

Health Action Trust



Terms and Conditions of Trade for the Supply of Services by WellBeing@Work

1. Parties and Definitions to this Agreement

1.1. "WellBeing@Work" (WB@W) is a division of Health Action Trust (HAT), Nelson. "WB@W" for the purposes of this agreement, shall mean "WellBeing@Work", any person or entity acting for or on behalf of WB@W or with the permission of WB@W.

1.2. "Client" shall mean the Client any person or entity acting for or on behalf of the Client or with the permission or authority of the Client as detailed on any quotation, estimate, Engagement Agreement or notation as provided by WB@W to the Client.

1.3. "Guarantor" shall mean any person (or persons), or entity, who agrees to be held liable for the debts incurred by the Client in the course of business between the Client and WB@W, on a principal debtor basis.

1.4. "Services" shall mean all services supplied by WB@W to the Client and includes any programmes, consultancy advice, training seminars and workshops.

1.5. "Price" shall mean the price payable for services as agreed between WB@W and the Client in accordance with clause 4 of this contract.

2. Services

2.1. The Services provided shall be described on our invoices, quotation, and/or Engagement Agreement, or any other such form as provided by WB@W to the Client.

3. Service and Conduct

3.1. Where WB@W performs work for you, it will ensure that competent and suitably experienced personnel carry out all work, in a professional manner and in accordance with appropriate standards.

3.2. While WB@W will make every endeavour to ensure a fully professional approach to all work carried out, it cannot guarantee the results of training or recommendations as many factors are outside our control. Consequently, any liability that WB@W may have arising from the provision of services under this agreement is limited as per sub clauses 13.3 and 13.4 below.

4. Price and Payment

4.1. The price shall be at WB@W's sole discretion, one or more of the following:

- (a) The price as quoted by WB@W to the Client. The quoted price or rates shall not alter providing the Client accepts WB@W's quote in writing within thirty (30) days of the date of the quotation.
- (b) WB@W's price as per WB@W's current rates as when the service is provided.
- (c) Travel may be charged for travel in excess of 40 km road travel per day from the premises at 26 New Street, Nelson. Kilometres travelled in excess of this daily maximum are charged

at 77c per km. Time spent traveling in excesses of 30 minutes per day is charged at half the current hourly rate.

- (d) The use of external suppliers on your behalf will be charged to you at the supplier's prevailing rates.

5. Payment Terms

5.1. Payment shall be at WB@W's sole discretion one or more of the following:

- a) All invoices shall be paid no later than the 20th day of the following month of the invoice date.
- b) Payment from approved Clients shall be made by instalments in accordance with WB@W's payment schedule.

(c) Payments will be made as agreed between WB@W and the Client. If no payment arrangement is made or payment terms agreed then payment shall be due as stated on the Invoice by direct credit to WB@W's nominated account.

5.2. Payment shall not be deemed to have been received until cleared funds are deposited in WB@W's nominated account.

5.3. GST and other taxes and duties that may apply will be added to the Price unless they are expressly included in the Price.

6. Acceptance of Terms of Trade

6.1. Any engagement of WB@W's Services shall constitute acceptance of the Terms and Conditions of Trade of WB@W by the Client. Should more than one Client enter into this agreement the Clients shall be jointly and severally liable for payment in full of the Price.

6.2. The terms and conditions of this agreement can only be amended with the written consent of WB@W and shall be binding on the Client.

6.3. In the event that the Client proposes any change to the structure of the Client's business, a change in Shareholding, Name, Directors, Premises, postal address, registered office or Sale of the business the Client shall give no less than fourteen (14) days written notice of the proposed change or changes. If any loss is incurred by WB@W the Client shall be liable for any loss suffered by WB@W due to the Client not complying with this provision.

7. Default and Consequences of Non-Payment

7.1. If the Client defaults in payment of any invoice when due, the Client shall pay all costs and disbursements incurred by WB@W in pursuing the debt including legal costs on a solicitor and own Client basis and WB@W's collection agency costs. Disbursements incurred by WB@W in pursuing the debt including legal costs on a solicitor and own Client basis and WB@W's collection agency costs.

7.2. Interest on overdue or unpaid invoices shall accrue from the date when payment becomes due daily until the date payment is received at a rate of 2.5% per calendar month and all interest shall compound monthly before and after any judgement until payment is received in full.

