

1. Definitions

- 1.1 "Contract" means the terms and conditions contained herein, together with any Quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 "FISL" means Forensic and Industrial Science Ltd, its successors and assigns or any person acting on behalf of and with the authority of Forensic and Industrial Science Ltd.
- 1.3 "Client" means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting FISL to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client's executors, administrators, successors and permitted assigns.
- 1.4 "Incidental Items" means any goods, documents, designs, drawings or materials supplied, consumed, created or deposited incidentally by FISL in the course of it conducting, or supplying to the Client, any Services.
- 1.5 "Services" means all Services supplied by FISL to the Client at the Client's request from time to time.
- 1.6 "Report" means any documentation, report or other material/s provided, utilised or created incidentally by FISL in the course of it conducting, or providing to the Client, any Services.
- 1.7 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "**Personal Information**" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.8 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. **If the Client does not wish to allow Cookies to operate in the background when ordering from the website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Services via the website.**
- 1.9 "Price" means the price payable (plus any Goods and Services Tax ("GST") where applicable) for the Services as agreed between FISL and the Client in accordance with clause 6 of this Contract.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for, or accepts Services provided by FISL.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing and with the consent of both parties.
- 2.4 The Client acknowledges:
- (a) that the supply of Services on credit shall not take effect until the Client has completed a credit application with FISL and it has been approved with a credit limit established for the account.
 - (b) that whilst FISL is conducting its sampling procedures from painted surfaces, there is the possibility that minor surface damage may occur that may require re-painting. FISL will accept no liability in such circumstances unless the resulting damage is due to the negligence of FISL.
- 2.5 In the event that the supply of Services request exceeds the Clients credit limit and/or the account exceeds the payment terms, FISL reserves the right to refuse delivery.
- 2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

- 3.1 The Client acknowledges and accepts that FISL shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by FISL in the formation and/or administration of this Contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by FISL in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of FISL; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

4. Change in Control

- 4.1 The Client shall give FISL not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, change of trustees, or business practice). The Client shall be liable for any loss incurred by FISL as a result of the Client's failure to comply with this clause.

5. Authorised Representatives

- 5.1 The Client acknowledges that FISL shall (for the duration of the Services) liaise directly with one (1) authorised representative, and that once introduced as such to FISL, that person shall have the full authority of the Client to order any Services, Goods and/or to request any variation thereto on the Client's behalf. The Client accepts that they will be solely liable to FISL for all additional costs incurred by FISL (including FISL's profit margin) in providing any Services, Goods or variation/s requested thereto by the Client's duly authorised representative.

6. Price and Payment

- 6.1 At FISL's sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by FISL to the Client; or
 - (b) FISL's estimated Price, which the Client acknowledges is an estimation only the final Price can only be ascertained upon completion of the Services. Variances in the estimated price of more than ten percent (10%) will be subject to the Client's approval before proceeding with the Services; or
 - (c) FISL's quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 6.2 FISL reserves the right to change the Price in the event of a variation to FISL's quotation. Any variation from the plan of scheduled Services or specifications will be charged for on the basis of FISL's quotation or estimate and will be shown as extras on the invoice. Payment for all extras must be made in full at their time of completion.
- 6.3 At FISL's sole discretion a non-refundable deposit may be required.
- 6.4 Time for payment for the Services being of the essence, the Price will be payable by the Client on the date/s determined by FISL, which may be:
- (a) on delivery of the Services;
 - (b) before delivery of the Services;
 - (c) payment for approved Clients shall be due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is thirty (30) days following the date of any invoice given to the Client by FISL.
- 6.5 Payment of Services funded through Legal Aid will be due sixty (60) days following the date of the invoice.
- 6.6 Every special instruction to the effect that charges shall be paid by a third party other than the Client shall be deemed to include a stipulation that if that nominated third party does not pay those charges within thirty (30) days of delivery or attempted delivery of the Services, then the Client shall pay those charges to FISL within thirty (30) days of being notified of that third party's failure to pay.
- 6.7 In the event that FISL is required to attend Court on behalf of the Client, the Client will be responsible for any costs incurred and will be shown as an extra on the invoice. Payment for all extras must be made in full at their time of completion.
- 6.8 Payment may be made by cheque, bank cheque, electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Client and FISL.
- 6.9 FISL may in its discretion allocate any payment received from the Client towards any invoice that FISL determines and may do so at the time of receipt or at any time afterwards. On any default by the Client FISL may re-allocate any payments previously received and allocated. In the absence of any payment allocation by FISL, payment will be deemed to be allocated in such manner as preserves the maximum value of FISL's Purchase Money Security Interest (as defined in the PPSA) in the Services.
- 6.10 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 FISL nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.11 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to FISL an amount equal to any GST FISL must pay for any supply by FISL under this or any other agreement for providing FISL's Services. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

