
Terms of Business of Business Advisory Accounting & Tax Services Limited (BAS)

This document, together with the engagement letter, forms the contract between YOU and BAS. The terms defined in the engagement letter have the same meaning in these terms of business. Please read the terms of business carefully as they will place certain requirements and liabilities on you.

Introduction

These terms of business and the attached engagement letter together form the entire agreement ("the contract") between the New Zealand firm Business Advisory Accounting & Tax Services Ltd (BAS) and all addressees of the engagement letter. If there is any conflict between these terms and the engagement letter, the engagement letter will prevail. Unless otherwise agreed in writing, any further work we may carry out in connection with this service will be carried out as part of this contract.

1. Services

- 1.1 We will provide the services described in the engagement letter ("the services").
- 1.2 You are responsible for determining that the scope of the services is sufficient to meet your needs.
- 1.3 Unless specifically stated to the contrary in the engagement letter:
 - (i) we may allocate appropriate partners, staff and agents to perform the services and may replace any personnel named in the engagement letter with personnel of similar skills
 - (ii) timetabled dates are intended for planning and estimating purposes only and are not contractually binding;
 - (iii) the services do not involve an audit or examination conducted in accordance with New Zealand auditing standards and we will not express an opinion on any financial statements or information taken as a whole, nor provide any opinion on the achievability of prospective financial information;
 - (iv) we will rely on the information that you provide and will not verify that information;
 - (v) the services do not include the provision of legal advice or legal due diligence services;
 - (vi) if the services depend upon laws, regulations or interpretations by Government agencies, we are not responsible for any changes in those laws, regulations or interpretations (whether or not having retrospective effect) which occur after the date of our report and are not required to notify you of such changes;
 - (vii) the services are not designed to reveal fraud or misrepresentation. Accordingly, we do not accept responsibility for detecting fraud or misrepresentation whether by directors, management, staff or external parties;
 - (viii) we are not responsible for the work of any other person who you engage to perform work in conjunction with our services;
 - (ix) where the services are for appointment as Statutory Auditor, Receiver or Liquidator these have the meaning in statute law;
 - (x) where the words Examination, Compilation, Review, Opinion, Assurance or Agreed Upon Procedures are used to specify any services those words have the meanings assigned to them in professional standards of the New Zealand Institute of Chartered Accountants.

2. Client responsibilities

- 2.1 You agree that you will;
 - (i) co-operate with us to enable us to assist you by providing, in a timely fashion, all information, assistance and facilities that we require to enable us to provide the services;
 - (ii) be responsible for the accuracy and completeness of all data and information you provide and that it is true, accurate and not misleading;
 - (iii) ensure that the collection, retention and dissemination of information for the purposes of the services complies with the provisions of the Privacy Act 1993 and with any other legislation governing the use of information;
 - (iv) use the results of the services only for the purpose for which the services are provided;
 - (v) advise all of our personnel who visit your premises of what is required of them in relation to health and safety in relation to safety equipment, emergency evacuations, the reporting of accidents and hazards and to other matters.

3. Reliance on our work

- 3.1 You may rely on our final written report or other final product of the services only. Any oral comments or drafts of written reports or any other communications made prior to the final written report do not represent our final conclusions and should not be relied upon.
- 3.2 The services are intended for the addressee of the engagement letter only and should not be relied upon by management of, or advisers to, the addressee in their personal capacities.

4. Disclosure of our work

- 4.1 The services are provided for your use only and we accept no responsibility or liability to any other person.
- 4.2 You must not disclose any report or other information provided as part of the services to any other person without our prior written consent.
- 4.3 You must not use our name in connection with any prospectus, information memorandum or other offer or marketing document, whether public or private, without our prior written consent.

