

Daisy Chain - Terms & Conditions of Trade

1. Definitions

- 1.1 "Consultant" shall mean Daisy Chain Consulting Limited (New Zealand registered company with identified number 8149904) and its successors and assignees.
- 1.2 "Customer" shall mean the client or any person acting on behalf of and with the authority of the client.
- 1.3 "Guarantor" means that person (or persons), or entity that guarantees payment of all moneys due and owing to the Consultant under this agreement, whose liability shall be that of the principal debtor.
- 1.4 "Goods" shall have the same meaning as in section 119 of the Contract and Commercial Law Act 2017 and are goods supplied by the Consultant to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined).
- 1.5 "Green Washing", "Green Hushing" and or "Green Wishing" means different approaches to environmental claims any person, business or organisation. Green Washing occurs when any person or other misleads consumers whether directly or indirectly by exaggerating or falsely promoting their environmental practices or sustainability initiatives to appear eco-friendly. Green Hushing refers to businesses and or other individuals deliberately under-communicating or concealing their environmental efforts. Green Wishing involves making overly optimistic or aspirational claims about sustainability goals without coherent plans or practical steps to achieve them.
- 1.6 "Terms of Engagement" shall mean the Consultant's letter to the Customer outlining the proposal of Goods and Services, costs, terms and conditions that are legally binding on the Consultant and the Customer.
- 1.7 "Services" shall mean all services supplied by the Consultant to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined vide supra).
- 1.8 "Price" shall mean the cost of Goods and Services as agreed between the Consultant and the Customer subject to clause 5 of this agreement.

2. Application of Terms and Conditions

- 2.1 The Terms and Conditions contained herein shall apply to all agreements made between the Customer and the Consultant. Unless otherwise agreed in writing, these Conditions shall apply to the exclusion of any other terms and conditions.
- 2.2 The Customer acknowledges that none of the Consultant's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Consultant in writing and the Consultant is not bound by any such unauthorised statements.

3. Liability of Customer and Guarantor

- 3.1 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 3.2 In consideration of the Consultant providing the Customer with Goods and Services the Guarantor unconditionally guarantees payment of all moneys due and owing to the Consultant under this agreement.
- 3.3 Any instructions received by the Consultant for the supply of Goods and/or Services, and/or the Customer's acceptance to delivery information requested by the Consultant shall constitute acceptance of the terms and conditions contained herein.

4. Consultant to provide Goods and Services

- 4.1 The Consultant shall provide Goods and Services in respect of the advice specified in the quote vide supra ("the advice") together with such other incidental services as the Consultant may consider necessary for the proper performance of the advice, and such other goods and services as may be agreed between the parties.
- 4.2 The Goods and/or Services are as described on the invoices, quotation, work authorisation or any other work commencement forms as provided by the Consultant to the Customer.
- 4.3 The Customer agrees that the Consultant is only responsible for the provision of Services as agreed between them. The Consultant will provide the following tailored solutions to the Consultant:
 - (a) Develop customised initiatives to align with the Customer's environmental and sustainable business plan;
 - (b) Provide customised audits to align with contracts and report back to the Customer to enhance their business awareness;
 - (c) Assist the Customer with the implementation of eco-friendly practices that promote responsible stewardship of our planet;
 - (d) Assist the Customer with their compliance of ISO14001;
 - (e) Data collection for decision making;
 - (f) Updating sustainability gap analysis and developing roadmaps for improvement; and
 - (g) Providing training in environmental awareness to the Customer's employees to foster a culture of sustainability within their organisation.

5. Price And Payment

- 5.1 The Price (costs of the Goods and Service provided pursuant to this agreement) shall be paid by the Customer to the Consultant within 7 days of the date of the Consultant's invoice without deduction or setoff.
- 5.2 At the Consultants sole discretion the Price shall be either:
 - (a) As indicated on invoices provided by the Consultant to the Customer in respect of the Goods and Services supplied; or
 - (b) The Consultant's current price at the date of delivery of the Goods and/or Services according to the Consultants current Price outlined in the Consultant's Terms of Engagement to the Customer; or
 - (c) Subject to clause 5.3, be the Consultants quoted Price, which shall be binding upon the Consultant provided that the Customer shall accept in writing the Consultants quotation within seven (7) days of the date of the quote.
- 5.3 Any variation from the plan of scheduled advice or information supplied by the Customer to the Consultant will be charged for on the basis of the Consultant's quotation and will be shown as extras on the invoice. Payment for all extras must be made in full.
- 5.4 At the Consultant's sole discretion, a deposit may be required. The deposit amount or percentage of the Price will be stipulated at the Consultant's discretion time and shall become immediately due and payable as a part payment of the Price.
- 5.5 Time for payment for the Goods and Services shall be of the essence and will be stated on the invoice, quotation, or any other forms. If no time is stated,

