

QUALIS 2020 LIMITED

TERMS AND CONDITIONS OF BUSINESS



This document sets out the Terms and Conditions upon which Qualis 2020 Limited will perform Services. Qualis 2020 Limited is a New Zealand company incorporated under the Companies Act, company number 8126502, NZBN 9429048656993.

1. DEFINITIONS

In these Terms and Conditions:

"Additional Services" means any work requested, (either orally or in writing) by you, that we agree to complete that is beyond the scope of any Project Brief, or where no Project Brief has been agreed to, any work performed by us for you;

"Agreement" means this agreement, which defines the terms and conditions under which we will perform the Services for you and where applicable will also include any Project Brief. Where these terms and conditions and the Project Brief conflict the terms of this agreement will prevail;

"Confidential Information" means all information relating to our or your business and includes information relating to our or your business operations, business strategies, marketing plans and technologies and the Services;

"Fees" means the charging arrangement set out in the Project Brief or where no specific charging arrangement is agreed, then such charges as reasonably determined by us in our professional opinion which account for:

- (a) the skill, specialised knowledge and responsibility required to complete the Services;
- (b) the importance of the matter to you and the result achieved;
- (c) the urgency and circumstances in which the business is transacted;
- (d) the complexity of the issue and difficulty or novelty of the project concerned;
- (e) the time expended on the work (recorded in minimum 30 minute intervals and rounded up to the nearest full hour) charged at hourly rates reflecting the experience and specialisation of staff involved;
- (f) the number and importance of the documents being prepared or perused;
- (g) the use of any proprietary tools, techniques or processes we use to complete the Services;
- (h) the costs usually charged in the industry for similar projects;
- (i) an allowance for administrative overheads;
- (j) a 50% premium on our usual fee or applicable charge where any request by you requires any Services to be delivered/started within one working day or less, or where work is specifically requested or required to be completed on or over a weekend, or where the work is required to be carried out in less than the required by RCA review timeframe; and
- (k) a 100% premium on our usual fee or applicable charge where work is specifically requested or required to be completed on or over a New Zealand Public Holiday, including regional public holidays based on where the specific staff member is primarily located.

"HSWA" means the Health and Safety at Work Act 2015, any regulations made under that Act, and any other similar law or regulation concerning work place health and safety;

"Project Brief" means an engagement proposal or other document (including email or other written communications) agreed between you and us that sets out the scope of works/services we will provide and (where applicable) the charging basis for the work/services we will undertake for you;

"RCA" means a Road Control Authority, as that term is defined in the Land Transport Act 1998;

"Services" means any work carried out in relation to any Project Brief or any Additional Services;

"Terms and Conditions" means these Qualis 2020 Limited Standard Terms and Conditions of Business;

"we", "us" or "our" means Qualis 2020 Limited;

"Working Day" means a day, excluding Saturdays, Sundays, statutory public holidays as they relate to Canterbury or any day in the period commencing 24 December and ending on 5 January (inclusive),

"you" or "your" means the Qualis 2020 Limited client the Project Brief is addressed to and to whom the Services are performed for, including any person or entity acting for or on behalf of the Client or with the permission or authority of the Client.

"Time not of the essence" means time is not of the essence in the performance of obligations under this Agreement (which the Terms and Conditions form part of) except in relation to performance of payment obligations

2. SERVICES

- 2.1. All rights, deliverables and obligations related to this Agreement commence from the date the Project Brief is formalised or in the case of Additional Services, the date we agreed to the Additional Services. For the purposes of clarification where a prepayment for Services is required, we reserve the right to not commence the Services until you have made that prepayment however the rights, deliverables and obligations related to this Agreement will be in effect from the date the Project Brief was signed or the Additional Services were agreed to.
- 2.2. You agree and understand that any Additional Services may incur additional Fees and alter the timeframe of any deliverables due in accordance with a Project Brief.
- 2.3. The person requesting work, including written and oral communication, for and on behalf of you warrants that he or she has authority to make this binding legal contract on your behalf. The person signing agrees to indemnify us against all losses and costs that may be incurred by us arising out of a court of competent jurisdiction finding that the person signing the agreement did not enjoy such authority at the date this agreement was made.
- 2.4. We will use reasonable endeavours to perform the Services in accordance with any agreed timeframes.
- 2.5. To enable us to perform the Services, you agree to provide us with any information, assistance, co-operation, and access to site location, designs, data, or anything that we may reasonably require from time to time to deliver our Service.
- 2.6. To the best of your knowledge, all information provided by you or on your behalf will be accurate and complete in all material respects. The provision of information to us will not infringe any copyright or other third-party rights.
- 2.7. We will rely on the information, assistance and co-operation made available to us and, unless we expressly agree otherwise, will have no responsibility to evaluate it or verify it.
- 2.8. Unless specified in the Project Brief only a final document will be provided, no draft or editable report will be issued. Where a draft is provided, you may not rely on that draft report, presentation, or communication. We may choose to, but shall not be required to, update any final report, presentation, or communication due to client requests or any new information or circumstances of which we become aware, or events occurring, after its delivery.