7. Delivery Of Services

- 7.1 At FISL's sole discretion delivery of the Services shall take place when the Client takes possession of the Services at the Client's nominated physical address or the Client's nominated email address.
- 7.2 The Client shall make all arrangements necessary to take delivery of the Services whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Services as arranged then FISL shall be entitled to charge a reasonable fee for redelivery.
- 7.3 Delivery of the Services to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 7.4 FISL may deliver the Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 7.5 The failure of FISL to deliver shall not entitle either party to treat this contract as repudiated.
- 7.6 FISL shall not be liable for any loss or damage whatsoever due to failure by FISL to deliver the Services (or any of them) promptly or at all, where due to circumstances beyond the control of FISL.

8. Risk

- 8.1 If FISL retains ownership of the Services nonetheless, all risk for the Services passes to the Client on delivery.
- 8.2 In the event that items or materials are held by FISL, FISL undertakes to maintain a reasonable duty of care towards the items or materials but risk (including, but not limited to, insurance risk) in the items or materials remains with the Client. Under no circumstances shall the liability of FISL, for items or materials held by FISL, exceed the fair market value of the items or materials.
- 8.3 Irrespective of whether FISL retains ownership of any Incidental Items all risk for such items shall pass to the Client as soon as such items are delivered to the Client and shall remain with the Client until such time as FISL may repossess the Incidental Items. The Client must insure all Incidental Items on or before delivery.
- 8.4 FISL reserves its right to seek compensation or damages for any damage, destruction or loss suffered in relation to the Incidental Items as a result of the Client's failure to insure in accordance with clause 8.3.

9. Report

- 9.1 The Report:
- (a) is to be read in conjunction with all previous reports, information and opinions relating to the inspection of the property.

- (b) is prepared on the basis that the Client has provided FISL with a full and frank disclosure of all information and other material facts which may affect the preparation of the Report. FISL accepts no responsibility or liability whatsoever:
 - (i) unless such full disclosure has been made to FISL; and
 - (ii) for errors in any information obtained or statements from the Client or other applicable parties, or any matter outside the scope of the Services to be provided to FISL.
- (c) provided by FISL will be a factual statement of the inspection and analysis carried out within stated limitations and with opinions given in good faith and as seen accessible at the time of the inspection or analysis. It carries with it no guarantee against latent defects or suitability of the property for any particular purpose, nor any guarantee of compliance with any particular nation or state requirement, regulation, law, standard or code unless specifically requested as a special instruction and confirmed in the text of the Report.

10. Compliance With Laws

- 10.1 The Client and FISL shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works including any WorkSafe health and safety laws relating or any other relevant safety standards or legislation pertaining to the Works.
- 10.2 Notwithstanding clause 10.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") FISL agrees at all times comply with sections 28 and 34 of the "HSW Act" with meeting their obligations for health and safety laws in the workplace regardless of whether they may be the party in control of the site or where they may be acting as a subcontractor for the Client who has engaged a thirty party head contractor.

11. Title

- 11.1 FISL and the Client agree that where it is intended that the ownership of Incidental Items is to pass to the Client that such ownership shall not pass until:
 - (a) the Client has paid FISL all amounts owing for the Services; and
 - (b) the Client has met all other obligations due by the Client to FISL in respect of all contracts between FISL and the Client.
- 11.2 Receipt by FISL of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then FISL's ownership or rights in respect of the Incidental Items shall continue.
- 11.3 It is further agreed that:
 - (a) the Client is only a bailee of the Incidental Items and must return the Incidental Items to FISL immediately upon request by FISL;
 - (b) the Client holds the benefit of the Client's insurance of the Incidental Items on trust for FISL and must pay to FISL the proceeds of any insurance in the event of the Incidental Items being lost, damaged or destroyed;
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Incidental Items. If the Client sells, disposes or parts with possession of the Incidental Items then the Client must hold the proceeds of sale of the Incidental Items on trust for FISL and must pay or deliver the proceeds to FISL on demand;
 - (d) the Client should not convert or process the Incidental Items or intermix them with other goods, but if the Client does so then the Client holds the resulting product on trust for the benefit of FISL and must dispose of or return the resulting product to FISL as FISL so directs;
 - (e) the Client shall not charge or grant an encumbrance over the Incidental Items nor grant nor otherwise give away any interest in the Incidental Items while they remain the property of FISL;
 - (f) the Client irrevocably authorises FISL to enter any premises where FISL believes the Incidental Items are kept and recover possession of the Incidental Items.

