



Terms and Conditions

1. INTERPRETATION.

1.1 In these Terms and Conditions, unless the context otherwise requires:

“**Client**” means the person or entity purchasing the Services and named in the Letter of Confirmation or elsewhere as agreed with the Designer (collectively referred to as “**you**” or “**your**”).

“**Designer**” means Alberny Interiors Limited (company number 8307621) (collectively referred to as “**we**”, “**us**” or “**our**”).

“**Letter of Confirmation**” means the letter provided by the Designer to the Client detailing the Services purchased by the Client, and includes these Terms.

“**Project**” means the overall design job which includes one or more Service as set out in the Letter of Confirmation.

“**Services**” means all interior design and consultation services provided by the Designer to the Client, the details of which are contained in the Letter of Confirmation or are otherwise agreed between the parties in writing from time to time.

“**Terms**” means these terms and conditions, which may be amended by the Designer in any manner at any time.

2. GENERAL.

2.1 These Terms apply to all present and after acquired Services provided by us.

2.2 You acknowledge that by purchasing the Services from us, that you have read, understood, and agree to be bound by the Terms. Unless otherwise agreed in writing, these Terms apply to all tenders, quotes, contracts, agreements and legal relations, between you and us.

3. PROVISION OF SERVICES

3.1 You may request variations to the Services. If we have provided an estimate for the Services, we will provide an updated estimate for such variation for your acceptance or rejection. All requests and responses must be in writing.

3.2 Where we require access to your premises to provide the Services, you shall grant to us and all of our employees and subcontractors unencumbered and unobstructed access to all areas of the premises and will at all times ensure that the premises, and the facilities at such premises, are safe and properly maintained.

3.3 If in our reasonable opinion we cannot provide the Services as a direct result of your failure to meet your obligations above, then you may be charged all of the fees, amounts payable and expenses incurred by us.

4. CLIENT RESPONSIBILITIES

4.1 In accepting these Terms, you acknowledge that you take full responsibility for all decisions regarding the Project.

4.2 You shall provide to us, as soon as practicable following any request for information, all information in your power to obtain which may be necessary for performance of the Services.

4.3 You shall comply with all of our reasonable requests in order to facilitate timely and efficient completion of the Project.

4.4 You shall solely be responsible for using all necessary skill and care in handling, storing, maintaining and using any products provided to you in connection with the Services. You acknowledge that in order for you to obtain the maximum benefit described from the use of the products, they must be used strictly in accordance with the instructions and directions provided.

5. CLIENT COMMUNICATION

5.1 Unless otherwise agreed in writing, we charge our standard hourly rate for time spent outside our scheduled meetings.

5.2 You warrant that you have full authority to engage us to provide the Services.

6. FEES AND PAYMENT TERMS

6.1 Our hourly rate is \$185 plus GST and disbursement. We reserve the right at our sole and absolute discretion to amend our hourly rate from time to time.

6.2 All estimates are valid for 30 days and are exclusive of disbursements, expenses and third party consultancy fees (if any). We reserve the right to withdraw or vary any estimate at any time before you accept the estimate.

6.3 Unless otherwise agreed to in writing, all fees, expenses and amounts payable by you to us exclude GST and shall be paid in the following manner:

(a) The cost of the initial 90-minute consultation is payable in advance;

(b) We shall then invoice you on a weekly basis for all fees, expenses and amounts rendered as at the date of the invoice in respect of the Services;

(c) All invoices shall be payable by you within 3 days of the date of the invoice; and

(d) In respect of fixed price packages, a deposit of 50% of the total package price is payable by you at the time of receipt of the Letter of Confirmation. We shall then issue weekly invoices for all fees, expenses and amounts rendered as at the date of the invoice in respect of the Services.

6.4 You must make all payments to us without delay, counter-claim, abatement, deduction or set off.

6.5 We may purchase such goods and incidental services as are reasonably required for us to perform the Services or upon your request. The cost of obtaining such goods and or services (including where applicable, any storage or delivery fees) shall be payable by you. We will maintain records which clearly identify time and expenses incurred. We will not be liable for any defects, faults or issues that arise in respect of such goods or services.

- 6.6 Orders for goods and services to be provided by a third-party supplier will be placed on receipt of payment. In any case, we must receive payment in full for the goods, services and delivery costs prior to shipment of the goods and services.
- 6.7 Goods and services provided by a third-party will be cancelled or refunded pursuant to the relevant third-party's policies in place (if any). We do not assume any liability if a third-party does not accept cancellations or refunds of goods and services.
- 6.8 A 2.9% credit card fee will automatically be added to all invoices when you choose a credit card payment option.
- 6.9 Late payment of all invoices shall constitute a default and will incur a 12% per annum default interest fee. You will be liable for any costs and expenses (including legal and debt collection costs) resulting from any actions taken by us to recover the debt and including all such expenses as are actually incurred by us.

