

The Safety Lab NZ – General Terms and Conditions – 2023



These Terms apply to services carried out by the Company and should be read in conjunction with the Proposal. Unless agreed in writing by the Company, these Terms will apply to the exclusion of any inconsistent terms and conditions that may appear on any order form or other document issued by the Client. To avoid doubt, any subsequent terms provided by the Client are excluded, and any acceptance or counteroffer by the Client of these Terms will be deemed to be an acceptance of these Terms. These Terms will apply to any variations to the scope of the Services which may be agreed (verbally or in writing) by the Parties or ordered (verbally or in writing) by the Client and to any supplementary services which may be agreed (verbally or in writing) by the Parties.

The Client will be deemed to have accepted these Terms when the Client signs the Proposal (where indicated) or when the Company commences the Services at the Client's request (written or otherwise).

1. DEFINITIONS

In these Terms:

"Claim" means, concerning any person, a damage, loss, cost, expense or liability incurred by the person or a claim, demand, action, proceeding or judgment made against the person, however arising, whether in contract, tort (including but not limited to negligence), equity, product liability, under any warranty or indemnity, by operation of statute or otherwise, and whether present or future, fixed or unascertained and actual or contingent;

"Client" means the Client to which the Company will provide the Services as set out in the Proposal;

"Company" means The Safety Lab NZ Limited (NZBN 9429051333881) or the related body corporate or holding company (as defined in Companies Act 1993) providing the Services as set out in the Proposal;

"Confidential Information" means any information obtained by one party concerning the other party or its business activities and that:

- 1.1 by its nature is confidential;
- 1.2 is designated by the disclosing party as confidential or
- 1.3 the recipient knows or ought to know is confidential, and
- 1.4 includes details of the Proposal, including the fee, but excludes publicly available information, except as a result of a breach of these Terms; or

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info@thesafetylab.nz (+64) 09 870 4407

- 1.5 was disclosed to the recipient by a third party who was not under a duty of confidentiality
- 1.6 in relation to that disclosure;

"Consequential Loss" includes loss of profit, loss of revenue, loss of production, loss of use, loss of any plant or facility, business interruption, loss of business opportunity or business contract (in each case whether direct or indirect) or any indirect, consequential, special, contingent or penal damage or loss;

"End Date" means the date upon which the Services must be completed as specified in the Proposal (if any);

"Fee" means the fee(s) payable by the Client to the Company for the Services as set out in the Proposal;

"Force Majeure Event" includes earthquake, flood, landslide, fire, explosion, war, invasion, act of foreign enemies, hostilities, civil war, rebellion, revolution, insurrection, military or usurped power, martial law or confiscation by order or any government or other authority, change in law, strikes, lockouts, labour difficulties, rationing or unavailability of essential equipment, labour or supplies and disruption or unavailability of utilities and services which are beyond a party's control.

"GST Act" means the Goods and Services Tax Act 1985) as amended, superseded or replaced from time to time;

"Insolvency Event" means any of the following:

- 1.7 the threatened or actual appointment of a voluntary administrator, liquidator, provisional liquidator, receiver,
- 1.8 receiver and manager, controller, trustee in bankruptcy, administrator or other person of similar office, including any application to a court for such an appointment;
- 1.9 entry into or proposing an arrangement or compromise for the benefit of creditors;
- 1.10 the levy or enforcement of a writ of execution, order or judgment;
- 1.11 becoming unable to pay debts as and when they fall due for payment;
- 1.12 the taking of possession or control of any asset by a person under an encumbrance or
- 1.13 failing to satisfy or to apply to have set aside a statutory demand, a bankruptcy notice or other similar form of statutory notice within the time specified in the demand or notice;

"Intellectual Property" means all intellectual property rights, including, without limitation:

- 1.14 patents, copyright (including future copyright), registered designs, rights in circuit layouts, trademarks, inventions, secret processes, discoveries and improvement and modifications of any kind;
- 1.15 the right to have Confidential Information kept confidential; and
- 1.16 any application or right to apply for registration of any of the rights defined in this clause;

"Law" includes all legislation, statutes, enactments, regulations, standards, by-laws, treaties, ordinances, equity and other such unwritten laws applicable to any act, omission, conduct, matter or thing for any reason;

"Parties" means the Company and the Client;

"Proposal" means the Proposal by the Company to the Client, which sets out the Services and the Fee;

"Services" means the services to be provided by the Company as set out in the Proposal as varied following these Terms and

"Tax Invoice" means the invoice issued by the Company following these Terms and has the respective meaning ascribed to it in the GST Act.

