

## **LDE Terms of Engagement**

1. It is confirmed these terms are the standard terms and conditions between LDE and the Client unless otherwise agreed in writing between LDE and the Client.
2. In this Agreement, unless the context otherwise requires:
  - (a) References to any legislation or any provision of any legislation shall include any modification or re-enactment of, or any legislative provision substituted for, and all legislation and statutory instruments issued under such legislation or such provision;
  - (b) Words denoting individuals shall include body corporates and unincorporated associations and vice versa;
  - (c) Words denoting any gender shall include all genders;
  - (d) Any reference to a person shall be deemed to include that person's personal representatives;
  - (e) An agreement, covenant or undertaking on the part of or in favour of two or more persons binds or is for the benefit of them severally;
  - (f) References to clauses and schedules are references to clauses and schedules in these Terms;
  - (g) The following definitions apply:

"Agreement" means the agreement between LDE and the Client entered into under which LDE is to provide the Services to the Client. The usual form of this agreement is a proposal document authored by LDE, signed by the Client and returned to LDE.

"Business Day" means a day (other than a Saturday, Sunday, or Public Holiday) in Auckland between 9:00 a.m. and 5:00 p.m.

"Charges" means all amounts payable by the Client to LDE following clause 4.

"Client" means the party recorded in the Agreement. Where there is more than one client, it refers to each Client jointly and severally. The client also includes all agents, consultants, and permitted assigns of the Client.

"Debts" means all Charges, Subcontractor Services, Debt Recovery Expenses, and costs whatsoever payable by the Client to LDE.

"Debt Recovery Expenses" means any costs incurred by LDE arising from or relating to the recovery of Debts, including but not limited to legal costs on a solicitor-client basis, attendance by LDE management staff, administrators or engineers at their usual hourly rate, and any disbursements incurred in recovering Debts.

"Due Date" means the date for payment of the Charges specified in the invoice issued by LDE. If no such date is specified, the Due Date is seven working days after the invoice date.

"LDE" means LDE Limited and its employees and permitted assigns undertaking the Services.

"LDE Standard Rates" means rates published at [www.lde.co.nz/standard-rates](http://www.lde.co.nz/standard-rates), updated yearly.

"Materials" includes but is not limited to all intellectual property, copyright and ownership of all data, information, drawings, specifications, reports, and any other documents or information obtained, derived and prepared by LDE while providing the Services.

"Objection Time" means the close of business five working days after LDE grants notice to the Client that it requires Variation(s) to the Services.

"Project Address" means the project address, being the address specified in the Services.

"Services" means the services described in the Agreement.

"Subcontractor Services" means Services carried out by subcontractors on instruction from the Client or in providing the Services.

"Subcontractor Services Charge" means the cost of the Subcontractor Services plus a minimum additional charge as defined in LDE Standard rates for Subcontractor Services costs unless otherwise specified in the Agreement.

"Terms" means these terms of engagement.

"Variation" means variations to the Services following clause 17 and any updates in deliverables required due to design iterations by any party other than LDE.

### **Undertake and Pay for Services**

3. LDE shall undertake and perform the Services described in the Agreement.
4. The Client shall pay LDE for the Services, including all Debt Recovery Expenses, as invoiced. All amounts payable by the Client are due for payment on delivery of an invoice from LDE to the Client by the Due Date. Late payments shall constitute a default. In the event of default, the Client shall be liable for: Default interest of 2% per month, on all overdue amounts from the Due Date, including any Debt Recovery Expenses.
5. LDE reserves the right to issue progress invoices for works undertaken as the project progresses. LDE may require payment for all outstanding invoices, including the final invoice, before issuing the Materials.
6. Where the Services are carried out, on instruction from the Client or as provided in the Services, LDE may purchase such Subcontractor Services, being incidental goods and/or services, as are reasonably required for LDE to perform the Services. Alternatively, the Client may engage the subcontractor directly. The cost of obtaining such Subcontractor Services shall be payable by the Client as a Subcontractor Services Charge, of the Subcontractor Services costs. LDE shall maintain records to identify the Subcontractor Services costs, including time and expenses incurred, copies of which shall be available to the Client on request and calculations provided for all Subcontractor Services Charges. LDE has no liability whatsoever to the Client concerning the Subcontractor Services.
7. LDE prepares the Services for the sole use and benefit of the Client and for a specific purpose(s), each as expressly stated in the Services. No other party may rely on the Services without the prior written consent of LDE. LDE undertakes no duty and accepts no responsibility to any third party who may act based on the Materials or the Services under the Agreement. If LDE acts on

information, or omission, provided by the Client and/or a third party contracted by the Client in preparing the Materials or delivering the Services, the Client indemnifies LDE from all loss, damages or liability. Subject to conditions specified by LDE in writing, the Client may only transmit, reproduce or disseminate the Materials in their entirety.

