



## Terms of Service v1.8

Last updated 19/3/2021

Please note that these Terms of Service may be updated at any point by Nailed It Safety Solutions Ltd or its Officers. Please check back regularly via the link that sent you here for the latest updates.

By choosing to proceed with engaging the services of Nailed It Safety Solutions, you agree to be bound by these conditions.

Terms used in this document

The Consultant, Us, We etc; Nailed It Safety Solutions Limited

The Client, you etc; the company who is engaging Nailed It Safety Solutions Limited.

### 1. DOCUMENTATION –

*Health and Safety Policies, documents etc.*

#### **1.1. Grant of License.**

Upon payment of any applicable fees, the Consultant grants to The Client, in accordance with the terms and conditions of this Agreement, a non-exclusive, non-transferrable license to use the Work in the course of its business and for its own internal business purposes, and for no other purpose whatsoever without the express written permission of the Licensor. The Client may copy, modify, update, and edit the Work in accordance with the terms of this Agreement, solely for its own internal business purposes. The Consultant may terminate any license granted to The Client immediately by notice in writing if The Client is in breach of this Agreement and such breach is not remedied within ten (10) days of notification from The Consultant of the said breach. Upon termination of any such license, The Client shall cease using the Work and destroy such copies (and all associated documentation) as may be in its possession.

The Client shall not sell, grant sub-licenses or distribute the Work in any way without the prior express written approval of Consultant.

The Client hereby accepts such license and agrees that The Client shall not use the Work except in accordance with the terms and conditions of this Agreement. The Client acknowledges and agrees that the license granted herein is non-exclusive and that The Consultant may license others to use the Work.

#### **1.2. Ownership of the work.**

The Client acknowledges that The Consultant is the sole and exclusive owner of the Work and of all associated intellectual property rights. The Client shall do nothing inconsistent with such ownership. The Client acknowledges that there is no transfer of title or ownership of any intellectual property rights in the Work to the Client. The Client further agrees that it will not claim ownership rights to the Work, or any derivative, compilation, sequel or series, or related Work owned by or used by Consultant. The Client agrees that nothing in this Agreement shall give The Client any right, title, or interest in the Work other than the right to use the same in accordance with the terms of this Agreement. The Client admits the validity of all the Consultant's copyright in the Work and all other intellectual property rights, and acknowledges that any and all rights that might be acquired by The Client because of its use of the Work shall inure to the sole benefit of Consultant.

## 2. ONGOING SERVICES, PACKAGES ETC

### 2.1. Third Party Services

The Client understands that any third-party services that form part of this agreement are provided by an independent third party and any agreements, terms and conditions, or contracts are between the Client and this third party.

- Payment for any third-party Services used as part of this package deal is separate from this agreement, and the Client understands that this is between them and the 3<sup>rd</sup> party.
- The Client understands that use of the 3<sup>rd</sup> party service, including cancellation and terms is bound by the third-party service's own agreements, terms and conditions, or contracts.
- The Client understands that primary software/service support for any 3<sup>rd</sup> party services will remain with the third party, even if the Consultant offers support for any services as part of his regular offerings.

### 2.2. Substitution of Services

- Where mutually agreed by both parties, the Consultant may substitute stated services for other services. For example, if the Client and Consultant agree, the Consultant may temporarily undertake Contractor vetting work in place of auditing.

### 2.3. Partial Works

- No refunds shall be given on units of work completed; instead both parties are to work towards a mutually agreeable arrangement. For example, if agreed services are not all completed in one month, these services may be moved to a different month by mutual understanding and the standard monthly fee invoiced.
- As a general rule, this does not apply to extra work completed. Work done extra to the scope for any given month will be invoiced in addition and not deducted from any following months workload.

## 3. PAYMENTS

All prices exclude GST Unless specified otherwise.

### 3.1. Payment timing:

- Reoccurring monthly charges shall be invoiced on the final Friday of each month.
- Once off Health and Safety Systems must be paid in full prior to commencement
- All other services shall be invoiced on delivery. Progress payments may be requested / negotiated on larger projects.

