to the Principal is likewise limited and the Client warrants that it is the Principal's agent for the purpose of this agreement

13. The Firm must effect and maintain for the duration of the Services:

13.1 Professional indemnity insurance for an amount of an amount of not less than the amount referred to in clause 12.1 of this agreement in respect of any single occurrence and in the aggregate for liability arising from a breach of professional duty whether owed in contract, tort or otherwise or by reason of any act or omission by the Firm; and

13.2 Public liability insurance with a minimum cover of the amount referred to in the Project Details.

14. The Firm must use reasonable endeavours to keep the professional indemnity cover required by this agreement in force for six years after the termination of this agreement.

15. If required by the Client, the Firm must provide certificates evidencing the insurance cover required by this Agreement.

Variations

16. The Client may order variations to the Services in writing and may request the Firm to make proposals for variation to the Services which may include a variation to the fees for the Services, if necessary.

Copyright of Documents

17. The Firm shall retain copyright of all documents it has prepared. The Client shall be entitled to use them or copy them for the purposes of the project. The ownership of data and factual information collected by the Firm and paid for by the Client, shall, after payment by the Client lie with the Client. The Client shall have no right to use any of the documents where any or all of the fees and expenses payable to the Firm have not been paid in accordance with this agreement.

Consumer Guarantees Act

18. If the Client is obtaining the Services for business purposes the provisions of the Consumer Guarantees Act 1993 are excluded in relation to the Services. If the Client is not obtaining the Services for business purposes then to the extent that any provision in this agreement is inconsistent with the Consumer Guarantees Act the provisions of the Act will prevail.

Personal Information

19. The Client authorizes the Firm to collect, retain and use personal information about the Client, including the information contained in this agreement, for the purposes of assessing the Client's credit worthiness, administering the Firm's rights against the Client or marketing any Services provided by the Firm. The Client may request access to and correction of any personal information and the Firm will comply with its obligations under the Privacy Act 1993.

Disputes

20. If a dispute arises under this agreement or concerning its subject matter, either party may at any time give written notice to the other requesting that meeting take place to seek to resolve the dispute. The parties will then meet within five business days of the notice and endeavour to resolve the dispute in good faith. If such meeting does not take place within five business days of the notice or if after five business days of the meeting the dispute remains unresolved, either party may pursue its rights at law.
21. Clause 20 does not restrict or limit the right of either party from taking immediate steps to obtain relief before an appropriate court, or to immediately terminate this agreement where this document provided such a right.

Termination and Suspension

22. The Client may suspend all or part of the Services or terminate this agreement by notice to the Firm in writing who shall immediately make arrangements to stop the Services and minimize further expenditure. Suspension or termination shall not prejudice or affect accrued rights or claims and liabilities of the parties including the payment of all fees and other costs payable to the Firm up to the effective date of suspension or termination and all further fees and costs incidental to the orderly termination of the Services.

Guarantee

23. The Client shareholders, directors and guarantors (if relevant) hereby irrevocably guarantee the due and punctual payment of all moneys owing by the Client to the Firm. It is acknowledged that the Firm is not obliged to pursue its remedies against the Client but may proceed in the first instance directly against any or all of the shareholders, directors and/or guarantors. If more than one their liability shall be joint and several.

Force Majeure

24. Neither the Firm nor the Client will be liable for any act, omission or failure under this agreement (except failure to meet an obligation to pay money) if the act, omission or failure arises directly from a force majeure event (being circumstances beyond the reasonable control of the party concerned, including, without limitation, extreme weather conditions, civil disruption or industry wide industrial action).