7. CLAIMS

- 7.1 At the completion of the Project you will have 7 days (time being of the essence) to notify us in writing of any issues relating to the Services we provided. If you do not notify us in that time you shall be deemed to have accepted the Services we provided.
- 7.2 For Services, which we have agreed in writing that you are entitled to reject, our liability is limited to refunding you the price (or part of it) for the Services you have paid for, either (in our discretion):
- (a) In the form of account credit; or
 - (b) In cash.
- 7.3 In exercising our election from the above options you agree that all of our liability in respect of your claim is fully discharged.

8. THIRD PARTY GOODS AND SERVICES

- 8.1 We contract with various third party suppliers who in turn provide us with rebates on products and services ordered through those suppliers. We will at all times consult with you prior to placing an order for goods or services from those suppliers.
- 8.2 Any goods or services you receive from a third-party or agreement you enter into with a third-party in connection with the Project is independent from us and is for all intents and purposes entirely separate from your agreement with us and the Services we provide; this clause applies regardless if the third-party you engage is referred to you by us.
- 8.3 Where the goods or services have the benefit of a warranty from a third party manufacturer, we will, to the extent permitted by the third party manufacturer, pass the benefit of the warranty to you but we will not ourselves be liable under such warranty.
- 8.4 You shall at all times hold insurance policies to cover all such risks as may reasonably arise in connection with the provision of the Services including without limitation any damage that may be caused by any suppliers while carrying out the Services. We will not accept liability for loss caused by third-parties, and you will need to make any claims directly to the third-party concerned.
- 8.5 You indemnify us from and against any and all damages, claims, losses, demands, liabilities (including vicarious liability), injuries, suits, actions, judgments, costs and expenses of any kind whatsoever (including,

without limitation, legal fees, service costs and costs of recovering unpaid amounts) arising out of or in any way connected with the supply of goods and services by a third party.

9. TERMINATION OR SUSPENSION OF SERVICES

9.1 You may suspend or terminate all or part of the Services by written notice to us and on receipt of such notice we shall immediately make arrangements to stop the Services and minimise further expenditure.

9.2 You must pay us all fees, amounts payable and expenses incurred as at the date of suspension or termination in accordance with clause 6. We may also, at our sole discretion, request that you pay us for any reasonable expenditure as may be required to suspend or terminate all or part of the Services under clause 9.

9.3 In the event of the late payment of any fees, expenses or amounts payable by you, we may suspend all or part of the Services by written notice to you until such time as all overdue fees, expenses or amounts payable are paid by you in full.

9.4 We may terminate the engagement at any time by written notice to you.

9.5 Termination shall not prejudice or affect the accrued rights or claims of either party.

10. LIMITATION OF LIABILITY

10.1 Except as provided in the Consumer Guarantees Act 1993 (if applicable) or as expressly provided for under these Terms, all warranties, descriptions, representations or conditions as to fitness or suitability for any purpose, tolerance to any condition, merchantability or otherwise whether expressed or implied by law, trade, custom or otherwise are expressly excluded.

10.2 We are not liable for indirect or consequential loss or damage whatsoever arising under or in connection with these Term.

10.3 We will not be liable for any claim unless it is formally notified within one month of the completion of Services.

10.4 Our total liability arising under or in connection with these Terms is limited to the fees payable for the Services or \$5,000, whichever is the lesser amount in aggregate for all events (connected or unconnected) occurring in any 12 month period,

10.5 If we are found liable to you (whether in contract, tort or otherwise), and you or a third party has contributed to the loss or damage, we shall only be liable to the proportional extent of our own contribution.

10.6 Where the Services are acquired for the purpose of a business, the provisions of the Consumer Guarantees Act 1993 will not apply and are excluded from these Terms.

10.7 We will not be liable for any fixtures or fittings supplied by you.

10.8 We do not warrant against fading of any finishes or oxidation of any products. Variations in colour are inherent to some finishes and finishes may vary in tone, colour, and texture.

10.9 We will not be held responsible for any fabrics or materials that may stretch, shrink, or react to weather conditions or incorrect cleaning procedures.

11. CLIENT'S LIABILITY AND INDEMNITY

11.1 You indemnify us from and against all damages, claims, losses, demands, liabilities, injuries, suits, actions, judgments, costs and expenses of any kind (including, without limitation, legal fees, service costs and costs of recovering unpaid amounts) arising out of or in any way connected with your breach of these Terms.

12. INTELLECTUAL PROPERTY

- 12.1 All of the trademarks, patents, copyright or other intellectual property rights in respect of the Goods and Services remain our property notwithstanding the sale of the Services to you and you may not use, reverse engineer, remove, interfere with or alter them in any way. Materials owned by us (including rights of drawings, calculations, models, samples, descriptions, figures, dimension specification and the like, that are part of a tender or publication, remain with us and shall be at all times our property) may not be copied, reproduced, distributed, modified, published, uploaded, posted, or transmitted in any way without our prior written consent.

