

Terms of Engagement

Introduction

These Terms of Engagement (“the Terms”), together with any engagement letter or proposal document and any fee estimate, form the agreement between you, the client (“you”) and us.

References to “we/us” (and related expressions) refer to Enable Business (Auckland) Limited, Enable Business (HB) Ltd, or Enable Business (Wellington) Ltd, as has been named in any engagement letter, proposal document or fee estimate, who shall be entitled to the benefit of, and to enforce, the Terms.

Compilation of Financial Statements

We will compile financial statements in accordance with Service Engagement Standard No. 2 – Compilation of Financial Information (SES-2) issued by Chartered Accountants Australia and New Zealand (“CAANZ”).

The financial information will be prepared in accordance with New Zealand GAAP or applicable reporting frameworks and will be disclosed within the financial statements and referred to in our compilation report.

The financial statements/report will be compiled from information provided by you. We will not audit, review, or otherwise attempt to verify the accuracy or completeness of such information. Our standard disclaimer reflecting these points will be attached to your future financial statements/report.

Additional services

In addition to compiling the financial statements, we will provide any additional services you wish us to perform for you, as agreed in any letter of engagement or proposal document.

Conditions and responsibilities

It is understood and agreed that:

- You will provide us with accurate and complete information necessary to compile the financial statements and tax returns;
- You accept responsibility for all records and information supplied to us and you accept responsibility for any failure to supply us with all relevant records and information;
- You accept responsibility for the payment of all income taxes;
- It is your responsibility to ensure the footers on the financial statements and the reference to us as accountants are not deleted from the statements or from our ‘report’ and ‘disclaimer’; and
- Uninformed readers could be misled unless they are aware of the possible limitations of the financial statements and our limited involvement.

Extent of Services

You are responsible for determining that the scope of the services we are to perform for you is sufficient to meet your needs.

We will rely on the information you provide to us. We do not accept any responsibility for the accuracy and completeness of the accounting records and other information you supply to us or for the reliability, accuracy and completeness of the financial information compiled on the basis of those records and information. We also do not accept any responsibility for the maintenance of adequate accounting records, an adequate internal control structure and the selection and application of appropriate accounting policies within your organisation. In addition, you are solely responsible to users of the financial information we compile.

The information you are to supply and any other information that we consider necessary to complete the engagement must be provided on a timely basis in order that the engagement can be completed on a timely basis. You agree to update any information where there has been a material change to that information, including if your circumstances change during the course of our services.

Our engagement does not include the investigation or discovery of internal control weaknesses, errors, illegal acts or other irregularities, including, without limitation, fraud, or non-compliance with laws or regulations. However, we will inform you of any such matters which come to our attention during the course of our engagement.

If the services we perform or your reliance on the services depend on taxation laws, regulations or interpretations by the Courts or Government agencies:

- our services are provided based on the current tax legislation and with the current practices of the New Zealand Inland Revenue Department and any other relevant tax authority at the time;
- we cannot be held responsible if legislation or such practices change at some future date or change with retrospective effect;
- we are not obliged to notify you of any subsequent change of law.

If for any reason we are unable to complete the compilation of your financial statements, or we consider the information to be misleading, we may refer to such matters within our compilation report or we may determine, at our sole discretion, not to issue a report.

Our Fees and Payment

Our fees will be as agreed in advance with you (including in any proposal document) or at our usual rates for the applicable work. For specific advisory work where no fee has been agreed in advance, our fees will be set at a fair and reasonable level, having regard to the time expended by us, the complexity of the instructions, the degree of specialization, and any urgency arising out of the instruction. Although our fees generally reflect the hours committed to your work multiplied by the hourly rate of those involved, this will not always be the case. Our fees are exclusive of GST and GST will be added where applicable. Our fees are also exclusive of any direct out-of-pocket costs and disbursements.

Except as agreed otherwise, you will be invoiced monthly and invoices will be payable on the 10th of each month via our GoCardless service, being the same month the invoice is dated.

Our fees for all other work undertaken are payable within 7 days of the invoice date.

We have the ability to arrange for our fees to be paid through either of your Visa or MasterCard. This facility can provide you with up to an extra 55 days of interest free credit.

You may also be able to pay via our fee funding service, which allows you to pay a monthly instalment (with an interest cost) over a period of typically up to 12 months.

If payment is not received by the due date, we reserve the right to suspend services and/or charge interest at 2% above the current Westpac New Zealand Limited lending rate for unsecured personal loans on any amount outstanding.

In the event that it is necessary to take debt collection or legal action to recover overdue accounts, all debt collection agency fees and commissions and legal costs incurred by us will be payable by you, the client.