#### If paying by Credit Card

- Talk to your HS Advisor who will send you a simple link to pay by credit card. We can also process payments over the phone.
- Credit Card transactions are handled securely by Swipe HQ and encrypted. Nailed It Safety does not store your credit card information in any form.
- Reoccurring, monthly Credit Card transactions take effect on the date that you sign up and occur every 30 days until cancellation.
- There is no surcharge for credit card payments.
- Payments will show on your statement as from NAILED IT SAFETY SOLUTIONS LIMITED (possibly abbreviated)

#### If paying by invoice

- For monthly packages, **invoices are due 7 days after invoice date.**
- Invoices are payable by direct credit or alternatively you can pay by credit card – simply click the link provided in the Xero portal.

- Invoices more than 7 days overdue may attract administration fees – refer: 3.4 Overdue Accounts.

### **3.2.Excluded in all Pricing unless specifically mentioned.**

- Any work done for subcontractors/suppliers of the Client including, but not limited to Consultancy advice specific to their business, test and tag services etc.
- Subscription or application fees to services that the Client requires, for example (but not limited to) BWARE, SiteWise, or IMPAC Pre-Qual, unless specifically mentioned within the applicable quote.
- Any subcontracted work such as asbestos testing and removal etc Should you instruct us to carry out any such work, this will be treated as additional work and be billed at the rates applicable at the time. Any subcontracted work will be billed to the client at cost+ clients bank overdraft rates +5% management fee.
- Any of the Consultant's own documentation, templates, policies and procedures, unless specifically specified above.
- Any incident investigations (*TWCs that require an investigation ie, anything beyond a 9 on the risk-matrix*), documenting, or reporting, including liaising with authorities or other experts.
- Any other services not included within the relevant proposal / quote.

Any work not covered in this agreement will be invoiced at our standard rate of \$120 per hour unless otherwise agreed.

The Consultant may provide the Client with notice of any work that includes additional fees, as well as an estimate of costs. Prices are subject to change without notice.

### **3.3.Travel**

Unless otherwise included in the attached Quote / Proposal, travel will be invoiced at the rate of .77c per KM.

### **3.4.Overdue Accounts**

The Consultant *reserves the right* to charge an overdue invoice fee for invoices more than 7 days overdue. This includes a \$50 administration fee (per invoice) for the first month and then an overdue fee. This fee is set at: consultants bank overdraft rates +5% interest fee on the outstanding balance *per month (chargeable on the final Friday of each month)*. Any collection costs incurred by the Consultant in pursuing these debts shall be the responsibility of the Client.

## **4. TERMS OF ENGAGEMENT**

The Client engages the Consultant to provide the Services described above and the Consultant agrees to perform the Services for the remuneration provided above. Both Parties agree to be bound by the provision of the Short Form Model Conditions of Engagement (overleaf), including clauses 2, 3, 9 and 10 and any variations noted and initialed by both parties.

Once signed, this agreement, together with the conditions overleaf and any attachments, will replace all or any oral agreement previously reached between the Parties.

We (the consultant) will take all precautions within our agreed scope of works in 1 to ensure your job sites and company's compliance with the standards set in the Health and Safety at Work Act 2015, and industry best practice Health and Safety guidelines. However, Nailed It Safety Solutions Limited will not be held responsible for any fines or costs relating to fines, penalties, or damages arising from injury to personal or property, in the event that these situations arise. You (the client) understand that many duties under the Health and Safety at Work Act cannot be contracted out to a 3<sup>rd</sup> party, and the ultimate responsibility for compliance rests with you. The Client will not withhold information from the Consultant that may affect his judgement or cause him to give incorrect advice.

## 5. REFUNDS AND CANCELLATION

- This agreement will continue until cancellation by either party. Either party may cancel by notifying the other in writing, with 3 months' notice.
- If the Client's account with the Consultant is more than 3 months overdue, then the Consultant may cancel this agreement at his discretion by providing 7 days' notice to the Client. Outstanding amounts may be referred to debt collection.
- Once-off portions of this agreement, such as documentation, continue to apply until mutual termination by both parties.
- Cancellation of ongoing services does not negate the portions of this agreement that address previously completed work such as documentation.
- No partial refunds will be given by the Consultant for termination part-way through the month.
- Any requested refunds are given at the sole discretion of the Consultant. We will honour our legal obligations under the Fair Trading Act and/or any other relevant legislation.