#### **New Zealand Laws**

8. The laws of New Zealand govern these Terms. The New Zealand Courts have jurisdiction over these Terms, and all amounts are payable in New Zealand dollars only.
9. LDE and the Client will be aware of and comply with any relevant obligations imposed on them under the Health and Safety at Work Act 2015. LDE has not and will not assume any duty imposed on the Client from time to time pursuant to the Health and Safety at Work Act 2015 arising from this Agreement.
10. The Client and LDE agree that where all, or any of, the Services are acquired for a business or commercial gain, the provisions of the Consumer Guarantees Act 1993 are excluded from those Services.
11. These Terms shall apply to any party that signs the Agreement electronically, subject to the provisions of the Contract and Commercial Law Act 2017, and shall be bound in all respects and capacities by the Terms as if the Terms and Agreement were signed in its original form.
12. Where the nature of the Services is such that it is covered by the Construction Contracts Act 2002 (CCA) and LDE has issued a payment claim that has been served following the CCA, the provisions of the CCA shall apply. In all other cases, if the Client, acting reasonably, disputes an invoice, or part of an invoice, the Client must give the reasons for withholding the disputed amount and pay any undisputed amount on or before the Due Date.

#### **Clients Obligations**

13. The Client shall provide, at no cost, to LDE all information in its control, possession or power as soon as practicable following any request for such information concerning the Services and/or the Project Address and owner of the Project Address. In providing the information to LDE, the Client shall ensure compliance with the Copyright Act 1994 and identify any proprietary rights that any other person may have in any of the information provided by the Client.
14. The Client will be responsible for securing access to or making the Project Address available for testing, inspection and any other matters LDE considers reasonable and appropriate from time to time and at all reasonable times, including, but not limited to: notification of any people associated with the Project Address that are relevant to the Services; for providing information regarding any possible further services to the site at the Project Address; and obtaining all rights of entry, services information and consents (other than those provided by LDE under the Agreement), to enable completion of the Services.
15. The Client will inform LDE as soon as practical of any unforeseen changes, new developments, or other issues that impact and influence the Services and provide LDE with all information relating to the same, be it in the direct or indirect control of LDE, so that LDE may inspect, consider and adjust the Services appropriately and seek a variation to the Services which will be conducted in the same way as any LDE Variations under clause 17.
16. The Client warrants that all information provided to LDE is accurate, complete, and up-to-date. LDE shall not be liable for any errors, omissions, or delays resulting from inaccurate or incomplete information provided by the Client. Any additional work required due to inaccuracies shall be treated as a variation and charged at LDE's standard rates.

#### **Variations**

17. Where LDE considers a direction from the Client or any other circumstance is a Variation, LDE shall notify the Client as soon as practicable in writing of the proposed Variation ("LDE Variation"). Any LDE Variation shall not form part of the terms of the Agreement until the LDE Variation is recorded and approved in writing by the Client (electronic approval is acceptable, subject to the requirements of the Electronic Transactions Act 2002) or where the Client does not submit an objection in writing to the LDE Variation within the Objection Time, and LDE in good faith undertakes the LDE Variation to meet the project deadlines. In this case, LDE may deem the LDE Variation accepted, and LDE is authorised to proceed with the Services, which shall include LDE Variations. Notwithstanding the above, LDE reserves the right to request the Client to sign or formally acknowledge the LDE Variation, even after the Objection Time has expired. Such a request shall not waive or limit LDE's rights to rely on the expiry of the Objection Time or to deem the LDE Variation accepted per this clause. Variations and other work not included in the Agreement will be charged at LDE's standard rates.

