

TERMS AND CONDITIONS

1. Agreement

1.1 These standard terms of engagement (**Terms of Engagement**) will apply to our engagement with you and the services we provide to you (**Services**). If we have agreed other terms of engagement with you in writing (either generally or in relation to a particular matter), those other terms of engagement will apply instead of these Terms of Engagement. You accept and agree to these Terms of Engagement by continuing to engage our services.

1.2 In these Terms of Engagement (whether capitalised or not) "we", "our" "us" means Heritage Preservation and Field Support Solutions Limited ("HPFS") and "you" means our client identified as such through acceptance of the quote or estimate or as otherwise agreed by us. Where you are a company or other corporate or unincorporated entity, we act only for you and we do not act for your shareholders, directors, agents, members or any other person unless we expressly agree otherwise.

2. Scope of work and our role

2.1 In providing the Services, we agree to use the degree of skill, care and diligence reasonably expected of a professional conservator or consultant providing the Services.

2.2 On review of the project, we will communicate the scope of those Services to you. If you are expecting us, or would like us, to perform any services in addition to those we have recorded or described, it is important that you let us know.

2.3 If at any time during the performance of the Services, our Services fall behind an agreed programme of works, then we will notify you and, where due to matters within our reasonable control, shall take all practicable steps to remedy such delay.

2.4 Unless agreed in writing, neither party may vary the scope of Services. Where practicable, the impact on the cost, programme and completion date for the Services shall be agreed in writing prior to those varied services progressing.

2.5 Where the value of the varied services cannot practicably be agreed between the parties prior to the varied services commencing, the parties shall agree to a budget for the variation works that shall not be exceeded without further agreement between the parties.

2.6 When our Services are completed, or we give notice to you that our engagement is at an end, our engagement will end.

2.7 You acknowledge and agree nothing in these Terms of Engagement shall be construed as a guarantee or promise as to the success or desired effectiveness of any Services we provide to you.

2.8 Where a report is produced by us in preparation of the Services, you agree this is a conservation report and does not represent a curatorial or artistic opinion as to the nature, quality and authenticity of the object(s).

3. Duty of Independent Judgement

3.1 Where the Services require that we certify, decide or use discretion under a contract between you and an unrelated third party, we must act independently, and with professional skill and judgement, according to the terms of the contract between you and the third party.

3.2 Our duties are owed only to you. Unless we otherwise agree in writing or as required by law, those duties do not extend to others. If any other persons wish to rely upon our advice or our Services, they may do so only if both we and you agree in writing.

4. Sub-Consultants

4.1 You agree we may sub-contract the performance of the Services to a person or entity engaged by us to assist in the performance of the Services (**Sub-Consultant**). In such circumstances, we will appoint, direct and pay any Sub-Consultant and remain responsible to you for the Services of the Sub-Consultant. For clarity, the sub-contracting of any of the Services shall not relieve us from any liability or obligation we owe you under these Terms of Engagement.

4.2 If, for good reason, you decide that a Sub-Consultant is unsuitable, you can request we have another Sub-Consultant perform the Services. We will use reasonable endeavours to accommodate your request.

5. Other Consultants

5.1 Where the Services are performed alongside other consultants who you have engaged to carry out other consulting or advisory services related to the Services (not including a Sub-Consultant) (**Other Consultants**), you agree that we are not responsible for the services and/or work of Other Consultants.

6. Warranties

6.1 Where performance of the Services necessitates obtaining any permission from any third party, authority or stakeholder, you warrant that you have obtained such consent, authority or permission (including local iwi or hapu) and acknowledge that we rely upon this warranty in the performance of Services.

7. Confidentiality and Privacy

7.1 In performance of the Services we may collect and hold personal information concerning you. All information obtained and held by us will be held in compliance with the [Privacy Act 2020](#). You have the right of access to, and correction of, your personal information held by us.

7.2 Except to the extent provided by clause 6.4, or as otherwise prescribed by law, neither party may use or disclose any professional advice or other information of a sensitive nature, including all information about the parties, or their businesses, or their clients that is not already in the public domain (including personal information, as defined in [Privacy Act 2020](#)) obtained as a result of or in connection with the Services (**Confidential Information**) without the express written consent of the other party.

7.3 Information obtained as a result of acting for you may be disclosed where that information is not confidential or is a matter of public record.

7.4 If you are subject to the [Official Information Act 1982](#), the [Local Government Official Information and Meetings Act 1987](#) or the [Privacy Act 2020](#) then we acknowledge that, pursuant to those Acts, you may be required to release information about the Services. If either party is legally bound to disclose Confidential Information, that party must first advise the other party what information will be provided and limit the information to that required by the law.

