

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, from time to time.
2. In this Agreement, unless the context otherwise requires:
 - (a) References to any legislation or to 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 9.00am and 5.00pm.

"Charges" means all amounts payable by the Client to LDE in accordance with clause 16.

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

"Client's Materials" means Client may reproduce drawings, specifications, and other documents in which the Client has ownership, as reasonably required in connection with the Services.

"Debts" means all Charges, Subcontractor Services, Debt Recovery Expenses, Charges and costs whatsoever payable by the Client to the 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" – Rates as published at 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.

"Mortgage" means any mortgage registered against the Property to secure the due payment of all monies payable by the Client to LDE under the Agreement.

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

"Property" means the subject property identified in the Services as provided in security for the Services and any additional, replacement or substitute property owned by the Client

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

"Services" means the services described in the Agreement.

"Subcontractor Services" means where the Services are carried out by subcontractors, on instruction from the Client or as provided in 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" mean these terms of engagement.

"Variation" means variations to the Services in accordance with clause 14 and any updates in deliverables required due to design iterations by any party other than LDE.

3. LDE shall undertake and perform the Services described in the Agreement.

4. This Agreement is conditional on LDE, in its sole and unfettered discretion, obtaining a satisfactory credit report on the Client. In the event the Client's credit report fails to be satisfactory, in the LDE's sole discretion, LDE may cancel this Agreement and no party shall have any right or claim against the other.
5. The Client agrees that LDE may use information related to the Project for case studies and marketing. The information used may include Project's objectives, processes, outcomes, and non-confidential data or images. Sensitive information will be excluded unless the Client consents in writing. LDE agrees to remove or make amendments to 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.
6. 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 in relation to those Services.
7. These Terms shall apply to any party that signs the Agreement electronically, subject to the provisions of the Electronic Transactions Act 2002, and shall be bound in all respects and capacities by the Terms as if the Terms and Agreement were signed in its original form.
8. The Client shall pay LDE for the Services (including all the Debt Recovery Expenses) when invoiced by LDE. Where these Terms have been entered into on behalf of the Client, the Client shall be jointly and severally liable for payment of all fees and expenses due to LDE for the Services, including but not limited to any Debt Recovery Expenses.
9. 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.
10. 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 as well as on behalf of the Client and further acknowledge and agree they are jointly and severally liable with the Client, as a principal debtor to LDE, and confirms they are authorised to bind the Client under these Terms.
11. The Client shall provide, and all at no cost, to LDE all information in its, his or her control, possession or power, as soon as practicable following any request for such information, in relation to 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 shall identify any proprietary rights that any other person may have in any of the information provided by the Client.
12. 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:
 - (a) notification of any people associated with the Project Address that are relevant to the Services;
 - (b) for providing information regarding any possible further services to the site at the Project Address; and
 - (c) obtaining all rights of entry, services information and consents (other than those provided by LDE under the Agreement), to enable completion of the Services.
13. The Client indemnifies LDE from all liability with respect to 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.
14. 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 to LDE in respect to the LDE Variation within the Objection Time and LDE in good faith undertakes the LDE Variation to meet the project deadlines, LDE may deem the LDE Variation accepted and LDE is authorised to proceed with the Services, which shall include LDE Variations. Variations and other work not included in the Agreement will be charged at LDE standard rates.
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 14.
16. 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 a default by the Client, the Client will be liable for any Debt Recovery Expenses incurred by LDE and LDE shall be entitled to invoice the Client for any Debt Recovery Expenses. The Client shall pay default interest of 2% per month, compounding daily on all overdue amounts from the Due Date, including any Debt Recovery Expenses invoiced to the Client.
17. If the Client initiates legal proceedings against LDE, and the resulting judgment is not substantially in the Client's favour, LDE shall be entitled to charge for time and attendance at its standard rates for all attendances in relation to the proceedings, and this shall be payable by the Client.
18. 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 which has been served in accordance with 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.