#### **Intellectual Property**

18. The Client agrees that LDE may use non-confidential information related to the Project for case studies and marketing. All private information, including Address and Client details, will be excluded unless the Client consents in writing. LDE agrees to remove or amend any material should the Client request in writing. The use of the Project information does not imply the Client's endorsement of LDE's services.
19. LDE shall retain ownership of all Materials and rights whatsoever of such Materials, including but not limited to intellectual property, copyright and ownership of all data, information, drawings, specifications reports, and any other documents whatsoever obtained, derived and prepared by LDE in the course of the Services. Materials are not assigned to any person or entity and may not be distributed, operated or copied for any commercial purpose other than as defined in the Services, nor incorporated in any other work or publication, whether in hard copy, electronic or any other form without the prior written consent of LDE. The Client shall only be entitled to copies of the Materials for use in respect to the Services. The Client shall only obtain ownership of the Materials on payment by the Client in full of all Debts, including all Charges, Subcontractor Services Charges and costs, whatsoever, payable by the Client to LDE. The Client's Materials may be reproduced, such as drawings, specifications, and other documents in which the Client has ownership, as reasonably required in connection with the Services, but not otherwise in respect to the Materials, without the prior written consent of LDE, which may be withheld in its unfettered discretion.

20. The Client shall have no right to use the Materials if any Debts remain outstanding after the Due Date, and ownership of Materials shall remain with LDE. The Client shall be in breach of the Agreement.

### **Limitation of Liability**

21. The Services are provided based on the descriptions supplied by the Client, and LDE shall not be liable under any circumstances for any loss, damage, or claims arising from its reliance on such descriptions (or omissions) provided by the Client.
22. The Client indemnifies LDE from all liability for any damage or necessary correction of any damage to or reinstatement of any underground services, subsurface soil, rock, groundwater, surface water, buildings, surfaces, platform, structure and/or vegetation arising from the Services, which are all outside of the scope of the Agreement, and any remedy or reinstatement of the same required by the Client or LDE, shall all be additional cost to the Client from the amounts agreed to by the Client and LDE under the Agreement.
23. LDE's liability under this Agreement is strictly limited to the scope of services expressly agreed to and described in the Agreement or any subsequent variation approved following these Terms. LDE shall not be held liable for any claims, damages, losses, or expenses arising from matters outside the agreed scope of services, including but not limited to decisions, actions, or omissions taken by the Client or third parties based on LDE's deliverables or advice that are beyond the intended purpose or scope of the services provided. The Client acknowledges that LDE is not responsible for identifying or addressing issues outside the agreed scope of services unless expressly included in a written variation. Any reliance on LDE's work for purposes outside the agreed scope is entirely at the Client's risk.
24. The Client acknowledges that all reports, documents, and deliverables provided by LDE must be read and considered in their entirety. No reliance shall be placed on any individual section, summary, or page without considering the entire document and its context. LDE shall not be held liable for any misinterpretation, omission, or misuse of its reports, documents, or deliverables arising from the Client's failure to review the complete content provided.
25. If either Party is found liable to the other (whether in contract law, 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 contribution.
26. Where LDE breaches the Agreement, LDE is only liable to the Client for reasonably foreseeable claims, damages, liabilities, losses or expenses caused directly by the breach. LDE shall not be liable to the Client under the Agreement and/or these Terms for indirect, consequential, special loss, or loss of profit, however arising, whether under contract law, in tort or otherwise. For events or circumstances beyond LDE's reasonable control, the provisions of clause 48 (Force Majeure) shall apply in addition to the limitations set out in this clause.
27. LDE's liability under this Agreement shall not exceed the lesser of (a) five times the Charges (exclusive of GST and disbursements) up until the time of the liable event; or (b) the amount recoverable under LDE's Professional Indemnity insurance policy. This liability cap applies cumulatively to all claims, damages, and losses arising under or in connection with this Agreement.
28. The Client acknowledges that LDE currently holds a Professional Indemnity insurance policy for liability under Clause 27. LDE undertakes to use all reasonable endeavours to maintain a similar insurance policy for six years after the completion of the Services. However, the Client agrees that LDE's liability is limited to the extent of coverage provided by its Professional Indemnity insurance policy. LDE shall not be liable for any claims, damages, liabilities, losses, or expenses that are not covered or recoverable under the terms of its insurance policy for any reason, including but not limited to exclusions, policy limits, insurer insolvency, or exhaustion of the policy.
29. In any event, LDE's liability under this Agreement shall not exceed the lesser amount recoverable under its insurance policy or \$NZ250,000.
30. Without limiting any defences a party may have under the Limitation Act 2010, neither party shall be liable for any loss or damage resulting from any occurrence unless a claim is formally made on the other party within two years from the completion date of the Services.