7.3. WB@W at its discretion may suspend or terminate the supply of goods and/or services should the Client, at any time be in breach of any obligation to WB@W (including those relating to payment). WB@W will not be liable for any loss or damages the Client has deemed to have suffered because WB@W has exercised their rights under this clause.

7.4. If any account remains overdue after thirty (30) days then an amount of \$20.00 or 10.00% of the amount overdue (up to a maximum of \$200) whichever is the greater, shall be charged for administration fees and shall become immediately due and payable.

7.5. Without prejudice to WB@W's other remedies at law, WB@W shall be entitled to cancel all or any part of any supply agreement with the Client which remains unfulfilled and all amounts owing to WB@W shall, whether or not due for payment, become immediately payable in the event that:

- a) any money payable to WB@W becomes overdue of payment, or in WB@W.'s opinion the Client will be unable to meet his payments as they become due; or
- b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- c) a receiver, liquidator, manager (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

8. Right of Cancellation

8.1. WB@W may cancel any contract to which these Terms and Conditions apply or cancel the delivery of materials products or goods or service at any time before the materials, products or goods and the like are delivered by giving written notice to the Client. On giving notice WB@W shall repay to the Client any sums paid in respect of the Price. WB@W shall not be liable for any damages or losses arising from such cancellation.

8.2. Should the Client cancel any contract with WB@W the Client shall be liable for any loss incurred by WB@W (including but not limited to loss of profits) up to the time of Cancellation.

9. Intellectual Property

9.1. Where WB@W has designed, drafted or supplied written Works for the Client, then the copyright in those works and documents shall remain vested in WB@W, and shall only be used by the Client. The Client shall not distribute or sell any works or documents to any third party as supplied to the Client by WB@W without the written consent of WB@W.

10. Secondment

10.1. Where WB@W provides staff, contractors or any form of personnel on secondment to the Client and the Client offers a contract or employment whether full time or part time to the secondi, which is accepted by the secondi during the secondment or within 180 days of the end of the secondment the Client shall pay WB@W a placement fee of 25% + G.S.T of the secondi's annualised salary based on full time employment.

11. Privacy Act 1993

11.1. The Client and the Guarantor/s (if separate to the Client) authorises WB@W to:

- a) collect, use and retain any information about the Client, for the purpose of assessing the Client's creditworthiness or marketing products and services to the Client; and
- b) disclose information about the Client, whether collected by WB@W from the Client directly or obtained by WB@W from any other party, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.

11.2. Where the Client and/or Guarantors are an individual the authorities under clause 11.1 are authorities or consents for the purposes of the Privacy Act 1993.

11.3. The Client and/or Guarantors shall have the right to request WB@W for a copy of the information about the Client and/or Guarantors retained by WB@W and the right to request WB@W to correct any incorrect information about the Client and/or Guarantors held by WB@W.

12. Dispute Resolution

12.1. All disputes and differences between the Client and WB@W 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

13. General

13.1. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the existence, validity legality and enforceability of the remaining provisions shall not be prejudiced, affected or impaired.

13.2. These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of Nelson New Zealand or as otherwise directed by the Court.

13.3. WB@W shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by WB@W of these terms and conditions.

13.4. In the event of any breach of this contract by WB@W the remedies of the Client shall be limited to damages which under no circumstances shall exceed the contract price for Services provided and limited to the amount of monies paid to WB@W by the Client in part or full whichever is the lesser amount.

13.5. The Client shall not be entitled to set off against or deduct from the price any sums owed or claimed to be owed to the Client by WB@W.

13.6. WB@W may license or sub-contract all or any part of their rights and obligations without the Client's consent.

13.7. The customer acknowledges that the Trustees of Health Action Trust have entered this agreement not in their personal capacity but in their capacity as Trustees of Health Action Trust and liability of Health Action Trust under this agreement will be limited to the assets of that Trust in its hands at the time being and available for payment in the due course of administration.

13.8. WB@W reserves 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 WB@W notifies the Client of such change.

13.9. The provisions of the Contractual Remedies Act 1979 shall apply to this contract as if section 15(d) were omitted from the Contractual Remedies Act 1979.

13.10. Neither party shall be liable for any default due to any act of God, war, terrorism, fire, flood, drought, storm or other event beyond the reasonable control of either party.

13.11. The failure by WB@W to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect WB@W's right to subsequently enforce that provision.