2. SERVICES

- 2.1 The Company will provide the Services to the Client at the times, location, frequency, quantity and manner specified in the Proposal or otherwise agreed in writing by the Parties.
- 2.2 The Company will perform the Services competently and professionally and under these Terms.
- 2.3 The Services may be varied as agreed in writing between the Parties.
- 2.4 The Client will ensure that the Company has access to all sites and buildings as required or necessary for the Company to undertake the Services. Notwithstanding any other provision in these Terms, the Company will have no liability to the Client or any third party to the extent that the performance of the Services is not able to be undertaken (in whole or in part) due to access to any relevant sites or buildings being prevented or delayed due to the Client or their respective employees or contractors expressing safety or health concerns associated with such access.

3. FEE

- 3.1 The Client will pay the Company the Fee in consideration of the Company providing the Services.
- 3.2 The Company may vary the fee by notice to the Client if:
 - 3.2.1 the Company undertakes additional Services at the request (written or verbal) by the Client;
 - 3.2.2 the Company undertakes additional work or services which are required as a result of unexpected or undisclosed conditions encountered by the Company whilst providing the Services;
 - 3.2.3 the Services are varied by agreement of the Parties under clause 2.3 of these Terms; and
 - 3.2.4 a change of law or technological advance occurs during the provision of the Services, which (in the Company's reasonable opinion) results in increased costs to the Company in the provision of the Services.
- 3.3 If the Client does not accept the Proposal within the validity period of the Proposal, the Company may (in its sole discretion) vary the fee set out in the Proposal at any time before acceptance of the Proposal by notice in writing to the Client.

- 3.4 The Client will pay all Tax Invoices without deduction or set off on or before the twentieth (20) day of the following month of the relevant Invoice date.
- 3.5 The Company may charge, and the Client must pay interest on all amounts not paid by the Client on the payment due date at an interest rate of two per cent (2%) per annum. Interest will be calculated daily and may be capitalised monthly until the Client makes the full payment.
- 3.6 Allowance to the Client of additional time to pay the fee will not constitute a waiver by the Company of any of these Terms.
- 3.7 In the event of non-payment of the fee under these Terms, the Client will pay all reasonable collection expenses, legal costs and any other expenses incurred by the Company in the event of non-payment.
- 3.8 The Company may cease the Services immediately without notice to the Client if the Client fails to pay any Tax Invoice under these Terms. The Company will not be obliged to recommence the Services until the overdue amount is paid in full to the Company.
- 3.9 If an amount of GST is payable on a supply under these Terms:
- 3.9.1 the recipient of the supply must pay, in addition to the other consideration payable or to be provided for the supply, an amount equal to the GST payable on the supply; and
 - 3.9.2 the recipient must pay the additional amount to the supplier at the same time as the other consideration. However, the recipient does not need to pay the additional amount until the supplier gives the recipient a tax invoice (except where the recipient is required to issue the tax invoice).
- 3.10 If, for any reason (including, without limitation, the occurrence of an adjustment event) the amount of GST payable on a supply varies from the GST amount paid to the supplier, the parties will account to each other for the difference. If the recipient is required to pay an additional amount under this clause, and the reason an additional amount is payable is because of the occurrence of an adjustment event, the recipient needs not pay the additional amount until the supplier gives the recipient an adjustment note (except where the recipient is required to issue the adjustment note).
- 3.11 If an amount paid by the supplier as and for GST under these Terms is overpaid, and the GST Act applies to that amount, then the amount is not recoverable unless the supplier can recover that amount from the Commissioner after taking all reasonable steps to do so.
- 3.12 Clause 3.9 and 3.10 do not apply to the extent that the GST on the supply is payable by the recipient under the GST Act.
- 3.13 If any party is entitled to payment of any costs or expenses through reimbursement or indemnity, the claim must exclude any amount for which that party (or representative member if the party is a member of a GST group) may obtain an input tax credit.
- 3.14 Unless indicated, all amounts referred to in these Terms, other than in clauses 3.9 to 3.13 (inclusive), are GST exclusive.
- 3.15 Unless indicated to the contrary, "GST" and other terms used in this clause (and in other provisions of this Agreement referable to GST) have the meanings given to those terms by the GST Act.