### **Suspension and Termination**

31. The Client may suspend all or part of the services by providing written notice to LDE. Upon receiving such notice, LDE shall immediately halt the affected services and take reasonable steps to minimize further costs. LDE may suspend all or part of the services if the Client fails to approve a necessary variation when delivering the original scope of services without the variation is no longer feasible. LDE will provide written notice to the Client explaining why the variation is essential, such as a necessary consenting requirement. Or a Force Majeure (as per Clause 48) prevents LDE from performing its obligations under this Agreement.

If the Client instructs LDE to restart the Services, and LDE agrees to do so, upon resumption of suspended services, LDE may charge reasonable restart or re-mobilization fees and Adjust charges if market rates or project conditions have materially changed.

32. The Client may terminate all or part of the services by providing written notice to LDE. Upon receiving such notice, LDE shall immediately halt the affected services and take reasonable steps to minimize further costs.

LDE may terminate the Agreement with written notice if: a) The suspension of services exceeds 15 business days. b) The Client breaches its payment obligations under this Agreement. c) Force Majeure renders performance impossible or impracticable for more than 30 business days.

Either party may terminate the Agreement with written notice if: a) The other party commits a material breach that is not remedied within 15 business days of receiving notice. b) The Agreement becomes impossible to perform or frustrated, including but not limited to events covered under the Force Majeure clause.

In a dispute regarding the applicability of this clause, the matter shall be referred to arbitration following the clause 42.

33. Suspension or termination of the Agreement does not affect the rights, obligations, or liabilities accrued by either party up to the date of suspension or termination. Or LDE's entitlement to payment for all services provided up to the date of suspension or termination, including: a) Pro-rata charges for completed work, b) Costs incurred for subcontractor services already provided or committed. c) Downtime costs for staff awaiting reassignment, calculated at LDE's standard rates. LDE shall take reasonable steps to mitigate costs associated with suspension or termination. Suspension or termination does not waive any other remedies available to either party under this Agreement or in law.

## **Dispute Resolution**

34. The Parties shall attempt in good faith to settle any dispute themselves but failing that, all disputes between the parties under or in connection with this Agreement shall be resolved exclusively through arbitration following the Arbitration Act 1996. Arbitration shall be the sole mechanism for dispute resolution under this Agreement, except where expressly excluded by Clauses 35, 36 and 43.
35. In any claim involving multiple parties where LDE is named alongside other parties in legal proceedings, the Plaintiff shall be required to initiate separate arbitration proceedings against LDE. LDE shall not be joined in any court proceedings involving other parties unless LDE provides express written consent.
36. LDE shall enforce this arbitration requirement except where a court or arbitrator determines that enforcing arbitration would substantially prejudice LDE, or LDE agrees in writing to waive arbitration.
37. All arbitration proceedings shall remain confidential, and neither party shall disclose the existence, content, or outcome of such proceedings without prior written consent of the other party, except where disclosure is required by law.
38. Where the Plaintiff's claim against LDE is dismissed, withdrawn, or found to lack merit, the Plaintiff shall be liable for all reasonable arbitration costs incurred by LDE. These costs shall include: (a) Legal fees, including costs for external counsel, expert opinions, and evidence preparation; (b) Internal time costs charged at LDE's standard hourly rates; (c) Compensation for productivity losses or costs associated with mitigating stress, such as hiring additional staff; (d) Documented losses of client relationships, future business opportunities, or costs related to mitigating reputational damage; and (e) Punitive damages equal to 50% of total documented costs, reflecting the burden imposed by the Plaintiff's actions.
39. All costs and damages claimed under this clause shall be presumed reasonable unless the Plaintiff provides evidence to the contrary. LDE shall substantiate its claims with detailed documentation, including time records, invoices, and relevant evidence. These provisions apply to arbitration, court proceedings, or settlements, provided no liability is established against LDE.
40. LDE's arbitration and counterclaim rights shall operate jointly. If arbitration is waived, LDE retains the right to pursue counterclaims in any alternative forum. Recovery of costs shall not be subject to any fixed cap, provided such costs are reasonable and proportional to the harm caused.
41. This counterclaim provision does not apply to disputes governed by the Construction Contracts Act 2002. Payment claims under the Act must be addressed solely following its provisions. This clause does not suspend the Client's obligation to pay any amount claimed under the Act.
42. If a dispute arises between LDE and the Client regarding these Terms or the Agreement, the following process shall apply: (a) Either party may serve written notice specifying the nature of the dispute. The parties shall meet in good faith to resolve the dispute in person or virtually. (b) If unresolved within 10 Business Days, the dispute may be referred to arbitration unless: (i) The dispute involves multiple parties, in which case Clause 35 shall apply; or (ii) The dispute concerns matters excluded from arbitration under Clause 36. (c) If no arbitrator is agreed upon within 10 Business Days, the arbitrator shall be appointed by the President of the Arbitrators' and Mediators' Institute of New Zealand Inc upon application by either party. (d) Arbitration shall follow the Institute's Arbitration Protocol, using a single arbitrator, conducted in Auckland unless otherwise agreed. (e) The arbitrator's decision shall be binding on both parties.
43. Nothing shall restrict or limit either party's right to seek urgent injunctive relief from the Courts to prevent imminent harm; or to exercise rights under the Construction Contracts Act 2002, including adjudication.