5. Fees, disbursements & tax refunds

- 5.1 Unless otherwise agreed, our fees are calculated on the basis of time spent and on the level of skill and responsibility involved in providing the services.
 - (i) in addition to our fees, we will charge disbursements that are necessary to effectively carry out "the services".
 - (ii) you also agree to pay reasonable professional fees and expenses, including legal fees and expenses, in complying with or challenging any legally enforceable notice or demand issued by a third party including any government department or any court or tribunal in relation to or in connection with the services.
- 5.2 Our invoices are due for payment upon receipt. If payment is not received within 14 days we reserve the right to suspend provision of the services, including (but not inclusive of) filing your tax returns. If you fail to settle your account within 14 days, your account will be debited with an administration fee of \$25.00 plus GST for each statement or reminder we send you (not exceeding 1 fee per 14 days). We will also charge interest on a cumulative basis any unpaid portion at the daily rate of 0.0546% from the date of the invoice.
- 5.3 It is our policy to commence legal proceedings if our fees remain unpaid after 28 days, unless an arrangement plan is approved by us. All costs (including without limitation debt collection fees and our solicitor's legal expenses) incurred by us in recovering or attempting to recover payment of any debt owed by you to us will be payable by you upon demand.
- 5.4 Any fee estimate is given in good faith but is not contractually binding.
- 5.5 In respect of any tax refunds due to YOU, YOU give BAS authority to receive any refund on my/our behalf and deposit them into BAS' Trust Account. YOU further authorise BAS to debit from such refunds any fees to prepare our/my tax return(s) and/or any outstanding fees and to pay the net balance of the refunds to me/us, either by direct credit into my/our bank account, or by cheque as per postal address supplied with the filing authorisation.

6. Liability limitation

- 6.1 Our liability for any loss or damage that you suffer caused by our breach of contract, tort (including negligence), breach of fiduciary duty or other actionable wrong of any kind shall be limited as follows;
 - (i) we shall have no liability for any consequential or indirect loss or loss of profit;
 - (ii) our liability will be reduced to take into account any contributory negligence on your part pursuant to the Contributory Negligence Act 1947;
 - (iii) in the event that more than one person caused or contributed towards your loss, our liability to you will be limited to the proportion of the loss that the Court would apportion to us under section 17 of the Law Reform Act 1936, based on an assessment of our degree of responsibility and the responsibility of the others who contributed to the loss (whether or not those other persons are able to meet any liability they may have);
 - (iv) notwithstanding the foregoing, our liability for loss shall in no circumstances exceed the amount of the fees paid (the liability cap) or such other amount specified as the liability cap in the engagement letter.