then payment shall be within (7) seven calendar days of the date of the of the Consultant's invoice.

- 5.6 Payment shall be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Customer and the Consultant.

- 5.7 The Price shall be increased by the amount of any GST and other taxes and duties, which may be applicable, except to the extent that such taxes are expressly included in any quotation given by the Consultant.

6. Default & Consequences Of Default

- 6.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 4% compounding per calendar month and shall accrue at such a rate after as well as before any judgement.
- 6.2 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Consultant from and against all of the Consultant's costs and disbursements including on a solicitor and own client basis and in addition all of the Consultant's nominee's costs of collection.
- 6.3 Without prejudice to any other remedies the Consultant may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Consultant may suspend (including but not limited to withholding or delaying the preparation or issuance of materials, information and or any reports whatsoever) or terminate the supply of Goods and Services to the Customer and any of its other obligations under the terms and conditions. The Consultant will not be liable to the Customer for any loss or damage the Customer suffers because the Consultant exercised its rights under this clause.
- 6.4 If any account remains unpaid at the end of the second month after supply of the Goods or services, an immediate amount of the greater of \$20.00 or 10% of the amount overdue shall be levied for administration fees which sum shall become immediately due and payable in addition to the interest payable under clause 6.1 hereof.
- 6.5 In the event that:
 - (a) any money payable to the Consultant becomes overdue, or in the Consultant's opinion the Customer will be unable to meet its payments as they fall due, or;
 - (b) the Customer 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;
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer, then without prejudice to the Consultant's other remedies at law:
 - (i) the Consultant shall be entitled to cancel all or any part of any Goods and Services of the Customer which remains unperformed in addition to and without prejudice to any other remedies; and
 - (ii) all amounts owing to the Consultant shall, whether or not due for payment, immediately become due and payable.

7. Delivery of Goods and Services

- 7.1 Delivery of the Goods and Services shall be made to the Customer's nominated address (whether a physical address is nominated or delivered verbally and or transmitted through email or some other virtual correspondence).
- 7.2 Delivery of the Goods and Services to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 7.3 The Consultant shall not be liable for any loss or damage whatsoever due to failure by the Consultant to deliver the Goods and Services (or any of them) promptly or at all.
- 7.4 The Consultant shall not be liable for any loss or damage whatsoever in relation to and or in connection with electronic instructions, communication, website used and or relied upon by the Customer.

8. Personal Property Securities Act 1999

- 8.1 The Customer acknowledges and agrees that:
 - (a) These terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) A security interest is taken in all Goods previously supplied by the Consultant to the Customer (if any) and all Goods that will be supplied in the future by the Consultant to the Customer during the continuance of the parties' relationship.
- 8.2 The Customer undertakes to:
 - (a) 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 Consultant may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, the Consultant for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
 - (c) not register a financing change statement or a change demand without the prior written consent of the Consultant;
 - (d) give the Consultant not less than fourteen (14) days prior written notice of any proposed change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice); and
 - (e) immediately advise the Consultant of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 8.3 The Consultant and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to this agreement.
- 8.4 The Customer waives its rights as a debtor under sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 8.5 Unless otherwise agreed to in writing by the Consultant, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 8.6 The Customer unconditionally ratifies any actions taken by the Consultant under and by virtue of the power of attorney given by the Customer to the Consultant under clauses 8.1 to 8.5.

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9. Cancellation

- 9.1 The Consultant may cancel these terms and conditions or cancel delivery of Goods and Services at any time by giving written notice. The Consultant shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 9.2 At the Consultants sole discretion, the Customer may cancel delivery of Goods and/or Services. In the event that the Customer cancels delivery of Goods and/or Services the Customer shall be liable for any costs incurred by the Consultant up to the time of cancellation.