19. When the Client is in default according to Clause 16, the Client grants to LDE an agreement to mortgage the Property from the Client to LDE, to secure the amount owing. The Client shall, if required, execute in favour of LDE, the documents necessary to register the Mortgage in the standard and latest version of an All Obligations Auckland District Law Society form used from time to time, with such modifications as LDE, or LDE's solicitor, deem necessary, over the Property to secure the due payment of all the money payable by the Client to LDE under this Agreement, and pay all costs incurred by LDE in preparation, execution and registration of the Mortgage(s). In consideration of LDE entering into this Agreement and the Client granting LDE the right to Mortgage the Property, the Client hereby irrevocably nominates, constitutes and appoints LDE to be the true and lawful attorney for the Client to register the Mortgage, comply insofar as it affects the Property, including but not limited to doing all things and executing all documents, necessary to facilitate the registration of the Mortgage within a Landonline workspace and obtain the consent of any chargeholder, mortgagee, or other encumbrancee required for the execution or registration of the Mortgage.
20. 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 prior written consent of LDE. The Client shall only be entitled to copies of the Materials for use in respect to the Services only. 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.
21. 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, and pursuant to clause 30 of these terms, LDE is released from all liability or obligations under the Agreement and at the sole and unfettered discretion of LDE the Agreement may be terminated.
22. 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 provided by the Client.
23. 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 in reliance on the Materials or the Services under the Agreement. In the event LDE relies on information 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.
24. 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 clearly 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 in relation to the Subcontractor Services.
25. 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 the Client's indirect, consequential, special loss, or loss of profit, however arising, whether under contract law, in tort, or otherwise. The maximum aggregate amount payable, whether in contract law, tort or otherwise, in relation to claims, damages, liabilities, losses or expenses, shall be five times the Charges (exclusive of GST and disbursements) but in any event not greater than \$NZ250,000. 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 the other party to this Agreement within 2 years from the date of completion of the Services.
26. The Client acknowledges that LDE currently holds a Professional Indemnity insurance policy for liability under Clause.25 LDE undertakes to use all reasonable endeavours to maintain a similar insurance policy for six years after the completion of the Services.
27. 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 own contribution, and in any event, LDE's liability shall be limited to the amount specified in clause 25 of these Terms.
28. 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 out of this Agreement.
29. The Client may suspend all or part of the Services by notice in writing to LDE who shall immediately make arrangements to halt the Services and minimise any further expenditure charged to the Client. In the event the Client instructs LDE to restart

the Services, and LDE agrees to do so, LDE reserves the right to charge the Client reasonable re-start fees in addition to the Charges and update the Charges in the event there have been changes to pricing by LDE in the meantime.

30. If the suspension has not been lifted after 15 Business Days or the Client is in material breach of the Terms and/or Agreement LDE has the right to terminate the Agreement by notice in writing to the Client provided that Suspension or termination of the Agreement, or the Services, shall not prejudice or affect the parties' accrued rights or claims and liabilities and LDE shall be entitled to claim the following costs:
 - (a) Reasonable costs resulting from such termination, calculated based on the percentage of Services completed relative to the Charges; and
 - (b) LDE shall be entitled to charge the Client reasonable costs associated with any Subcontractor Services Charges and downtime for staff previously assigned to the project until they can be reassigned.
31. If either the Client or LDE considers that the Agreement has become impossible to perform or has been otherwise frustrated, one may notify the other that it considers the Agreement to be terminated. In the event of a dispute regarding the applicability of this clause, the matter shall be referred to arbitration in accordance with the clause 32.
32. If a dispute arises between LDE and the Client in relation to the Terms and/or the Agreement the following shall occur:
 - (a) One party may serve written notice on the other party specifying the nature of the dispute and the parties must meet in good faith in person or virtually to try and resolve the dispute;
 - (b) If the parties are unable to resolve the dispute within 10 Business Days, then either party may refer the dispute to arbitration and shall be conducted as follows;
 - (c) If the parties fail to agree on the identity of an arbitrator within 10 Business Days of the dispute becoming eligible for arbitration, the arbitrator will be appointed by the President of the Arbitrators' and Mediators' Institute of New Zealand Inc (Institute), upon the application of any party;
 - (d) The arbitration will be conducted in accordance with the Arbitration Protocol of the Institute, the tribunal of which will consist of one arbitrator. Unless agreed otherwise it will be held in Auckland;
 - (e) Pending final resolution of any Dispute, neither of the parties will make any press release, public announcement or statement concerning the subject matter of the Dispute to any person (except as expressly or by implication authorised in this Agreement); and
 - (f) The arbitrator's final decision shall be binding on both parties.
 - (g) This clause 32 does not restrict or limit the right of either party from:
 - (h) Taking immediate steps to obtain urgent injunctive relief from the Courts; or
 - (i) Exercising its rights under the Construction Contracts Act 2002, including the right to adjudication under the Construction Contracts Act 2002.
33. 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.
34. 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.
35. 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.
36. 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.
37. 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 (whether written, oral, or both), other than as provided by Variation.
38. 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 or 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.