



SL SAFETY CONSULTING

Standard Terms & Conditions

1. HOW THIS DOCUMENT WORKS
 - 1.1. This document sets out the terms and conditions that will apply to the services provided by SL Safety Consulting to you (the client specified in the attached proposal, letter or response document).
 - 1.2. The following meanings will apply:
 - 1.2.1. "Agreement" means the agreement between you and SL Safety Consulting setting out our rights and obligations and which are detailed in the following terms and conditions and in any relevant Specific Engagement Terms;
 - 1.2.2. "Charges" means the charges payable by you, as set out in the Specific Engagement Terms;
 - 1.2.3. "Confidential Information" means any information, data and materials (in any medium) which is identified by either of us as, or would reasonably be expected to be, proprietary, confidential or of a commercially sensitive nature;
 - 1.2.4. "Deliverables" means the services (whether project, consulting, support or any other type of service) and any other materials supplied by SL Safety Consulting to you;
 - 1.2.5. "Engagement" means each engagement of SL Safety Consulting under this Agreement;
 - 1.2.6. "GST" means goods and services tax payable under the Goods and Services Tax Act 1985, as amended, varied or substituted;
 - 1.2.7. "Intellectual Property Rights" means all intellectual property including all rights arising from the law of copyright, registered and unregistered trademarks, designs, circuit layout designs and rights in relation to circuit layouts, and know-how owned by the relevant party;
 - 1.2.8. "Specific Engagement Terms" means the commercial, technical and other terms for the supply of Deliverables which have been detailed in a proposal, letter or email of engagement, response to an RFP/RFT/RFI etc or otherwise and signed by you and SL Safety Consulting;
 - 1.2.9. "Your Responsibilities" means the responsibilities set out in clause 4 and in the Specific Engagement Terms (if any);
 - 1.2.10. "you" means the client specified in the Specific Engagement Terms and "your" will be construed similarly;
 - 1.2.11. "we" or "us" means you and SL Safety Consulting; and
 - 1.2.12. "Working Day" means any day on which registered banks are open for business in Wellington, except Saturday or Sunday, and "Working Days" will be construed similarly.
 - 1.3. In this Agreement, unless the context otherwise requires:
 - 1.3.1. the singular includes the plural and vice versa;
 - 1.3.2. where you comprise two or more persons, any covenant or agreement by you will bind those persons jointly and severally;
 - 1.3.3. references to "you" includes your directors, employees, contractors, agents and successors;
 - 1.3.4. references to any statute will include any modification or re-enactment of the statute and all legislation, orders and regulations issued under that statute or passed or made in substitution for the same.
2. START DATE
 - 2.1. This Agreement commences on the date specified in the Specific Engagement Terms, or, if no date is specified, on the date you confirm your agreement to the Specific Engagement Terms ("Start Date").
 - 2.2. If SL Safety Consulting has commenced supply of the Deliverables before the Start Date, we agree that this Agreement will also apply to the services provided before the Start Date.
3. SL SAFETY CONSULTING'S RESPONSIBILITIES
 - 3.1. SL Safety Consulting will supply the Deliverables to you in accordance with this Agreement.
 - 3.2. SL Safety Consulting will use all reasonable endeavours to supply the Deliverables in accordance with the time frame stipulated in the relevant Specific Engagement Terms.
 - 3.3. SL Safety Consulting's ability to supply the Deliverables is dependent on your timely performance of Your Responsibilities.
 - 3.4. SL Safety Consulting shall use the space and resources provided by you in accordance with Clause 4.1 for the sole purpose of supplying the Deliverables.
 - 3.5. SL Safety Consulting shall comply with all relevant statutory obligations and your policies (as advised by you to SL Safety Consulting in writing), in particular the Privacy Act, the Human Rights Act, the Health and Safety at Work Act and associated Regulations, the smoking policy, policies relating to security and access for your premises, and any computer usage policy.
4. YOUR RESPONSIBILITIES
 - 4.1. You shall:
 - 4.1.1. ensure that SL Safety Consulting and its personnel have full and safe access to your premises at all reasonable times for purposes associated with supply of the Deliverables;
 - 4.1.2. ensure SL Safety Consulting's personnel are given such information, facilities, services and accessories as SL Safety Consulting requires to enable it to comply with its obligations under this Agreement;
 - 4.1.3. provide a suitably qualified or informed representative, who shall be available on call during SL Safety Consulting's normal business hours to advise SL Safety Consulting on access, use of your resources and any other matter within your knowledge or control which may assist SL Safety Consulting in complying with its obligations under this Agreement;
 - 4.1.4. obtain all rights and licences necessary for SL Safety Consulting to use any material or software you supply to or require SL Safety Consulting to use to perform its obligations under this Agreement and you shall indemnify and fully protect SL Safety Consulting in the event of any third-party claim against SL Safety Consulting which arises out of your failure to obtain such rights and licences.