10. Privacy Act 1993

- 10.1 The Customer and the Guarantor/s (if separate to the Customer) authorises the Consultant to collect, retain and use any information about the Customer, for the purpose of assessing the Customers creditworthiness or marketing any Goods and Services provided by the Consultant to any other party.
- 10.2 The Customer authorises the Consultant to disclose any information obtained to any person for the purposes set out in clause 10.1.
- 10.3 Where the Customer is a natural person the authorities under (clause 10.1 & 10.2) are authorities or consents for the purposes of the Privacy Act 1993.

11. Customers Disclaimer

- 11.1 The Customer hereby disclaims any right to rescind, or cancel the agreement or to sue for damages or to claim restitution arising out of any misrepresentation made to him, her or them or by any servant or agent of the Consultant and the Customer acknowledges that he, she or they purchases the Goods relying solely upon his, her or their own skill and judgement and that the Consultant shall not be bound by nor responsible for any term, condition, representation or warranty other than the warranty given by the Manufacturer which warranty shall be personal to the Customer and shall not be transferable to any subsequent Customer.
- 11.2 The Consultant shall be entitled to rely on the accuracy of any plans, specifications, and other information provided by the Customer. The Customer acknowledges and agrees that in the event that such information provided by the Customer or the Customer's agent and/or third party contracted with the Customer is inaccurate then the Consultant shall not be responsible for any losses, damages, or costs (however arising) that the Customer suffers out of the use of the inaccurate plans, specifications, or other information.
- 11.3 The Consultant shall accept no responsibility for Services undertaken by any third party Consultant employed and or contracted by the Customer and/or the Consultant. If the Customer believes that they have any claim in relation to Services undertaken by that third party, then said claim must be made against the third party Consultant in the first instance.
- 11.4 Where the Consultant gives advice to the Customer that may provide the Customer with options to invest or purchase other goods and services, the Customer acknowledges and agrees to not hold the Consultant liable and or responsible for any decision to invest or any purchase of any goods and services that may incur costs, damages and or liability whatsoever. For avoidance of doubt, the Customer agrees that the Consultant shall not be liable for any claims, demands, losses, damages, costs and expenses however caused or arising should the Customer decide to proceed with any products or options recommended by the Consultant.
- 11.5 The Customer acknowledges that any products or goods recommended may vary in, representation, colour, texture, shade, surface, and finish, and may fade or change colour over time, and or may be found by professionals to be Green Washing, Green Hushing and or Green Washing. While every effort will be taken by the Consultant, the Consultant shall not be liable for any loss, damages or costs however arising resulting from any variation of any products or goods advised and or recommended to the Customer.

12. Intellectual Property

- 12.1 Where the Consultant designed, drawn or written advice, reports, statements, and any other material for the Customer, then the copyright in those designs and drawings and documents shall remain vested in the Consultant, and shall only be used by the Customer at the Consultant's discretion.
- 12.2 The Customer warrants that all designs, drawings, documents, materials or instructions (whether given or received by a third party) to the Consultant will not cause the Consultant to infringe any patent, registered design, or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Consultant against any action taken by a third party against the Consultant in respect of any such infringement.
- 12.3 The Customer agrees that the Consultant may use any documents, designs, drawings, Services or Goods, carried out, supplied, delivered, or created by the Consultant for the purposes of advertising, sale, marketing, or entry into any competition.
- 12.4 For Avoidance of doubt these intellectual property provisions will continue to apply after termination of this agreement and regardless of any dispute.