3. PAYMENT

- 3.1. All Fees and other sums due to us under the Agreement:
 - (a) are exclusive of any
 - (i) GST, where applicable, which will be payable by you to us in addition to the Fees;
 - (ii) RCA costs, which will be your responsibility to meet, or charged in addition to our Fees where we have agreed to meet those on your behalf;
 - (b) will be paid to the credit of a bank account to be designated in writing by us;
 - (c) will be paid without deduction or set-off of any kind;
 - (d) will be paid 30 days after the invoice is sent; and
 - (e) will be paid by the due date, failing which:
 - (i) we may charge interest on any outstanding amount on a daily basis at an annual rate equivalent to the standard commercial overdraft interest rate charged by our bankers plus 8%, from the due date until the date of actual payment; and

- (ii) if we incur any costs or expenses by reason of your failure to pay any amount required to be paid by you to us by the due date, you will reimburse us for all costs and expenses that we incur in connection with any actions or proceedings for recovery of such amounts, including all reasonable accounting costs, attorney costs (on a solicitor and own client basis), court costs and debt collection costs.
- 3.2. We may elect to suspend performance of the Services while any Fees or other amounts payable under the Agreement remain outstanding.
- 3.3. In addition to the Fees, you agree to pay for reasonable expenses and other charges (Disbursements) incurred by us on your behalf.
- 3.4. In regard to travel related costs, these will be charged to you at the appropriate per kilometre rate, as specified by the IRD at the time of travel.
- 3.5. Where our engagement with you is terminated prior to completion of the work we were engaged for, we reserve the right to charge you Fees in accordance with these Terms and Conditions for the work carried out up to the date of termination.

4. DISPUTE RESOLUTION

- 4.1. All disputes and differences between the parties to this agreement touching and concerning this agreement shall be referred to arbitration under a single arbitrator agreed upon by both parties, or failing agreement, by two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1996.

5. INTELLECTUAL PROPERTY RIGHTS

- 5.1. Subject to 5.2 we will own all copyright in all reports, summaries, documents, and other materials created by us specifically for you during the performance of the Services. We will retain ownership of such copyright, but you may use the materials on an exclusive, non-transferable, non-sub-licensable basis to use them solely for your internal business purposes upon payment by you in full of all Fees and other amounts payable under the Agreement.
- 5.2. Nothing in clause 5.1 will give you ownership of any copyright in any reports, summaries, documents, or other materials that are generic to our business, are precedents, are created for other clients or are not created by us (such as third party works, templates, pre-existing works and our library resources). If we provide such materials to you, we do so on the basis that you are licensed on a non-exclusive, non-transferable, non-sub-licensable basis to use them solely for your internal business purposes.
- 5.3. The document(s) created for you are done so specific for the original intended purpose and must not be modified, shared, or reused by you without specific written permission.

6. CONFIDENTIALITY

- 6.1. All Confidential Information will be maintained as secret and confidential by you and us respectively. Neither party may use or disclose the Confidential Information other than as necessary to enable us to perform the Services or comply with our obligations under the Agreement.
- 6.2. We owe the same obligation of confidentiality in clause 6.1 to others who are, or who have been, our clients. You accept that the provision of Services to you does not place us under any obligation to disclose to you, or use for your benefit, any confidential information that we have, or may obtain, in relation to any other client or prospective client.
- 6.3. We may use your name, brand and / or trademark publicly to identify you as a client, but we may refer to you in connection with Services only if, in doing so we do not disclose any of your Confidential Information, or it is a matter of public knowledge that we are providing them (or have provided them).
- 6.4. Our obligations of confidentiality under the Agreement will not apply where we use in our marketing materials any report, presentation or other work we have prepared for you provided that your identity and other sensitive information has been removed or obscured.

6.5. Our obligations of confidentiality under the Agreement will not apply to Confidential Information that:

- (a) was, before our receipt from you, in our possession;
- (b) is independently acquired or developed by us;
- (c) is subsequently disclosed to us by a third party who has not derived it from you;
- (d) is or becomes generally available to the public through no act or default of us; or
- (e) is required to be disclosed by law.

7. WARRANTY AND LIABILITY

7.1. We warrant that in performing the Services we will use reasonable skill and care.

7.2. Your sole remedy against us for any Services that do not comply with the warranty in clause 7.3 will be for us, at our option, to:

- (a) re-perform such Services to the standard required under the Agreement; or
- (b) refund the Fees paid by you for the relevant non-compliant Services.