3.16 This clause will continue to apply after the expiration or termination of these Terms.

4. PRICE REVIEW

- 4.1 Subject to clause 4.3, the fee is fixed for the first Contract Year.
- 4.2 Subject to clause 4.1, in each Contract Year, the fee will be increased or decreased by notice in writing to the Client to reflect movements in the average of the Labour market statistics for New Zealand as published by Stats NZ in respect of the previous Contract Year ("Annual Price Review Notice"). The Company will not issue more than one Annual Price Review Notice for each Contract Year. Annual Price Review Notices issued in respect of:
- 4.2.1 the current Contract Year: will take effect 30 days from the date of issue; and
 - 4.2.2 A future Contract Year will take effect 30 days later than the date of issue or the first day of that future Contract Year ("Effective Date").
- 4.3 The Company is entitled, by written notice to the Client, to increase or decrease the fee where it forms the view (acting reasonably and having regard to several factors, including but not limited to fluctuations in foreign exchange rates, labour costs, duties, tariffs or legislative changes) that the provision of Services to the Client has become commercially unviable to the Company ("Extraordinary Price Review Notice").
- 4.4 The Client shall be deemed to have accepted the Company's Extraordinary Price Review Notice unless it provides notice in writing of its non-acceptance within 30 days of the date of the Extraordinary Price Review Notice. All accepted (or deemed accepted) Extraordinary Price Review Notices will take effect 40 days after the Extraordinary Price Review Notice date.
- 4.5 In this clause, "Contract Year" means each 12 months commencing on the date the Company first provides the Services and each anniversary thereof.

5. INDEMNITY AND LIABILITY

- 5.1 The Company indemnifies the Client against any actual direct loss, cost or expense incurred or suffered by the Client arising from any negligent act or omission of the Company or an officer, employee, or agent of the Company in the provision of the Services, except to the extent that any such loss, cost or expense is caused or contributed to by the Client or any other person.
- 5.2 The Client is liable for and must indemnify the Company in respect of any Claim which the Company may suffer or incur arising out of:
- 5.2.1 a breach of these Terms by the Client;
 - 5.2.2 an act or omission of the Client; and
 - 5.2.3 a breach of the law by the Client, except, in each case, to the extent that any such Claim is caused or contributed to by the negligent act or omission of the Company.
- 5.3 Notwithstanding any other provision of these Terms, whether a Claim or liability is based on breach of contract, tort (including negligence), under any warranty or indemnity, under statute, in equity or otherwise, to the maximum extent permitted by law:
- 5.3.1 neither party will be liable to the other party for or in connection with any Claim for Consequential Loss;
 - 5.3.2 the Company is not liable for any Claim which relates directly or indirectly to:
 - 5.3.2.1 the Company following accepted guidelines under the law when supplying the Services to the Client;

- 5.3.2.2 a change in law (which was applicable during the period in which the Company provided the Services) or technological advance if such change in law or technological advance occurred after the completion of the Services by the Company; or
- 5.3.2.3 the failure of the Client to comply with any applicable Laws or recommendations provided by the Company or any other negligent or wrongful act or omission of the Client;
- 5.3.3 the Company's liability in respect of defective Services is limited to the re-supply of the defective Services to the Client or refund of the Fee as set out in clause 6.1 below; and
- 5.3.4 subject to clause 5.3.2, the maximum cumulative liability of the Company to the Client in respect of, in connection with and about all Claims arising out of or in connection with these Terms or the Services is an amount equal to one hundred per cent (100%) of the fee payable by the Client to the Company as set out in the Proposal.

6. DEFECTIVE SERVICES

- 6.1 If the Client determines (acting reasonably) that the Services or any part of the Services do not comply with the description of the Services set out in the Proposal or are defective, the Company (in its absolute discretion) will either re-supply the defective Services at no cost to the Client or refund the fee (or a portion of the fee) which relates to defective Services.