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- 6.2 Where there is more than one addressee to the engagement letter, the amount of our liability as derived from clause 6.1 above is a total limit to be allocated between addressees, such allocation being entirely a matter for the addressees, who will be under no obligation to inform us of it.
- 7. Time limit for claims**
- 7.1 No legal proceedings may be commenced later than 12 months after the date on which the party bringing the claim became aware or ought reasonably to have become aware of the facts giving rise to the claim.
- 7.2 In any event, no legal proceedings may be commenced more than 12 months after the date on which the facts giving rise to the claim occurred.
- 8. Indemnity**
- 8.1 To the maximum extent permitted by law, you agree to indemnify BAS, its partners and staff, and other BAS firms and their partners and staff, and to hold each harmless against any liabilities, losses, expenses and other costs reasonably incurred in connection with any claims made against them by any third party arising out of or in connection with the services.
- 8.2 This clause is for the benefit of the third parties referred to herein and they may enforce this clause under the Contracts (Privity) Act 1982.
- 9. Contract solely with BAS**
- 9.1 You agree that in relation to the services and the contract the client relationship is solely with BAS. Accordingly, you agree not to bring a claim of any nature against any partner, employee, contractor or sub-contractor of BAS or against any other member firm of the worldwide organisation of BAS firms.
- 9.2 This clause is for the benefit of the third parties referred to herein and they may enforce this clause under the Contracts (Privity) Act 1982.
- 10. Confidentiality**
- 10.1 Subject to any need to make disclosures required by law or professional ethical obligation, both parties agree that information or documents received by or provided to the other for the purposes of the contract and provision of the services, and which are marked confidential or are manifestly confidential (confidential information) will be treated as confidential, except if the information;
- (i) is or becomes generally available to the public other than by a breach of the obligations under the contract;
 - (ii) is known to the parties prior to entering into the contract, or
 - (iii) is received from a third party who owes no obligation of confidence in respect of the information.
- 10.2 You agree that BAS may disclose confidential information;
- (i) for the purpose of providing the services and on a "need to know" basis to our personnel (including contractors and sub contractors) and other BAS firms involved in the provision of the services, and to our insurers or legal advisors;
 - (ii) to the Practice Review Board of the Association of Chartered Certified Accountants (ACCA) or other professional accounting and tax bodies in relation to quality control reviews performed by that board;
 - (iii) once a completed transaction is no longer confidential, we may cite the performance of the services to clients and prospective clients as an indication of our experience.
- 11. Ownership and destruction of working papers**
- 11.1 The working papers that we produce in the course of performing the services are our property and we have no obligation to disclose our working papers to you or to any other person.
- 11.2 You acknowledge that we may, after a period of time, destroy our working papers, reports and other records relating to the services - including any of your documents that have come into our possession, in accordance with our standard procedures relating to document retention.
- 12. Intellectual property rights**
- 12.1 Intellectual property rights in all documentation, systems, materials, methodologies and processes (tools) brought to and utilised by BAS in relation to the services or created in the course of providing the services, and in all working papers and reports, remain vested in BAS.
- 12.2 Subject to the requirement to treat confidential information as confidential any spreadsheet, database, system, technique, methodology, idea, concept, information or know-how developed in the course of the contract may be used in any way we deem appropriate, including by or for our clients, without any obligation to account to you.
- 12.3 In the case of documentation or software prepared by BAS for you we may, on termination or completion of the contract, retain one copy of such information as a professional record or our involvement.
- 13. Other engagements**
- 13.1 Nothing in this contract prevents BAS from providing services to other clients provided that we take reasonable steps to ensure that each client's confidential information is not disclosed to other clients.
- 13.2 This contract is separate from other engagements that we may perform for you or for other clients and we have no obligations to utilise knowledge gained from such other engagements when performing the services under this contract.
- 13.3 By entering into this contract and providing the services, we do not assume a responsibility to you in relation to any reports or opinions that we may have provided under separate engagements, including statutory audit reports, or in relation to any other work that we may have performed for any other client, whether or not that client is the subject of the services.
- 14. Circumstances outside the Parties' control**
- 14.1 Neither party will be liable to the other for any failure to fulfil obligations cause by circumstances outside its reasonable control.
- 15. Assignment**
- 15.1 Neither party may assign, transfer, charge or otherwise deal with its rights or obligations under the contract without the prior written consent of the other party, except that each may transfer its respective rights and obligations to a partnership or legal entity authorised to take over all or part of its business.
- 16. Termination of Contract**
- 16.1 The contract may be terminated by either party by written notice.
- 16.2 You will pay BAS for all services provided up to the date of termination.
- 16.3 Where you terminate the contract before we have completed the services, you will pay any additional costs that we incur in connection with the early termination.
- 16.4 The provisions of the contract which expressly or by implication are intended to survive its termination or expiry will survive and continue to bind both parties.
- 17. Entire agreement**
- 17.1 The contract forms the entire agreement between the parties.
- 17.2 To the extent permissible by law all warranties, condition, representations and liabilities or terms other than those expressly stated are excluded.
- 17.3 If any term of the contract is held to be invalid the enforceability of the remainder of the contract will not be affected.
- 18. Resolving disputes**
- 18.1 The contract is governed by New Zealand law.
- 18.2 Should any dispute arise, the parties will attempt to resolve it in good faith by senior level negotiations (this may include mediation using the services of an agreed mediator).
- 18.3 If the dispute is not resolved through negotiation or mediation the New Zealand Courts will have exclusive jurisdiction over all claims that may arise out of or in connection with the contract.
- 18.4 Each party hereby irrevocably waives any claim that an action is brought in an inconvenient forum, or that the New Zealand Courts do not have jurisdiction.
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