7.3. You acknowledge and agree that the Services are undertaken for the purposes of a business and that the guarantees provided under the Consumer Guarantees Act 1993 do not apply.

7.4. You acknowledge that, except as expressly provided in these Terms and Conditions, we give no warranties or representations in relation to the Services, either express or implied, including but not limited to any implied warranties relating to quality, fitness for any particular purpose or ability to achieve a particular result.

7.5. During the course of performing the Services, we may express opinions or beliefs to you about the effectiveness of various courses of action or about the results that might be anticipated. Such statements are expressions of opinion only and will not constitute any promises or guarantees.

7.6. We will not assume any management responsibilities in connection with the Services. We will not be responsible for the use or implementation of the output of the Services.

7.7. The Services are provided to you, our client. We have no liability to any person other than you in relation to the Services.

7.8. To the fullest extent permitted by law, we accept no duty of care to any third party in connection with the provision of the Services.

7.9. You acknowledge that the Services are performed by Us, and that none of our officers, employees or affiliates will have any liability to you for any matter arising from the Services. This clause is inserted for the benefit of such officers, employees and affiliates and may be enforced by them against you.

7.10. In no event will we be liable (whether in contract, tort including negligence, or otherwise) to you for:

- (a) loss of revenue or profit, loss of anticipated savings, loss of goodwill or opportunity, loss of production, loss or corruption of data or wasted management or staff time; or
- (b) loss, damage, cost or expense of any kind whatsoever that is indirect, consequential, or of a special nature, arising directly or indirectly out of the Agreement.

7.11. If we are liable to you (or any others for whom the Services are provided) under this agreement or otherwise in connection with the Services, for loss or damage (including interest and costs) to which any other persons have also contributed, our liability to you shall be several, and not joint with such others, and shall be limited to our fair share of the total loss or damage which is agreed between us or ascribed to us by a court or tribunal of competent jurisdiction based on our contribution to the loss and damage relative to the others' contributions. No exclusion or limitation on

the liability of other responsible persons imposed or agreed at any time shall affect any assessment of our proportionate liability hereunder, nor shall settlement of or difficulty enforcing any claim, or the death, dissolution or insolvency of any such other responsible persons or their ceasing to be liable for the loss of damage or any portion thereof, affect any such assessment.

- 7.12. Our maximum liability to you arising out of any and all claims under the Agreement, or relating to the Services, will not in any circumstances exceed the Fees payable by you to us for the Services and actually paid before the date such liability first arose.
- 7.13. You may not bring any proceedings under the Agreement in relation to:
- (a) any act or omission of us; or
 - (b) any breach by us of the Agreement, more than 6 months following termination of the Agreement.
- 7.14. None of the exclusions or limitations set out in these Terms and Conditions will have the effect of limiting or excluding any form of liability where such liability cannot be so limited or excluded under applicable law.

8. HEALTH AND SAFETY

8.1. We will:

- (a) perform all our Services, and ensure any outputs from those Services, comply with the HSWA; and
- (b) consult, cooperate, and coordinate with you regarding our overlapping obligations under the HSWA to the extent reasonably required to ensure our respective compliance with the HSWA as it relates to, or affects, any greater project which the Services form a part of or contribute to.

8.2. You will:

- (a) Notify us promptly of any risk, safety issues or incidents that may arise or may have arisen in relation to your project that are relevant to our provision of Services;
- (b) Inform us of all applicable health and safety rules and regulations that may apply to your project;
- (c) Engage with us openly and in a timely manner regarding the nature of the project you are undertaking (to which the Services form a part or will contribute to); and
- (d) ensure that all safety measures you are responsible for have been taken to comply with all applicable health and safety laws.

8.3. We will not be responsible for any increased risk, or liability incurred (whether actual or contingent), due to:

- (a) you or any other party involved in the project for which the Services form a part of (including the principal, head contractor, or RCA):
 - (i) not following, adhering to, or deviating away from our recommendations, designs and/or directions conveyed by us in the delivery of our Services; and/or
 - (ii) failing to consult, cooperate in communicate, collaborate, and coordinate with us in delivering the Services; and/or
- (b) the full scope of the project we are engaged for not being fairly disclosed to us.

8.4. We may, in our absolute discretion, delay the performance of some or all of the Services or cancel this Agreement by notice in writing to you if in our reasonable opinion we believe the terms stated above have been breached and have not been rectified within a reasonable time.