7. REPORTS

- 7.1 Where the Services include the provision of a report to the Client by the Company, the Client acknowledges and agrees that:
 - 7.1.1 the report has been prepared for the purpose set out in the Proposal and/or report;
 - 7.1.2 unless otherwise specified in the Proposal or the report, the report has been prepared for the sole use of the Client;
 - 7.1.3 the Client may only use the report for the purpose for which it was prepared;
 - 7.1.4 the Client cannot disclose the report or permit the report to be disclosed to any other person without the prior written consent of the Company;
 - 7.1.5 the Client must not permit any other person to use or rely on the report without the prior written consent of the Company, and
 - 7.1.6 the Company is not responsible to the Client or any other person for implementing any recommendation or preferred course of action identified or referred to in the report or otherwise in the course of providing the Services.
- 7.2 The Company may issue preliminary findings or reports when undertaking the Services that require verification (either by the Company or third parties). Where the Company issues preliminary findings or reports to the Client, the Client acknowledges and agrees that:
 - 7.2.1 the Client can only rely on the preliminary findings or reports to the extent specified in those findings or reports; and
 - 7.2.2 the decision to undertake further investigative activities as the Company recommends rests solely with the Client, and the Company accepts no responsibility for that.

8. FACE-TO-FACE TRAINING

- 8.1 If the Services include training, upon arrival at the training venue at the agreed time, the Company representative will attempt to commence the training session on time. If there are no attendees present, the Company will do all that is reasonably possible to contact a responsible Client representative or its agent at the venue to assemble the required attendees. If the session is not able to commence within 30 minutes of the designated time, the Company's responsibility for delivery of the training Services will be deemed to have been fulfilled.
- 8.2 If the representative of the Company conducting the training Services is delayed in his or her arrival at the training venue for any reason or is unable to attend at the designated venue at the designated time. In that case, the Company will contact the Client or its agent as soon as possible, and if necessary, the session will be rescheduled at no further Fee to the Client.
- 8.3 The training Services will not be postponed in the event of inclement weather.
- 8.4 If the Services include training and the Client or its agent cancels or varies the agreed date on which training is to be provided by the Company ("Training Date") and such cancellation or variation takes place within five (5) business days of the scheduled Training Date. In that case, the Company may charge the Client a cancellation fee, which is equivalent to one hundred per cent (100%) of the fee payable by the Client for that training.

9. TERMINATION

- 9.1 The Company may terminate these Terms at any time and for any reason by giving the Client 30 days of written notice.
- 9.2 If either party breaches these Terms ("Defaulting Party") and the breach can be remedied, the other party ("Non-Defaulting Party") may give the Defaulting Party no less than 30 days written notice to remedy that breach. If the breach is not remedied within the period stipulated in the notice, the Non-Defaulting Party may give the Defaulting Party a further written notice immediately terminating these Terms.
- 9.3 Either party may terminate these Terms by written notice to the other party immediately upon any of the following events:
- 9.3.1 if the other party commits a serious breach of these Terms which cannot be remedied;
 - 9.3.2 if the other party ceases to do business as a going concern;
 - 9.3.3 if an Insolvency Event occurs in relation to the other party; or
 - 9.3.4 if the other party commits a serious criminal offence.
- 9.4 If these Terms are terminated pursuant to clauses 9.1, 9.2 or 9.3:
- 9.4.1 the Company will not be liable to the Client for any Claims by the Client relating to the termination of these Terms by the Company, including any payment for losses or expenses incurred by the Client;
 - 9.4.2 the Client will pay the Company all Fees relating to the Services provided by the Company up to the date of termination of these Terms and
 - 9.4.3 in the event that the Company has not completed the Services as of the date of termination of these Terms, the Client acknowledges and agrees that it cannot use or rely upon any interim reports, results or findings issued by the Company before the date of termination.

- 9.5 The Client must, at all times, comply with all of the Company's applicable policies, procedures, instructions, directions, publications or guidelines (as amended from time to time), which are available at <https://thesafetylab.nz/privacy-policy/> in relation to ethical sourcing practices, sustainability, ethical conduct, anti-bribery and modern slavery. If the Client cannot demonstrate a commitment to complying with the Company's policies, the Company reserves the right to terminate these Terms upon written notice immediately.