## **Other**

44. The Client acknowledges that all engineering outputs prepared by LDE are developed according to best practices and the latest applicable standards, codes of practice, and guidelines endorsed by Standards New Zealand and Engineering New Zealand when the services are provided. Any disputes regarding the adequacy or accuracy of LDE's engineering outputs must be substantiated by an independent expert opinion from a qualified engineer, prepared following Engineering New Zealand's guidelines and other applicable regulatory standards.
45. The party signing the Agreement on behalf of the Client, in consideration of LDE entering into the Agreement with the Client, acknowledges and agrees they are entering into this contract in their personal capacity and on behalf of the Client. They further acknowledge and agree they are jointly and severally liable with the Client as a principal debtor to LDE and confirm they are authorised to bind the Client under these Terms. Where these Terms are entered into on behalf of the Client, the signatory shall be jointly and severally liable with the Client for all fees and expenses due to LDE, including Debt Recovery Expenses.
46. The Client and LDE each agree that they shall not, during the provision of the Services and for six months following either completion of the Services or termination of the Services or this Agreement, by either party, solicit or entice away from employment any employee of the other party who was involved in either the provision or receipt, of the Services.
47. The Client shall not assign any of its rights or obligations under the Agreement and/or these Terms without the prior written consent of LDE, such consent which shall not be unreasonably withheld. These terms remain in force notwithstanding any neglect, forbearance or delay in enforcement. LDE shall not be deemed to have waived any term or condition under this Agreement unless such waiver shall be in writing and signed by an LDE Director, and any such waiver shall apply only to the particular transaction defined in writing to which it refers.

48. LDE is not liable under the Agreement and Terms where an event occurs that impedes LDE's ability to provide the Services, including exceptional weather conditions, fire, earthquake or act of nature, war, strikes, riots, civil commotion, vandalism, nuclear explosion and/or fallout, pandemics, acts of government, and any event which is normally covered by a policy of general insurance and LDE may in its sole discretion cancel the Agreement if LDE deems such an event defined under this clause effects the terms of the Agreement to the extent that there is a material possibility the event may cause LDE material loss.
49. LDE and the Client agree to treat each other respectfully and professionally, including their respective staff, subcontractors, and representatives. Abusive, threatening, or harassing verbal, written, or physical behaviour is strictly prohibited.
50. The Terms and the Agreement, including the Services, provide the entire understanding and agreement relating to the matters dealt with between LDE and the Client. These Terms supersede all previous understandings or agreements (written, oral, or both), other than as provided by Variation.
51. Before engaging LDE and accepting the Agreement and these Terms, the Client acknowledges and confirms it has had sufficient time to consider the Terms and Services and to obtain all necessary advice, including but not limited to independent legal advice. If any provision of these Terms can be read in a way that makes it illegal, unenforceable or invalid, then that provision, or part thereof, is deemed to be severed from these Terms and shall not affect the validity or enforceability or any other provision.