8. Intellectual Property

8.1 All intellectual property, including all registered and unregistered rights in respect of copyright, designs, know how, trademarks or other proprietary information (including trade secrets), patents and other rights resulting from intellectual activity (including moral rights granted under Part 4 of the Copyright Act 1994 (**Intellectual Property Rights**), a party held prior to entry into these Terms of Engagement or developed by or for a third party independently of the Services (**Background IP**) remains the property of that party (as relevant).

8.2 Any Intellectual Property Rights created by or on behalf of one party or jointly by the parties through the performance of the Services (**Developed IP**), vests exclusively on its creation in the parties jointly. To the extent that is not possible, by accepting these Terms of Engagement, you assign to us all present and future rights you may have in the Developed IP, with effect from the date of its creation.

8.3 The parties hereby grant to the other an unrestricted royalty-free license in perpetuity to copy or use such Developed IP and each party is free to make whatever use they wish of the Developed IP without any obligation to obtain the other's consent or to account for any future benefits.

8.4 Your rights in relation to Developed IP or to any licence in respect of Background IP are conditional upon, on each occasion, you having paid all amounts due and payable to us in accordance with clause 9 and concerning the Services. Until such payment is made, the related deliverables in whatever medium the Developed IP consists of will remain the property of HPFS Solutions Limited.

8.5 You represent and warrant that any Background IP that is owned by you, or any third party and provided to or used by us, whether as incorporated in the Developed IP or Services, will not infringe any Intellectual Property Rights or other rights of any third party.

8.6 We accept no liability for use of any Developed IP other than to the extent reasonably required for the intended purposes relating to the Services.

9. Client Obligations

9.1 You must:

- i. co-operate with us and not obstruct the proper performance of the Services;
- ii. represent that you are the sole owner of object(s) or are the authorised agent of the owner;
- iii. allow us such reasonable access to the site and other locations associated with the Services;
- iv. provide, free of charge, such assistance and information we reasonably require and which is ancillary or inherently necessary to the proper performance of the Services; and
- v. accept responsibility for the accuracy of information provided to us including the provenance of object(s) and any prior restorations;
- vi. where applicable, promptly provide such consent or approval necessary for completion of a current stage, before commencing the next stage. If you have any concerns with the current stage, you must notify us of these in writing prior to giving approval for us to proceed to the next stage;
- vii. unless otherwise agreed, obtain and pay for all consents, certificates, approvals, authorities, licences and permits that are needed to lawfully carry out the Services;
- viii. pay for the Services in the manner prescribed by clause 9 below;
- ix. arrange and pay for the services provided by Other Consultants; and
- x. as soon as you become aware of anything that will materially affect the scope or timing of the Services, immediately notify us of the anticipated impact on the Services and the corrective action take to avoid or minimise the impact.

10. Payment Obligations

10.1 Unless we otherwise advise in writing, our Services are payable (without deduction or set-off) upon receipt of a valid invoice, by the 20th of the month following the month of issue of each GST Invoice, or as otherwise agreed between the parties.