10. INTELLECTUAL PROPERTY

- 10.1 The Company owns all rights, titles, and interests in intellectual property developed, owned, or acquired by the Company prior to the commencement of the Services, including any modification or improvement of that intellectual property.
- 10.2 The Client owns all rights, titles and interests in Intellectual Property developed, owned or acquired by the Client before the commencement of the Services.
- 10.3 The Client agrees that the Company owns all rights, titles and interests in Intellectual Property made, written or developed by the Company during and to provide the Services under these Terms.
- 10.4 To enable the Client to enjoy the benefit or end result of the Services, the Company grants to the Client, on full payment of the applicable fee, a non-exclusive, perpetual, irrevocable, worldwide, royalty-free licence (with the right to grant sub-licences) to use, solely for that purpose, such of the Company's Intellectual Property as is strictly necessary to enjoy that benefit or end result.
- 10.5 If necessary to enable the Company to undertake the Services, the Client grants to the Company a nonexclusive, perpetual, irrevocable, worldwide, royalty-free licence to use, solely for that purpose, such of the Client's Intellectual Property as is strictly necessary to undertake the Services.

11. NON-SOLICITATION

- 11.1 During the Term and for twelve (12) months following the termination or expiration of these Terms, the Client will not, without the consent of the Company, solicit, induce or otherwise attempt to persuade any employee, consultant or contractor of the Company to cease working for the Company and/or work for the Client.
- 11.2 During the Term and for a period of twelve (12) months following the termination or expiration of these Terms, the Company will not, without the consent of the Client, solicit, induce or otherwise attempt to persuade any employee, consultant or contractor of the Client to cease working for the Client and/or work for the Company.

12. CONFIDENTIALITY

- 12.1 Each party owns all of its Confidential Information.
- 12.2 During these Terms and after the termination of these Terms, each party can use or disclose the other party's Confidential Information only:
- 12.2.1 to perform the Services or obtain the benefit of the Services;
 - 12.2.2 to professional advisors on a confidential basis to obtain advice;
 - 12.2.3 if the disclosing party has consented in writing or
 - 12.2.4 if required by law.

12.3 Upon the earlier of:

12.3.1 the termination or expiry of these Terms; or

12.3.2 a demand from the disclosing party, the recipient of Confidential Information must:

12.3.2.1 at the disclosing party's discretion, deliver to the disclosing party or destroy all Confidential Information in the recipient's possession or under its control; and

12.3.2.2 delete all Confidential Information held electronically in any medium in the recipient's possession or under its control.

13. DISPUTE RESOLUTION

13.1 Any dispute or agreement concerning or in connection with these Terms or the Services in any matter ("Dispute") is to be resolved in accordance with the procedure provided in clause 13.

13.2 In the event of a dispute, the party seeking to have it resolved must issue a notice to the other parties, setting out all details relevant to the dispute ("Dispute Notice").

13.3 Within fourteen (14) days of receipt of a Dispute Notice, the senior management of the Parties to the Dispute respectively must meet in New Zealand (or such other place agreed by the Parties) to negotiate resolution of the Dispute unless the Parties agree to hold such discussions by teleconference or via other electronic means. The Parties agree that those negotiations must be conducted in good faith.

13.4 In the event that the Dispute is not resolved under clause 13.3, either party will be entitled to take the matter to litigation in the courts of New Zealand.

13.5 Nothing contained in clause 13 will prevent a party from seeking urgent interlocutory relief.

14. INSURANCE

14.1 The Client must at all relevant times effect and maintain, at its own cost, with reputable insurers and on terms consistent with prudent risk management:

14.1.1 a public and products liability insurance policy that covers all Claims made in consequence of or in respect of bodily injury, death or damage to property and that provides coverage for an amount of not less than \$1 million for each Claim;

14.1.2 employers liability in the name of the Client covering all liabilities, whether arising under statute, common law or civil law, in relation to the death of, or injury to, employees or any person deemed to be an employee of the Client;

14.1.3 insurance that provides cover against loss or damage resulting from any loss of, damage to, theft of, or destruction by any cause of any property of the Client's for which the Company is responsible; and

14.1.4 A motor vehicle policy with respect to liability to third parties for personal injury, death, disease or illness, or liability to third parties for loss of or damage to property.