## 6. MISCELLANEOUS

- The Consultant shall perform the Services as described in the attached documents.
- In providing the Services the Consultant shall exercise the degree of skill, care and diligence normally expected of a competent professional.
- The Client shall provide to the Consultant, free of cost, as soon as practicable following any request for information, all information in his or her power to obtain which may relate to the Services. The Consultant shall not, without the Client's prior consent, use information provided by the Client for purposes unrelated to the Services. In providing the information to the Consultant, the Client shall ensure compliance with the Copyright Act 1994 and shall identify any proprietary rights that any other person may have in any information provided.
- The Client may order variations to the Services in writing or may request the Consultant to submit proposals for variation to the Services. Where the Consultant considers a direction from the Client or any other circumstance is a Variation the Consultant shall notify the Client as soon as practicable.
- The Client shall pay the Consultant for the Services the fees and expenses at the times and in the manner set out in the attached documents. Where this Agreement has been entered by an agent (or a person purporting to act as agent) on behalf of the Client, the agent and Client shall be jointly and severally liable for payment of all fees and expenses due to the Consultant under this Agreement.
- All amounts payable by the Client shall be paid as above. Late payment shall constitute a default, and the Client shall pay default interest on overdue amounts from the date payment falls due to the date of payment at the rate of the Consultant's overdraft rate plus 5% and in addition the costs of any actions taken by the Consultant to recover the debt.
- Where Services are carried out on a time charge basis, the Consultant may purchase such incidental goods and/or Services as are reasonably required for the Consultant to perform the Services. The cost of obtaining such incidental goods and/or Services shall be payable by the Client. The Consultant shall maintain records which clearly identify time and expenses incurred.
- Where the Consultant breaches this Agreement, the Consultant is liable to the Client for reasonably foreseeable claims, damages, liabilities), losses or expenses caused directly by the breach. The Consultant shall not be liable to the Client under this Agreement for the Client's indirect, consequential or special loss, or loss of profit, however arising, whether under contract, in tort or otherwise.
- The maximum aggregate amount payable, whether in contract, tort or otherwise, in relation to claims, damages, liabilities, losses or expenses, shall be five times the fee (exclusive of GST and disbursements) with a maximum limit of \$NZ500,000.
- Without limiting any defences a Party may have under the Limitation Act 2010, neither Party shall be considered liable for any loss or damage resulting from any occurrence unless a claim is formally made on a Party within 6 years from completion of the Services.
- The Consultant shall take out and maintain for the duration of the Services a policy of Professional Indemnity insurance for the amount of liability under clause 11. The Consultant undertakes to use all reasonable endeavours to maintain a similar policy of insurance for 1 year after the completion of the Services.
- If either Party is found liable to the other (whether in contract, tort or otherwise), and the claiming Party and/or a Third Party has contributed to the loss or damage, the liable Party shall only be liable to the proportional extent of its own contribution.

- The Consultant has not and will not assume any obligation as an Officer or otherwise which may be imposed upon the Client from time to time pursuant to the Health and Safety at Work Act 2015 ("the Act") arising out of this engagement. The Consultant and Client agree that in terms of the Act, the Consultant will not be the person who controls the place of work.
- The Client may suspend all or part of the Services by notice to the Consultant who shall immediately make arrangements to stop the Services and minimise further expenditure. The Client and the Consultant may (in the event the other Party is in material default) terminate the Agreement by notice to the other Party. Suspension or termination shall not prejudice or affect the accrued rights or claims and liabilities of the Parties.
- Where 3rd Party products and services are used as part of the agreed scope of works, the Consultant is not responsible for the availability of these services. Where these services are unavailable to the client, this shall not constitute a breach of contract. Both parties shall negotiate the appropriate alterations to price/services on a case-by-case basis.
- The Parties shall attempt in good faith to settle any dispute by mediation.
- This Agreement is governed by the New Zealand law, the New Zealand courts have jurisdiction in respect of this Agreement, and all amounts are payable in New Zealand dollars.