In the unfortunate circumstance that a disagreement arises between us over our fees, if the matter cannot be resolved amicably by discussion (which is the preferred option) then we both agree to use the Fees Resolution Service of the New Zealand branch of CAANZ, to resolve the matter. Details of this Service are available from CAANZ. You should be aware that, like all other providers of services, we are entitled to retain possession of your records that have been used in relation to this engagement until outstanding fees are settled.

Retention of accounting records

We will hold electronic versions of accounting records on your behalf for the period required by the Inland Revenue Department. At the end of that period, unless you write requesting they be forwarded to you, we reserve the right to remove relevant accounting records from our system.

Independence

We will state in our report if we are aware that we are not independent of you. However, we will not conduct a comprehensive review to determine whether we are, or are not, independent.

Primary Use of financial statements and advice

We understand that the intended use and distribution of the financial statements is primarily for the purposes of completing an income tax return for you, and to distribute to financial institutions with whom you have existing or prospective relationships. If this should change you must notify us immediately. Because our services are for your exclusive use, all financial statements and advice must only be used by you and only for the intended purpose. We will not accept any responsibility to any person, other than you, for the contents of the financial statements and advice. Our name and advice may not be used in connection with any offer document, report or other public or private document without our prior written consent.

Resources utilised

We advise that we utilise a range of staff and independent contractors to undertake your work.

Information and disclosure

The conduct of each engagement is in accordance with the professional standards, rules and ethical requirements of CAANZ.

However, as members of CAANZ, we are subject to, and bound by, the disciplinary procedures and rules of CAANZ, and our work and files are subject to the practice review rules of CAANZ under which compliance with professional standards by members is monitored. These procedures and rules require us to disclose to CAANZ, its reviewers and/or its disciplinary bodies our files and work papers including client information. By allowing us to undertake an engagement, you acknowledge that, if requested, our files relating to the engagement will be made available to CAANZ, its reviewers and/or its disciplinary bodies. We assure you that the same ethical standards regarding confidentiality that we adhere to apply equally to CAANZ's reviewers.

Ownership of work papers

We claim a lien over all books and records in our possession until all work has been performed and all fees rendered have been paid. Work papers, including electronic documents and files, that we create will remain our property. We reserve the right to request a "hold harmless" letter from you and any third parties receiving our work papers.

Intellectual Property

We will retain all intellectual property rights in any work, processes, ideas, concepts, technologies and business methodologies that are used in or that are developed in the course of providing services for you.

Authority to obtain information from financial institutions

Our work may involve the collection of personal information relevant or incidental to the engagement. Any such information will be held at our offices and will be retained for as long as may be relevant to the engagement and, except where otherwise specified, will only be used or disclosed for purposes related to the engagement. Individuals concerned will be able to contact us to access information held about them and, if necessary, seek correction to that information. You confirm we have authority to communicate with and obtain information from any third party (including the Inland Revenue Department) if the information sought is relevant to our engagement.

Limitation of liability

Where permitted by law, our liability in connection with our services will be limited as set out below.

Our liability to you will not exceed the fees paid to us for the particular engagement for which any claim is made, and we shall have no liability for an engagement to the extent our fees have not been fully paid. In any event, our aggregate liability to you (including interest and costs) in contract or tort (including, but not limited to negligence) under statute or otherwise in relation to our services will be capped at \$25,000 (or such other amount as specified in any engagement letter or proposal document, or as otherwise agreed). Where you, the client, comprise more than one person, this limitation of liability is to be allocated between you on terms agreed between you, and none of you may dispute the enforceability or operation of the limitation of liability on the grounds that no such allocation was agreed.

In no circumstances shall we have any liability for any indirect, special or consequential loss or damages (including for any loss of revenues or profits or loss of opportunity), nor for any failure to perform caused by circumstances outside our reasonable control. No claim may be made against us nor may legal proceedings be commenced later than 12 months following completion of the particular item of work for which any liability or loss is alleged.

Subject always to the maximum aggregate liability referred to above, our liability to you will be limited to the proportion of the legally payable amounts which may be justly and equitably attributed to us, after taking into account the responsibility of you and any other third parties who have contributed to your loss (whether or not those other persons are able to meet any liability they may have to you).

These limitations of liability apply collectively to us and our partners, directors, employees, contractors and agents.

Any condition or warranty which might otherwise be implied or incorporated within the Terms by reason of statute, common law or otherwise is hereby expressly excluded, to the maximum extent permissible by law. If you are acquiring, or hold yourself out as acquiring, our services for business purposes, any guarantee which might otherwise be implied or incorporated within the Terms pursuant to the Consumer Guarantees Act 1993 is hereby expressly excluded.

You agree to indemnify us and our partners, directors, employees, contractors and agents and to hold each of us harmless from and against any and all costs, expenses, losses, claims, demands, actions, suits, or proceedings paid, incurred or suffered by, or made or initiated against, any of us by any third party arising out of, or in connection with, an engagement.