13. FORCE MAJEURE

- 13.1 We will not be liable for any breach of these Terms in the event of any unforeseen circumstances, being any failure, delay or breach caused by strike, industrial dispute or disturbances, natural disaster, shortage or unavailability of stocks of products or raw materials, failure of any of our suppliers to supply the products, delay by any of our suppliers in supplying the products, delay in transit, import or export restrictions, legislative, governmental or other prohibition or restrictions, fire, flood, disease, pandemics, hostilities, commotions or any other causes whatsoever (whether similar to the foregoing or not) which is beyond the our reasonable control ("**Force Majeure Event**").
- 13.2 If we considers that a Force Majeure Event has occurred and we will be unable to perform the Services as a result of a Force Majeure Event, we will promptly notify you of that fact and may suspend the Services. Any suspension of the Services by us will be limited to the period during which the Force Majeure Event continues.
- 13.3 Where the provision of the Services by us has been suspended for a period of 30 consecutive days or more, we may terminate the Services by giving you written notice.

14. PRIVACY ACT

- 14.1 If you are a natural person, you authorise:

- (a) Us to collect, retain and use such information about you as we may necessarily require for the purposes of:
- i. Supplying the Services to you;
 - ii. Dealing with requests, enquiries or complaints and other customer care related activities and all other general administrative and business purposes;
 - iii. Enforcing our rights under these Terms;
 - iv. Marketing any services provided by us and carrying out market and product analysis and research;
 - v. Carrying out any activity in connection with any legal, governmental or regulatory requirements that we are subject to or in connection with legal proceedings, crime or fraud prevention, detection or prosecution; and
 - vi. Any other purpose as consented to by you in writing from time to time, (collectively referred to as the "**Purposes**").
- (b) Any person or entity to provide us such information as we may necessarily require about that Individual for the Purposes;

(c) Us to disclose information about you as necessarily required for the Purposes, or as otherwise authorised by you, including to:

- i. Third parties who provide products or services related to the Services that we provide;
- ii. Third parties to whom we may be required to disclose information by reason of legal, governmental or regulatory authority or where we believe in good faith that disclosure is necessary to protect or enforce our rights or the rights, property or safety of others;
- iii. Trusted third parties to provide services or perform functions on our behalf; and
- iv. To any other third party where you has given you express consent for us to do so.

14.2 In addition to clause 14.1, we shall be entitled to collect, use and disclose information about you in accordance with any applicable New Zealand privacy legislation.

14.3 You are entitled to request access to and correction of any such information held about you by us.

14.4 We will maintain reasonable security safeguards to protect your information and take reasonable steps to ensure your information is not disclosed to an unauthorised person or entity.

14.5 We will retain your information for so long as is reasonably necessary to fulfil the Purposes for which it was collected, including for the purposes of satisfying any legal, regulatory, tax or accounting requirements.

14.6 If you fail to provide any information that is reasonably requested by us, that you acknowledge that we may not be able to provide the Services to you.

14.7 Any information about you that is collected by us will be held by us. Our address is **33 Braemar Road, Rothersey Bay, Auckland 0630, New Zealand**

15. DISPUTE RESOLUTION

15.1 If any dispute arises in connection with the Goods and Services or these Terms, the parties or will, within 10 working days (being a day, other than a Saturday, Sunday or Public Holiday in Auckland) ("**Working Day**") of a written request from one party to the other, meet in a good faith effort to resolve the dispute. If the dispute is not resolved at that meeting, the parties will attempt to settle it by mediation. To initiate the mediation a party must give notice in writing ("**Mediation Notice**") to the other party to the dispute requesting mediation. The mediation will start not later than 20 Working Days after the date of the Mediation Notice.

15.2 To the extent permitted by law, no party may commence any court proceedings in relation to any dispute arising out of these Terms until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation.

15.3 Nothing in this clause will prevent a party from obtaining urgent interlocutory relief in respect of a breach or suspected breach of these Terms.

16. GENERAL

16.1 These Terms set out the entire agreement and understanding between the parties and merges all prior discussions between them. No party will be bound by any conditions, warranties or representations except as expressly provided in these Terms.

16.2 Any waiver, delay or failure to execute any rights by us shall not be deemed a waiver of that right or any further or other right of ours. No waiver is effective unless it is in writing.

16.3 If any provision of these Terms is, or becomes, unenforceable, illegal or invalid for any reason, the relevant provision shall be deemed to be modified to the extent necessary to remedy such unenforceability, illegality or invalidity or if this is not possible then such provision shall be severed from these Terms, without affecting the enforceability, legality or validity of any other provision of these Terms.

16.4 You may not assign your rights and obligations under these Terms without our written consent.

Above agreed to by:

Client's Name:

Client's Signature

Date