- 10.2 Payment to us will not constitute approval of any part of the Services.
- 10.3 Where you, acting reasonably, dispute an invoice, or part of an invoice, you must promptly give the reasons for such dispute in sufficient detail to enable us to reasonably consider the merits of your dispute.
- 10.4 Where an invoice, or part of an invoice, is not paid as required by this clause 10.1, or any disputed amount that is not paid which is subsequently found to be payable, you must pay interest on the unpaid amount from due date to the date of actual payment at the rate of 5% per annum above the New Zealand 90-day bank bill rate, compounded monthly.
- 10.5 If an invoice is not paid by its due date, we reserve the right to:
- i. cease to do any further work for you, and keep your papers, files, resources or materials until all accounts are paid in full; and/or
 - ii. if necessary, to recover the costs of collection of any unpaid account.
- 10.6 If you fail to make any payment that is due and payable in accordance with this clause 9, and that default continues for five (5) working days, we may provide you with written notice specifying the default and requiring payment within five (5) working days from the date of the notice. Unless payment has been made by you in full, we may suspend performance of the Services any time after expiration of the notice period.
- 10.7 If, after the date of this agreement, the cost or duration of the Services alter because of changes or additions to any statute, regulation or by-law, or requirements of any authority that has jurisdiction over any part of the Services, the agreed changes to cost and duration of the Services will be treated as a variation and agreed between the parties.
- 11. Dispute**
- 11.1 If there is a dispute between the parties in relation to the Services, or any matter arising from it, the parties will meet in good faith and use their best endeavours to resolve the dispute themselves.
- 11.2 If the dispute cannot be resolved by the parties themselves within a reasonable time, then they must explore whether the dispute can be resolved by use of mediation or other alternative resolution technique.
- 11.3 If the dispute relates to a matter involving issues solely of a technical nature or any other dispute of a technical nature which the parties believe should be determined by a person independent of the parties who is suitably qualified and capable of making an expert determination (**Expert**), but which does not include matters of contract interpretation (**Technical Matter**), either party may refer the dispute to the determination of an Expert and cannot refer it to arbitration pursuant to clause 10.5 below.
- 11.4 The parties must agree upon the identity of the Expert to be appointed but, if they are unable to agree upon the identity of the Expert within 15 (fifteen) days of the dispute arising, either party may refer the matter to New Zealand Conservators of Cultural Materials who may nominate a suitably qualified person.
- 11.5 If any dispute related to a matter, that is not a Technical Matter, is not settled within a reasonable time, then either party may refer the dispute to arbitration by a sole arbitrator under the provisions of the [Arbitration Act 1996](#) and the substantive law of New Zealand. The arbitrator will be appointed by agreement between the parties within fifteen (15) working days of written notice of referral by the referring party to the other or, failing agreement, by the President of the [Arbitrators' and Mediators' Institute of New Zealand \(AMINZ\)](#) or its successor body, or any nominee of the President. In either case, the arbitrator must not be a person who has participated in any informal dispute resolution procedure in respect of the dispute.
- 11.6 No dispute arising gives either party the right to suspend their obligations under the Terms of Engagement.
- 12. Our fees**
- 12.1 Our fees will generally be agreed by you prior to performance of the Services. Despite this, should circumstances dictate that our Services require urgent performance, or you otherwise engage us to perform the Services without previously approving the rates, fees and expenses for the Services, you agree to pay such fair and reasonable fees as are recorded in our tax invoice issued pursuant to clause 9.
- 12.2 We may require you to pay some or all of our fees in advance, or to provide other security for our fees. In such circumstances, you authorise us to draw on any fees paid in advance immediately upon us issuing and sending an invoice to you or to hold fees paid in advance and apply them against our final invoice (and any unpaid invoices) in relation to the Services.
- 13. Materials**
- 13.1 Where we consider it ancillary to, or inherent and necessary to the proper performance of the Services to purchase or order goods, services, materials or equipment (**Materials**), where practicable, we agree to obtain your prior approval. In such circumstances, we may ask for payment for major Materials before those costs are incurred.
- 13.2 Despite clause 12.1, you agree to reimburse us such reasonable expenses that are necessarily incurred by us in the performance of the Services.
- 13.3 Where our Services require us to order in special supplies equivalent to or greater than the value of \$3,000 we will invoice on the 10th of each month requiring payment to be made on the 20th of the month.

14. Health and Safety

14.1 To the extent prescribed by the [Health and Safety at Work Act 2015 \(HSWA\)](#), we are responsible for health and safety issues relating to the provision of the Services and, to the extent required by the HSWA, will comply with any health and safety plan operated by the party or third party who manages or controls the workplace.

14.2 In complying with these duties, you agree we may, from time to time, need to consult, cooperate and coordinate certain activities with yourself and other relevant parties (including Sub-Consultants, contractors and visitors). In such circumstances, you agree:

- i. to raise any known health and safety issues with us; and
- ii. to work constructively and, to the extent reasonably practicable, cooperatively to coordinate the discharge of our respective duties.
- iii. for sites where there are multiple Other Consultants or suppliers providing services and works, to work with other PCBUs to determine who manages or controls the work place, and will collaborate and consult with them as appropriate.
- iv. to comply with our [Health and Safety Policy and Procedures](#).

14.3 Despite any provision to the contrary, we have not and will not assume any duty imposed on you pursuant to the HSWA in connection with the Services.

15. Limitation of liability

15.1 Unless we expressly agree with you in writing that this clause 15 does not apply to all or any of the Services, to the extent permitted by law our aggregate liability to you, whether in contract, equity, tort (including negligence) or otherwise, arising out of your engagement of us in relation to or in connection with (whether directly or indirectly) the Services is limited to the greatest of:

- i. the amount available to be paid out under any relevant insurance held by us from time to time; and
- ii. up to the amount equal to one times the fee applicable to the Services (or any series of related Services).

15.2 You agree to release us from all claims arising out of or in connection with our Services to the extent that our liability to you would otherwise exceed the amount recorded at clause 15.1.

15.3 Each of the above limits of liability shall be effective notwithstanding that one or more others is ineffective or unenforceable for any reason.

15.4 Where a claim is made and 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.

15.5 No party is liable to the other in connection with this agreement (including for negligence) for, and no party may claim, any indirect, remote or consequential type losses.