5. TITLE AND RISK
 - 5.1. Unless we agree other terms in the relevant Specific Engagement Terms, upon payment of all relevant Charges:
 - 5.1.1. you will become the sole owner of all Deliverables supplied by SL Safety Consulting for you.
 - 5.2. In accordance with clause 5.1, title to the Deliverables passes to you upon delivery by SL Safety Consulting to you or payment in full (without deduction or set-off) by you to SL Safety Consulting of the price, whichever is the later.
 - 5.2.1. Notwithstanding anything in this agreement the risk of loss of the Deliverables (other than services supplied) from any cause whatsoever passes to you upon delivery of the Deliverables by SL Safety Consulting to you.
 - 5.2.2. Until payment in full, in accordance with clause 5.1, of the price of the Deliverables is made by you to SL Safety Consulting, you shall only be a fiduciary owner of the Deliverables and you agree to:
 - 5.2.2.1. enable the Deliverables (as far as they are able) to be readily identifiable as the property of SL Safety Consulting; and
 - 5.2.2.2. maintain the Deliverables (other than services supplied) so supplied in good order and condition and to return the property immediately if called upon to do so by SL Safety Consulting.
 - 5.3. We acknowledge that the vesting of title under clause 5.1 or the relevant Specific Engagement Terms does not affect the Intellectual Property Rights in any material existing as at the relevant Start Date (including but not limited to documentation and data) or any modifications or enhancements to such existing material. Where:
 - 5.3.1. SL Safety Consulting owns the Pre-Existing Material, it hereby grants you a royalty free, non-exclusive and non-transferable licence to use such Pre-Existing Material for the purpose of enjoying your rights; and
 - 5.3.2. you own the Pre-Existing Material, you hereby grant SL Safety Consulting a royalty free, non-exclusive and non-transferable licence to use such Pre-Existing Material to perform its obligations under this Agreement; and
 - 5.3.3. a third party owns the Pre-Existing Material, you shall obtain, at your cost (if any), a licence for SL Safety Consulting to use such Pre-Existing Material to perform its obligations under this Agreement.
6. SUPPLY OF THIRD PARTY MATERIALS
 - 6.1. SL Safety Consulting shall, to the extent it is authorised and able, pass through any warranties and indemnities (including Intellectual Property Rights indemnities) provided by a third-party supplier in respect of third party materials supplied to you by SL Safety Consulting. Your right to use such third-party materials shall be subject to the terms of use of the owner of that third-party material.
7. CHARGES AND PAYMENT
 - 7.1. SL Safety Consulting may invoice you on the last Working Day of each month for the Development Services performed in that month, or may invoice you in accordance with any specific invoicing and payment terms that we agree in the Specific Engagement Terms.
 - 7.2. You will pay each invoice, or the undisputed portion of any invoice (provided that you have dealt with any disputed portion in accordance with clause 7.6) by the 20th day of the month following the month in which the invoice is dated.
 - 7.3. In addition to the Charges, you will pay reasonable disbursements incurred and claimed by SL Safety Consulting in relation to the Project.
 - 7.4. You will pay interest at 2% per month on any overdue amounts from the due date to the date of payment, calculated on a daily basis and any costs (including legal fees) incurred by SL Safety Consulting in collecting any such overdue amounts.
 - 7.5. All Charges are exclusive and net of any taxes, duties or other levies, imposts, or rates imposed by any governmental agency, including, but not limited to GST ("Taxes"). You shall pay all Taxes.
 - 7.6. Unless you have, in good faith, notified SL Safety Consulting of a dispute in relation to any invoice within 5 Working Days of receiving the relevant invoice, you must pay all invoices in accordance with clauses 7.1 to 7.5 (inclusive). We will deal with disputed invoices in accordance with clause 14.
8. PROTECTION OF OUR CONFIDENTIAL INFORMATION
 - 8.1. We will at all times keep confidential, treat as privileged, and not directly or indirectly make or allow any copying, disclosure or use to be made, of any provision of this Agreement or of any Confidential Information of the other party, except to the extent:
 - 8.1.1. required by law;
 - 8.1.2. that we otherwise agree in writing;
 - 8.1.3. necessary to obtain the benefit of, or to carry out obligations under, this Agreement; or
 - 8.1.4. that the information is or becomes available in the public domain without breach by a party of its confidentiality obligations under this clause or at law.
9. WARRANTY
 - 9.1. For a period of 90 days from the date of delivery of the services ("Warranty Period"), SL Safety Consulting warrants that the services have been performed with due care and skill.
10. LIMIT OF SL SAFETY CONSULTING'S LIABILITY
 - 10.1. To the extent permitted by law, any condition or warranty which would otherwise be implied in this Agreement is hereby excluded.
 - 10.2. Notwithstanding any other provision of this Agreement, SL Safety Consulting will not be liable to you, directly or indirectly, for any loss or damages suffered or incurred by you as a result of:
 - 10.2.1. any of your delays, acts or omissions or the delays, acts or omissions of any third person (other than an employee or contractor of SL Safety Consulting); or
 - 10.2.2. failure or delay by you to meet or comply with any of your obligations under this Agreement.
 - 10.3. To the fullest extent permitted by law, SL Safety Consulting's total liability (whether in contract, tort, including negligence or otherwise) to you under or in connection with this Agreement is limited to the total Charges paid by you in relation to the Deliverables to which the liability relates.
 - 10.4. SL Safety Consulting will not be liable (whether in contract, tort, including negligence, or otherwise) to you for:
 - 10.4.1. any indirect or consequential loss, damage, cost or expense of any kind whatsoever and howsoever caused; or
 - 10.4.2. any loss of production, loss of profits or savings, or wasted management or staff time, arising directly or indirectly in accordance with this Agreement.