You agree and accept that we will only accept liability to yourselves for advice provided in writing. Any draft documents, oral comments or any other communications made prior to final financial statements or other written advice do not represent our final conclusion and should not be relied upon.

Anti-Money Laundering, FATCA, CRS and Other Laws

We must comply with our obligations under all laws binding on us, including:

- anti-money laundering and countering financing of terrorism laws; and
- laws relating to tax reporting and withholdings.

In order to do so, we may be required to conduct customer due diligence on you, persons acting on your behalf, and other relevant persons such as your beneficial owners or persons who have effective control. In the case of a trust, this may include both trustees, appointors and the beneficiaries of the trust. In the case of a company, this may include directors, direct and ultimate shareholders and key executives. We may not be able to act or continue acting for you until this is completed.

We may also be required to verify the source of wealth and source of funds where enhanced due diligence is required. You authorise us to collect this information from your lawyers, investment advisers and banks.

We may be required to provide information about you, persons acting on your behalf, and other relevant persons as described above to government agencies. We may not be permitted to tell you or such persons if we do provide such information.

Please ensure that any of the persons described above in respect of whom we collect information are aware of and consent to this. Please also ensure that all information provided to us is accurate. We are not responsible to you or anyone else for anything done or not done by us (including any provision of information by us to any third party or any withholdings made) in order to comply with our legal obligations.

We may appoint a third party to conduct the required customer due diligence on our behalf and your authorisation also extends to the collection and provision of information by any such third party. You will be liable for any direct costs we incur in contracting with a third party to conduct customer due diligence on our behalf.

Accident Compensation Corporation

You authorise our firm to act as your agent for ACC levy purposes and also for all associated entities. This authorisation allows our firm to query and change information on your ACC levy account(s) through ACC staff, and through ACC Online Services. This authority will also allow our firm's main representative discretion to delegate access to your ACC information to other members of our firm including our contractors. Other delegated members of our firm will also be able to query and change information on your ACC levy account.

You also authorise us to act on behalf of yourself and other taxpayers identified as associated with each engagement.

Insurance

We confirm our understanding that the adequacy and extent of your insurance covers are to be regularly reviewed by brokers or insurance companies and discussed with you by them, and that we are not responsible for this function.

Commission

We may receive commission or a share of fees on services we organise, facilitate or recommend. These services include, but are not limited to, insurance services, banking and financial services, services relating to the buying and selling of businesses, seminar events, and accounting software or subscriptions.

Pre-analysed accounting information for our acceptance

We are prepared to accept, without verifying or checking the material in any way, coded, pre-analysed, and summarised accounting information from you that will assist us in the preparation of your financial statements. You should note that the responsibility for the accuracy and completeness of this information remains with you.

Electronic Service and Communication

We may communicate with each other electronically. In relation to electronic services and communications, you acknowledge that these are not always error-free or completely secure. Neither of us is responsible to the other for any loss suffered in connection with the use of email or other electronic means as a form of communication between us.

We each agree to take reasonable precautions to protect our own information technology systems, including implementing reasonable procedures to guard against viruses and unauthorised interception, access, use, corruption, loss or delay of electronic communications.

Assignment

You may not transfer assign or novate any of your rights and obligations in relation to our engagement or these terms without our prior written consent. We may transfer, assign, novate or subcontract our rights and obligations hereunder without approval, and any related company of ours shall be entitled to the benefit of and to enforce these Terms, including the limitations of liability and indemnities herein.

Termination

We may terminate our services for you immediately if you fail to meet your obligations under these Terms, including to pay our fees within the time specified or to provide us with adequate information or instruction, or in circumstances where there is a change beyond our reasonable control (such as regulatory-related developments) that prevents us from providing services to you.

If our engagement is terminated for any reason you agree to pay us the fees for any work we have done and any expenses we have incurred up to the date of termination. Where appropriate, we will return to you any documents or property that we hold following payment of outstanding fees, except that we may retain a scanned copy of all information to allow us to satisfy our professional obligations and record keeping requirements.

If the engagement is terminated, the provisions of those Terms which expressly or by implication are intended to survive termination or expiry will continue to apply and bind both of us, including the limitation of liability provisions.

Governing Law

The Terms and our relationship with you will be governed by the applicable laws of New Zealand and the exclusive jurisdiction of the New Zealand courts.

Updates

These Terms of Engagement may be updated from time to time and will be deemed to be binding on you where either handed or emailed to you, or posted on our website www.enablebusiness.co.nz (or any successor website).

The Terms will be deemed to be modified to the extent necessary to comply with CAANZ Rules in force from time to time.