

# STANDARD TERMS AND CONDITIONS

## 1. PRICE

- 1.1 Any additional work not described above or variations to work shall be paid for in addition to the Price at the rate normally charged for the consultancy staff providing the additional work or variation to work.
- 1.2 The Client will reimburse ESR for all disbursements reasonably incurred in the performance of the Services.

## 2. PAYMENT OF PRICE

- 2.1 If the Payment Term is on "Order" the Client shall pay ESR the Price in full (including GST) immediately upon demand being made by ESR to the Client.
- 2.2 If the Payment Term is "Cash" the Client will pay ESR the Price in full (including GST) immediately upon completion of the Services by ESR.
- 2.3 If the Payment Term is on "Account" payment of the Price in full (including GST) and without deduction or set off is due on the 20th of the month following the date of issue of an invoice.
- 2.4 In all cases penalty interest of 4% above the prevailing ANZ base lending rate shall be payable monthly from the date payment is due until payment is received.
- 2.5 ESR may withhold delivery of any or all of the Services and take or retake possession of any reports produced by ESR if the Price and/or any other money is outstanding under this agreement after payment is due.
- 2.6 The Client will pay ESR all its costs and expenses arising from any delay or default in payment of the Price by the Client including without limitation agency collection fees and expenses and all legal fees.

## 3. PERFORMANCE

- 3.1 ESR shall perform the Services in a competent and professional manner. If any Services provided by ESR are materially defective then upon receipt of notice from the Client of such defect ESR shall, where possible, remedy such defect at no cost to the Client.
- 3.2 ESR is authorised to act as the Client's agent in performance of the Services.
- 3.3 ESR may use and integrate the work of third parties in the performance of the Services, but shall not be responsible for the performance of third parties.

## 4. LIABILITY

- 4.1 ESR shall not be liable for any loss, damage, liabilities or costs suffered or incurred by the Client or any other party (in contract or tort) arising directly or indirectly from the Services or the acts or omissions of ESR pursuant to this Agreement except to the amount of the Price.

## 5. PROPERTY

- 5.1 Upon completion of the Services and payment of the Price and/ or any other money outstanding under this Agreement, ESR's report generated for the Client as part of the Services shall become the exclusive property of the Client.
- 5.2 All intellectual property which arises out of or in the course of provision of the Services shall be the exclusive property of ESR. For the purposes of this Agreement "Intellectual Property" means all intellectual property whether or not proprietary in nature, and whether or not rights to such property are registered or registerable, including, but without limitation property or rights arising from, constituted or recognised by any Act of law or of equity, and for the purposes of this Agreement include without limitation trade secrets, confidential information, data, programmes, software, document formats and know-how.

**6. CONFIDENTIALITY**

- 6.1 The Client and ESR shall not without the other's consent, use or disclose to the detriment of the other party, any confidential information or trade secrets relating to the other party acquired in connection with this Agreement or the performance of Services.
- 6.2 Disclosure will not breach clause 6.1 to the extent that it may be required by law or the extent that it is known in the public domain.

**7. FORCE MAJEURE**

- 7.1 ESR will not be liable to the Client for any failure or delay in performance of this contract due to any circumstance reasonably beyond the control of the affected party.

**8. DISPUTE RESOLUTION**

- 8.1 Any dispute arising under this Agreement whether as to interpretation of any provision of the Agreement, or to its application shall be dealt with:
  - (a) by direct negotiation between the parties; or failing such agreement;
  - (b) by mediation in terms of the LEADR New Zealand Incorporated standard mediation agreement; or failing such agreement;
  - (c) by arbitration conducted in accordance with the Arbitration Act 1996.

**9. JURISDICTION**

- 9.1 This Agreement shall be governed and interpreted in accordance with the laws of New Zealand.

**10. GENERAL**

- 10.1 Standard Terms and Conditions apply to all services, except where varied by a written contract between ESR and the Client.