9. TERMINATION

- 9.1. The Agreement will terminate when we have completed the Services, unless it is earlier terminated under clause 8.2. All Fees and other amounts payable under this Agreement will remain due and payable by you.
- 9.2. Subject to any specific terms set out in a Project Brief, either you or we may terminate the Agreement at any time and for any reason, by giving written notice to the other party.
- 9.3. Upon early termination of the Agreement:
- (a) we will stop performing the Services;
 - (b) for any Services calculated primarily on the amount of time spent performing the Services, we will invoice you for any Services performed but not yet invoiced as at the date of termination;
 - (c) for any Fees calculated on a fixed fee basis then:
 - (i) if you terminate the Agreement under clause 8.2, or you ask that we stop or suspend performing the Services, or if we terminate the Agreement because you breached clauses 2.5 or 2.6, we will be entitled to invoice you for the entire amount of the fixed fee not yet invoiced, and you will not be entitled to a refund of any amount of the fixed fee already paid by you;
- Or
- (ii) if we terminated the Agreement other than because you breached clauses 2.5 and 2.6, we will be entitled to invoice you for a proportion of the fixed fee not yet invoiced, such proportion to fairly reflect the amount of the Services actually performed, as reasonably determined by us;
 - (iii) we will invoice you for any expenses, disbursements and charges incurred but not yet invoiced as at the date of termination;
- (d) clauses 5, 6, 7, 8.3, 9 and any other clauses intended to survive termination will remain in full force and effect; and
 - (e) subject to this clause 8.3, and except for any accrued rights, neither party will be under any further obligation to the other party.

10. PRIVACY ACT 2020

- 10.1. With regards to individuals, as defined under the Privacy Act 2020, we may collect personal information from you, including information about your:
- (a) name
 - (b) contact information
 - (c) billing or purchase information
- 10.2. We will only collect your personal information in order to:
- (a) to perform the services offered
- 10.3. Besides our staff, we may share this information with:
- (a) 3rd party in order to necessary to perform our services.
- 10.4. Providing some information is optional. If you choose not to provide certain information, we may be unable to provide some or all of our services.

- 10.5. You also may decide to send Us personally identifying information, for example, in an electronic mail message containing a question or comment and we may use information from emails primarily to respond to your requests. We may forward your email to other employees who are better able to answer your questions. Any emails sent to us are recorded and forwarded to the relevant section. The sender's email address will remain visible to all staff tasked with dealing with the query. We may also use your email to contact you in the future about events or activities we believe may be of interest.
- 10.6. We do not collect personal data as part of automated decision making or profiling. Furthermore, we only use data that has been consciously provided by you, not data that has been derived or inferred.
- 10.7. We want to be very clear: We will not obtain personally identifying information about you when you visit our website (other than capturing your IP address when attempting to access our secure area) unless you choose to provide such information to us.
- 10.8. You have the right to ask for a copy of any personal information we hold about you, and to ask for it to be corrected if you think it is wrong. If you'd like to ask for a copy of your information, or to have it corrected, please contact us at hello@qualis.co.nz, or 0800 900 747, or PO Box 39132, Harewood, Christchurch, 8545.

11. GENERAL

- 11.1. We will not be liable to you for any breach or failure to perform any of our obligations under the Agreement where such breach or failure is caused by anything beyond our reasonable control, including (without limitation) war, civil commotion, hostility, act of terrorism, cyber-attack, network failures, strike, lockout, other industrial act, weather phenomena or other act of God, governmental regulation, or direction.
- 11.2. We may license or sub-contract all or any part of their rights and obligations without your consent.
- 11.3. No failure or delay by either you or us to exercise any right or remedy under the Agreement will be treated as a waiver of such right or remedy. No single or partial exercise of any right or remedy will prevent the further exercise of such right or remedy.
- 11.4. This Agreement contains the whole of the contract and understanding between you and us relating to the matters covered by it. It supersedes all prior representations, agreements, statements and understandings between you and us relating to those matters, whether verbal or in writing.
- 11.5. No addition to, amendment to, variation of this Agreement and no waiver or relaxation or suspension of any of the provisions or terms of this Agreement shall be of any force or effect unless in writing and signed by or on behalf of all the Parties. In particular no terms and/or conditions contained in any purchase order or other type document shall supersede these, unless in writing and signed by or on behalf of all the Parties.
- 11.6. We reserve the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which we notify you of such change.
- 11.7. New Zealand law governs the formation, validity, construction and performance of the Agreement. The Agreement is subject to the exclusive jurisdiction of the New Zealand courts, and the parties submit to that jurisdiction.
- 11.8. Any provision of this Agreement which is or becomes illegal or impossible under any jurisdiction shall not affect this Agreement other than to make such provision ineffective. The remaining parts of this Agreement shall remain in force and effect as if such provision or provisions held illegal or unenforceable had not been included.