12. Personal Property Securities Act 1999 ("PPSA")

- 12.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
 - (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Incidental Items and/or collateral (account) – being a monetary obligation of the Client to FISL for Services – that have previously been supplied and that will be supplied in the future by FISL to the Client.
- 12.2 The Client undertakes to:
 - (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which FISL may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, FISL for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Incidental Items charged thereby;
 - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Incidental Items and/or collateral (account) in favour of a third party without the prior written consent of FISL.
- 12.3 FISL and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 12.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 12.5 Unless otherwise agreed to in writing by FISL, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 12.6 The Client shall unconditionally ratify any actions taken by FISL under clauses 12.1 to 12.5.
- 12.7 Subject to any express provisions to the contrary (including those contained in this clause 12), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

13. Security and Charge

- 13.1 In consideration of FISL agreeing to supply Services, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

- 13.2 The Client indemnifies FISL from and against all FISL's costs and disbursements including legal costs of a solicitor and own client basis incurred in exercising FISL's rights under this clause.
- 13.3 The Client irrevocably appoints FISL and each director of FISL as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Client's behalf.
- 14. Consumer Guarantees Act 1993**
- 14.1 If the Client is acquiring Services for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Services by FISL to the Client.
- 15. Intellectual Property**
- 15.1 Where FISL has designed, drawn or developed Incidental Items for the Client, then the copyright in any Incidental Items shall remain the property of FISL. Under no circumstances may such designs, drawings and documents be used without the express written approval of FISL.
- 16. Default and Consequences of Default**
- 16.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at FISL's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 16.2 If the Client owes FISL any money the Client shall indemnify FISL from and against all costs and disbursements incurred by FISL in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, FISL's collection agency costs, and bank dishonour fees).
- 16.3 Further to any other rights or remedies FISL may have under this Contract, if a Client has made payment to FISL, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by FISL under this clause 16, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 16.4 Without prejudice to FISL's other remedies at law FISL shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to FISL shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to FISL becomes overdue, or in FISL's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by FISL;
 - (c) 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
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 17. Cancellation**
- 17.1 Without prejudice to any other remedies FISL may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions FISL may suspend or terminate the supply of Services to the Client. FISL will not be liable to the Client for any loss or damage the Client suffers because FISL has exercised its rights under this clause.
- 17.2 FISL may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are commenced by giving written notice to the Client. On giving such notice FISL shall repay to the Client any money paid by the Client for the Services. FISL shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 17.3 In the event that the Client cancels delivery of the Services the Client shall be liable for any and all loss incurred (whether direct or indirect) by FISL as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 18. Privacy Policy**
- 18.1 All emails, documents, images or other recorded information held or used by FISL is Personal Information as defined and referred to in clause 18.3 and therefore considered confidential. FISL acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act and any statutory requirements where relevant in a European Economic Area "EEA" then the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). FISL acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Clients Personal Information, held by FISL that may result in serious harm to the Client, FISL will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 18.2 Notwithstanding clause 18.1, privacy limitations will extend to FISL in respect of Cookies where transactions for purchases/orders transpire directly from FISL's website. FISL agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to FISL when FISL sends an email to the Client, so FISL may collect and review that information ("collectively Personal Information")
- In order to enable / disable the collection of Personal Information by way of Cookies, the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via FISL's website.
- 18.3 The Client authorises FISL or FISL's agent to:
- (a) access, collect, retain and use any information about the Client;

- (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Client.
 - (b) disclose information about the Client, whether collected by FISL from the Client directly or obtained by FISL from any other source, to any other credit FISL or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 18.4 Where the Client is an individual the authorities under clause 18.3 are authorities or consents for the purposes of the Privacy Act 1993.
- 18.5 The Client shall have the right to request FISL for a copy of the Personal Information about the Client retained by FISL and the right to request FISL to correct any incorrect Personal Information about the Client held by FISL.

19. Service of Notices

- 19.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;
 - (c) by sending it by registered post to the address of the other party as stated in this Contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 19.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

20. Trusts

- 20.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not FISL may have notice of the Trust, the Client covenants with FISL as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
 - (c) the Client will not without consent in writing of FISL (FISL will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.

21. Dispute Resolution

- 21.1 All disputes and differences between the Client and FISL 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.

22. General

- 22.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 22.2 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 Auckland.
- 22.3 FISL shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by FISL of these terms and conditions (alternatively FISL's liability shall be limited to damages which under no circumstances shall exceed the Price of the Services).
- 22.4 FISL may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 22.5 The Client cannot licence or assign without the written approval of FISL.
- 22.6 FISL may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of FISL's sub-contractors without the authority of FISL.
- 22.7 The Client agrees that FISL may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for FISL to provide Services to the Client.
- 22.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 22.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.