11. TERMINATION OF THIS AGREEMENT

- 11.1. Without prejudice to any other right or remedy it may have, whether under this Agreement, at law or otherwise, either party may terminate an Engagement immediately by written notice to the other party if:
- 11.1.1. the other party breaches any of its material obligations under this Agreement or the relevant Specific Engagement Terms(s); and
- 11.1.1.1. the breach is not capable of being remedied; or
- 11.1.1.2. the breach is capable of being remedied and the party in breach fails to remedy the breach within 10 Working Days after notice in writing has been given requiring such breach to be remedied; or
- 11.1.2. the other party ceases to, or is in danger of ceasing to carry on business in the usual manner.
- 11.2. Either party may terminate an Engagement by 30 days notice in writing.
- 11.3. On and from the effective date of expiry or termination of the Engagement:
- 11.3.1. you will pay SL Safety Consulting all Charges owing to SL Safety Consulting under this Agreement up to and including the date of expiry or termination;
- 11.3.2. within 10 Working Days after the date of expiry or termination, you will return or destroy (at SL Safety Consulting's option) any documentation or other materials to the extent that they contain or relate to Intellectual Property Rights owned by SL Safety Consulting; and
- 11.3.3. each of us must return to the other or destroy (at the other's option) all material forms of any Confidential Information and any other property of the other in its possession, custody or control.