16. Insurance

16.1 We will maintain with a major insurance company carrying on general insurance business in New Zealand such insurances required by New Zealand laws and which are prudent to cover the risks inherent in the Services.

16.2 Without limitation, such insurances include professional indemnity insurance with a limit of indemnity of \$5,000,000 for any one claim and in the aggregate.

16.3 You agree to provide evidence of insurance for any object(s), artwork(s) or taonga prior to the commencement of our Services. If you fail to obtain or maintain any insurance policy, we reserve the right to repudiate this agreement.

17. Force Majeure

17.1 Notwithstanding any other provision in this agreement, we will not be in default under this agreement if our failure to perform our Services arise due to a Force Majeure Event or event that is beyond our reasonable control.

18. Electronic communications

18.1 Unless otherwise agreed with you, we will communicate with you and others at times by electronic means. These communications can be subject to interference or interception or contain viruses or other defects (**Corruption**). We do not accept responsibility and will not be liable for any damage or loss (direct or indirect) caused in connection with the Corruption of an electronic communication.

18.2 If you have any doubts about the authenticity of any communication or document purportedly sent by us, whether electronically or otherwise, please contact us immediately.

19. Public Statements

19.1 Neither party will:

- i. make any public or media statements to anyone about the Services, without the other party's express written consent;
- ii. act in manner that damages the brand, reputation or goodwill of the other.

20. Files and documents

20.1 Upon termination or expiry of this agreement, you acknowledge and agree we are entitled to retain the files we establish and any documents you provide to us, subject to applicable law, for at least six years after completion of the Services. In the interests of storage space and costs, we may then destroy the files and documents (except documents which we have agreed to keep in long-term safe custody).

21. Termination

21.1 Either party may terminate this agreement by giving no less than 20 days written notice of that fact to us. Upon receipt of written notice terminating the engagement, we will cease performance of the Services.

21.2 We may also terminate this agreement if you are in default or breach of any warranty, and, in the case of a default that is capable of remedy, fail to remedy that default within a reasonable period specified by us in writing (not being less than ten (10) days).

21.3 The enforceability of these Terms of Engagement is not affected by termination. You must pay us for all fees and expenses (including costs of Materials) in relation to our provision of Services up to the date of termination and including the costs of recovery together with interest.

22. General

22.1 These standard terms of engagement and any other agreement we have with you are governed by New Zealand law and are subject to the exclusive jurisdiction of the New Zealand Courts. These standard terms of engagement may be changed by us at any time or times in the future. We will publish such changed terms on our website and each change will bind you in respect of any matters or work in respect of which we accept instructions from you after the publication of the change on our website.

22.2 Where you are in trade, the Services are acquired in trade and it is fair and reasonable under [section 43 of the Consumer Guarantees Act 1993](#) or [section 5D of the Fair Trading Act 1986](#) (as applicable), the parties agree that in connection with the Services and this agreement:

- i. they will be bound by this clause 21.2, and
- ii. the provisions of the [Consumer Guarantees Act 1993](#) will not apply; and
- iii. [Section 9](#) (misleading conduct), [section 12A](#) (unsubstantiated representations) and [section 13](#) (false or misleading representations) of the [Fair Trading Act 1986](#) will not apply to either party's conduct or representations if unintentional.

22.3 Upon request, the parties shall review and discuss the progress of the Services, as agreed from time to time, or as reasonably requested.

22.4 Subject to the obligations prescribed by clause 9, neither party will be liable to the other for any failure to fulfil obligations caused by circumstances outside its reasonable control.

22.5 You may not assign, transfer or subcontract all or part of your rights or obligations under this agreement without our prior written approval, such approval shall not be unreasonably withheld.

22.6 The provisions of clauses 6, 7, 9, 13, 14, 18 shall continue in effect after termination of the agreement.

22.7 Any waiver given by either party in connection with this agreement is binding only if it is in writing, and then strictly in accordance with the terms on which it is given.

22.8 Each provision of this agreement is severable and independent. If all or any part of a provision of these Terms of Engagement is invalid or unenforceable in any jurisdiction, that part or provision will be deemed to be severed for the purposes of that jurisdiction and will not affect the validity or enforceability of the remaining provisions or that provision in any other jurisdiction.

22.9 Nothing in this agreement is to be construed as evidence of a partnership between the parties.

22.10 Where there is a reference to any monetary amounts such amounts are to be calculated on the GST exclusive basis.

22.11 This agreement records the entire agreement between the parties with respect to the Services. It supersedes all prior (or other) agreements, contracts, obligations, representations, conduct and understandings the parties had or may have had in relation to the same subject matter.

22.12 No amendment to this Agreement shall be effective unless it is agreed in writing by both Parties.