13. Frustration of Contract

- 13.1 The Customer agrees that in the event of a frustration of contract pursuant to the Contract and Commercial Law Act 2017, the frustration of contract will only apply to the extent that the contract has been frustrated by way of default by the Consultant if the Services agreed between the Customer has not been provided to you within sixty (60) days from the date you sign our Terms of Engagement. However, this agreement will not be deemed to be frustrated by the Consultant if through no fault of the Consultant there is frustration of contract whether by force majeure, pandemic, epidemic, national or international restrictions imposed on trade, acts of sabotage, war, terrorism and/or any other event affecting the supply of services by the Consultant beyond its reasonable control.
- 13.2 In the event the agreement can be deemed frustrated by the Consultant pursuant to this clause, then it will refund any sums paid by the Customer which it holds and which has not been released to the Customer before the completion of the Consultant's services except for reasonable deductions for costs and expenses incurred and interim work carried out by the Consultant to the Customer's nominated New Zealand bank account.
- 13.3 The Customer agrees in the first instance to resolve any dispute in good faith by agreement with the Consultant by way of mediation.
- 13.4 In the event that any dispute in relation to the agreement of these terms and conditions but not limited to a frustration of contract claim has not been resolved by agreement or through mediation within thirty (30) days of the dispute being raised by either party, the Customer agrees that the dispute will be resolved by way of arbitration in accordance with the Arbitration Act 1996.

- 13.5 If an arbitrator is unable to be agreed by either party, then an arbitrator shall be appointed upon request by either party, by the president or vice president of the New Zealand Law Association. That appointment shall be binding on all parties to the arbitration and shall be subject to no appeal.

14. Confidentiality

- 14.1 Except in the property performance under this agreement, the Customer will not use or disclose to anyone Confidential Information which belongs to or concerns the Consultant, any of its clients, employees, suppliers, affiliates, and or contractors.
- 14.2 For the purposes of this agreement Confidential Information means all information which is not in the public domain and which is reasonably regarded by the Consultant as confidential to it, which the Customer becomes aware of in the course of their engagement with the Consultant including, but not limited to financial affairs, confidential business and technical information, correspondence and letters of advice (however comprised), recommendations and suggestions, business methods and management systems, detailed information and records relating to the Goods and Services and or products/services advised, know-hot not generally known to the public, strategic information relating to marketing, advertising or any other aspect of business, trade secrets, and or any information or material relating to the Consultant or any related party of the Consultant in connection with this agreement and the Goods and Services.
- 14.3 The Customer agrees that the Customer will hold all Confidential Information in confidence and will not without the written consent of the Consultant directly or indirectly at any time during the term of this agreement or following its termination for any reason use any Confidential Information, disclose any Confidential Information to any person, business, company or organisation, copy any material containing Confidential Information for personal use or use by any other unauthorised person, business, company or organisation other than to the extent necessary for the Customer to properly carry out the Customer's obligations under this agreement or as required by law.
- 14.4 The Customer agrees not to, directly or indirectly, engage in any conduct or make any statements (whether verbal and or in writing) that may disparage, denigrate, or negatively portray the Consultant or the Consultant's Goods and Services or the Consultant's agents to any of the Consultant's clients, employees, contractors, or any other person, business or organisation, and or damage the Consultant's business, reputation, goodwill or standing in the industry to any client, person, business or organisation. This provision will apply and survive the agreement in the event of termination regardless of any dispute.
- 14.5 For avoidance of doubt these confidentiality provisions will continue to apply after termination of this agreement and regardless of any dispute.
- 15. General**
- 15.1 If any provision of these terms and conditions shall be invalid, void, or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced, or impaired.
- 15.2 All Goods and Services supplied by the Consultant are subject to the laws of New Zealand and are subject to the jurisdiction in Auckland, New Zealand, and the Consultant takes no responsibility for changes in the law that affect the Goods or Services supplied.
- 15.3 The Consultant shall be under no liability whatsoever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Consultant of these terms and conditions.
- 15.4 In the event of any breach of this agreement by the Consultant the remedies of the Customer shall be limited to damages. Under no circumstances shall the liability of the Consultant exceed the Price of the Goods and or Services.
- 15.5 Neither party shall be liable for any default due to any act of God, terrorism, war, strike, lock out, industrial action, flood, storm, or other event beyond the reasonable control of either party.
- 15.6 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Consultant nor to withhold payment of any invoice because any part of that invoice or invoices is/are in dispute.
- 15.7 The Consultant may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 15.8 The Consultant reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the Consultant notifies the Customer of such change.
- 15.9 The failure by the Consultant to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Consultant's right to subsequently enforce that provision.
- 15.10 If any term in this agreement conflicts with the Terms of Engagement, the provisions in this agreement ("the Terms and Conditions") shall prevail and be legally binding on the Consultant and the Customer.