12. NO HIRING OF SL SAFETY CONSULTING'S EMPLOYEES AND CONTRACTORS

- 12.1. During each Engagement, and for 6 months after SL Safety Consulting's involvement in the relevant Engagement has ended ("Restraint Period"), you shall not solicit for employment or engagement, either directly or indirectly, any person who is employed or contracted by SL Safety Consulting in relation to that Engagement.
- 12.2. You shall promptly advise SL Safety Consulting if an employee or contractor of SL Safety Consulting's seeks to be employed or contracted by you prior to the Restraint Period expiring.
- 12.3. If you employ or contract with any employee or contractor of SL Safety Consulting ("staff member") during the Restraint Period, you shall, upon such employment or entering into any contract for the engagement of that staff member, pay SL Safety Consulting an amount equal to 25% of the staff members annual revenue with such annual revenue to be calculated at the person's usual hourly charge-out rate multiplied by 1824. For the purposes of this clause, "usual hourly charge-out rate" means:
- 12.3.1. if the staff member is employed or contracted by you during their participation in an Engagement, the hourly rate charged to you by SL Safety Consulting; or
- 12.3.2. if the staff member is employed or contracted by you within the 6-month period after their participation in an Engagement, the hourly rate that staff member is charged out at that time.

13. HOW WE WILL RESOLVE ANY DISPUTES BETWEEN US

- 13.1. Where any disagreement arises between us as to whether or not there is a default, or about the meaning of any term of this Agreement:
- 13.1.1. we shall nominate a representative for each us to meet to try to resolve the issue;
- 13.1.2. if our nominated representatives cannot resolve the issue within (20) Working Days of either of us having notified the other of the issue, then either of us may refer the disagreement to mediation. The mediator will be appointed by us or, where we cannot agree on a mediator within 10 Working Days of either of us referring a dispute to mediation, appointed by the Chairperson of Resolution Institute New Zealand. The guidelines which will govern the mediation will be set by us within 10 Working Days following appointment of the mediator. Failing agreement, either of us may request the mediator to set the guidelines which will govern the mediation. The costs and expenses of the mediator will be shared by us equally (unless the mediator directs otherwise).
- 13.2. Where we are following the above procedures for resolving the disagreement and neither of us has terminated this Agreement, we will continue to perform our respective obligations under the Agreement.
- 13.3. Nothing in this clause will prevent either of us from seeking urgent equitable relief before an appropriate court.

14. GENERAL

- 14.1. This Agreement constitutes the entire agreement, understanding and arrangement (express and implied) between the parties relating to the subject matter of this Agreement and supersedes and cancels any previous agreement, understanding and arrangement relating thereto whether written or oral.
- 14.2. The failure by either of us at any time to insist on performance of any provision of this Agreement is not a waiver of our rights at any later time to insist on performance of that or any other provision of this Agreement.
- 14.3. SL Safety Consulting may use subcontractors to perform the whole or part of its obligations under this Agreement.
- 14.4. Any changes to this Agreement (whether to the Specific Engagement Terms or the terms set out here) must be agreed by us in writing before they will take effect.
- 14.5. Where there is any inconsistency between the Specific Engagement Terms and the terms and conditions set out in this document, the terms and conditions set out in this document shall take priority.
- 14.6. If any provision of this Agreement is held invalid, unenforceable or illegal for any reason, the Agreement shall remain otherwise in full force apart from such provisions which shall be deemed deleted.
- 14.7. Clauses 7 (CHARGES AND PAYMENT), 8 (PROTECTION OF OUR CONFIDENTIAL INFORMATION AND PUBLICITY), 9 (WARRANTY), 10 (LIMIT OF SL SAFETY CONSULTING'S LIABILITY), 11.2 (CONSEQUENCES OF TERMINATION), 12 (NO HIRING OF SL SAFETY CONSULTING'S EMPLOYEES AND CONTRACTORS), this clause and any other covenants, conditions and provisions of this Agreement which are capable of having effect after the expiration or termination of this Agreement shall remain in full force and effect following the expiration or termination of this Agreement.