15. FORCE MAJEURE

15.1 A party will not be liable for its inability to perform its obligations under these Terms as a result of a Force Majeure Event. If a Force Majeure Event occurs, the party suffering it will notify the other party of the occurrence and expected duration of that event. The party suffering the Force Majeure Event must use all reasonable endeavours to prevent the force majeure occurrence.

- 15.2 If a Force Majeure Event renders performance of these Terms impossible for a continuous period of at least thirty (30) days, either party may, by notice to the other, terminate these Terms.

16. ANTI-BRIBERY

Each Party Will:

- 16.1 at all times comply with all applicable Laws and codes relating to anti-bribery and improper payments
- 16.2 have and maintain in place throughout the term of this engagement its own policies and procedures or statements, including adequate procedures under the Relevant Requirements ("Policies and Procedures"), to ensure compliance with the Relevant Requirements, and will enforce them where appropriate; and
- 16.3 endeavour to procure the observance and performance of the Relevant Requirements by all persons performing services or providing goods in connection with this engagement on its behalf or under its supervision or control in accordance with its Policies and Procedures.

17. GENERAL

17.1 Severability

- 17.2 Every provision of these Terms will be deemed severable as far as possible from the other provisions of these Terms.

- 17.3 If any provision is found to be void, illegal or unenforceable for any reason, it will be deemed to be severed and omitted from these Terms. These Terms, with the offending provision severed and omitted and with any consequential amendment if necessary, will otherwise remain in full force.

17.4 Entire Agreement

- 17.4.1 These Terms and the Proposal contain the entire agreement between the Parties with respect to the subject matter of these Terms and the Proposal.

- 17.4.2 These Terms supersede any prior agreement or understanding (if any) between the Parties in relation to the subject matter of these Terms or the Proposal.

17.5 Amendments

Any amendment to these Terms must be made in writing and executed by the Parties.

17.6 Assignment

The Company may assign its interest under these Terms at any time. The Client can only assign its interest under these Terms with the prior written consent of the Company, which must not be unreasonably withheld.

17.7 Relationship of Parties

The Parties are independent contractors. The Parties are not principal, agent, partners, trustee and beneficiary, or employer and employee.

17.8 Governing Law

These Terms will be construed according to the laws of New Zealand, and the Parties submit themselves to the non-exclusive jurisdiction of the courts of New Zealand and any competent appellate courts.

17.9 Reliance on Information Provided By Others

The Client acknowledges and agrees that the investigations will rely on information provided to the Company by the Client or other third parties. The Company makes no representation or warranty regarding the completeness or accuracy of any descriptions or conclusions based on information supplied to it by the Client, its employees or other third parties during provision of the Services. The Client releases and indemnifies the Company from and against all Claims arising from errors, omissions or inaccuracies in documents or other information provided to the Company by the Client, its employees or other third parties.

17.10 Limitation of Reports

All reports are prepared for the Client in accordance with industry-recognised standards and procedures recognised at the time of the work. Each report presents the assessment results based on the quoted Scope of Services (unless otherwise agreed in writing) for the specific purposes of the commission. No warranties expressed or implied are offered or provided to any third parties, and no liability will be accepted for using any report by any third parties. Information provided by third parties was assumed to be correct and complete. The Company does not assume any liability for misrepresentation of information by any party or for matters not visible, accessible or present on the subject property during any site works conducted during the time of the work. Each report should be read in full. No responsibility is accepted for use of any part of a report in any other context, for any other purpose, or by third parties. Opinions and judgments expressed in any report are based on the Company's understanding of current regulatory standards and should not be construed as legal opinions.

17.11 Waiver

The Client releases and indemnifies the Company in respect of any Claims arising from:

- 17.11.1 alleged damage to building surfaces caused by the Services;
- 17.11.2 additional costs for specialised access requirements or isolations required for the investigation, and
- 17.11.3 Hazardous building materials are in areas not accessed or accessible by the Company.

17.12 Marketing

The Client hereby authorises the use of their name and business logo on the company websites and any relevant marketing collateral. The Client agrees to provide a text statement (recommendation or review) of their experience working with the Company. The Company is hereby authorised to use the review or recommendation on the company websites and any relevant marketing collateral. The Client, with adequate notice, agrees to be nominated to act as a referee for the Company to aid with obtaining new work with new Clients.



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