

INSTITUTE OF GEOLOGICAL AND NUCLEAR SCIENCES LTD: STANDARD TERMS AND CONDITIONS

(Revised October 2017)

1 DEFINITIONS

- 1.1 "Contract" means the contract with the Client for the provision of the Services. The documents forming the Contract are the Proposal, these terms and conditions and any other documents that GNS SCIENCE and the Client agree form part of the Contract.
- 1.2 "Deliverables" mean the reports and other documents to be delivered to the Client as part of the Services.
- 1.3 "GNS SCIENCE" means the Institute of Geological and Nuclear Sciences Limited, a duly incorporated company having its principal place of business at 1 Fairway Drive, Avalon, Lower Hutt, New Zealand.
- 1.4 "Proposal" means GNS SCIENCE's offer, quote, proposal or tender.
- 1.5 "Services" mean the services described in the Proposal and in any other documents GNS SCIENCE and the Client agree form part of the Contract.
- 1.6 "Tax" includes any tax, levy, charge, fee, deduction or withholding of any nature and whatever called, imposed, assessed or levied by any governmental authority, together with any interest, penalty, charge, fee, additional tax or other amount imposed, or made on or in respect of any of the foregoing.

2 PAYMENT

- 2.1 The Client must pay GNS SCIENCE for the Services according to the Contract terms. Unless otherwise agreed in writing, payment shall be on the 20th day of the month following GNS SCIENCE's invoice.
- 2.2 Where the Contract provides for delivery of and payment for the Services by instalments, payment by due date in respect of instalments delivered is a condition precedent to GNS SCIENCE's obligation to deliver further instalments of the Services.
- 2.3 GNS SCIENCE reserves the right to charge interest for late payment, in which case interest shall unless waived by GNS SCIENCE be payable at the rate of 2.5% per month or part thereof on amounts outstanding.
- 2.4 Unless otherwise agreed in writing, all payments are expressed exclusive of goods and services tax chargeable under the Goods and Services Tax Act 1985 ("GST"). Where any supply made by GNS SCIENCE to the Client is chargeable with GST, the amount payable for that supply will be increased by, and the Client must pay to GNS SCIENCE, an amount equal to the GST chargeable in relation to that supply. The Client must pay the GST amount to GNS SCIENCE at the same time and in the same manner as the payments for the Services are to be made.
- 2.5 Subject to clause 2.4, if the Client is required by law to make any deduction, payment or withholding from any amount paid to GNS SCIENCE or if GNS SCIENCE is required by law to make any payment on account of Tax (other than Tax on GNS SCIENCE's net income) on or in relation to any payment from the Client, then the amount payable by the Client shall be increased to the extent necessary to ensure that, after that deduction, payment or withholding is made, GNS SCIENCE receives and retains (free from any liability) a net amount equal to the amount which it would have received and retained had no such deduction, payment or withholding been made.

3 DELIVERY

- 3.1 Unless otherwise stated in writing by GNS SCIENCE, all times quoted for delivery of Services are estimates only and GNS SCIENCE shall not be liable for any loss or damage, direct or consequential, arising from failure to deliver on anticipated or estimated date for delivery.
- 3.2 The Client shall not be relieved of any obligation to accept or pay for Services by reason of any delay in delivery or performance by GNS SCIENCE.
- 3.3 GNS SCIENCE shall not be responsible to the Client for delay or failure in performance of any of the obligations imposed by this Contract, if such delay or failure has been caused by fire, flood, hail, explosion, lightning, windstorm, earthquake, epidemic, subsidence of soil, failure of machinery or equipment or supply of material, discontinuity in the supply of power, court order, riot, war, strikes, labour disturbances or by any other cause of like or unlike nature in any such case beyond the reasonable control of GNS SCIENCE.

4 RESERVATION OF TITLE

Ownership of any end product of the Services, including the Deliverables shall not pass to the Client until payment in full has been made and, if relevant, the payment has been honoured or cleared through the banking system to the credit of GNS SCIENCE's bank account.

5 INTELLECTUAL PROPERTY

- 5.1 All rights and related intellectual property (including without limitation patentable inventions, non-patentable processes or know-how, data, designs, illustrations, drawings and specifications and copyright) held by GNS SCIENCE at the commencement of this Contract, or created or developed by GNS SCIENCE as a result of this Contract or arising from the Services, shall belong to GNS SCIENCE unless otherwise agreed in writing by GNS SCIENCE in the Proposal.
- 5.2 GNS SCIENCE hereby grants to the Client a royalty free, non exclusive, non transferable license to use its intellectual property (to the extent that this intellectual property is part of the Deliverables) to enable the Client to use the Deliverables for its own internal purposes or for other purposes expressly contemplated by the Proposal or agreed by GNS SCIENCE in writing but subject to that the Client may not otherwise use or reproduce or communicate the contents of the Deliverables to any third party unless authorised in writing to do so by GNS SCIENCE.

6 PERFORMANCE

- 6.1 In providing the Services GNS SCIENCE will use reasonable skill, care and diligence.
- 6.2 Except where figures or data incorporated in the Deliverables are specifically guaranteed in writing by GNS SCIENCE to be within specific tolerances, GNS SCIENCE accepts no responsibility for the figures or data being incorrect or incomplete.
- 6.3 The parties are responsible for meeting their respective health and safety obligations at law and must as far as reasonably practicable consult, co-operate with and co-ordinate activities with each other and any subcontractors or other parties. Prior to the commencement of the Services, GNS SCIENCE may at its discretion, or shall if requested by the Client, provide the Client with its health and safety policies, procedures and requirements. The Client agrees to support GNS SCIENCE under its health and safety policies, procedures and requirements and comply with the Health and Safety at Work Act 2015 in relation to GNS SCIENCE's provision of the Services.
- 6.4 If requested by GNS SCIENCE, the Client agrees to co-operate with GNS SCIENCE to prepare a site-specific health and safety plan for the carrying out and completion of the Services which appropriately addresses any safety hazards/risks associated with the Services. Both parties acknowledge that any steps taken by a party to identify risk and agree a site-specific health and safety plan will be undertaken co-operatively and in good faith and are not intended to result in an assumption by one party of the health and safety obligations of the other.
- 6.5 If either party identifies any hazard or risk associated with the carrying out and completion of the Services, that party must notify the other party of such hazard or risk as soon as practicable. In the event that GNS SCIENCE becomes aware of an unforeseen safety risk that is likely to affect GNS SCIENCE's ability to provide the Services, GNS SCIENCE will notify the Client as soon as practicable and the parties will consult in good faith to agree an appropriate extension of time, variation to the Services and/or variation to the amounts payable to GNS SCIENCE. The parties will ensure that any agreed changes or improvements to health and safety processes are implemented in a timely manner
- 6.6 If requested by either party, the parties will meet to review health and safety matters and/or following completion of the Services to undertake a review of compliance by the parties with their respective health and safety obligations.

7 LIABILITY

- 7.1 GNS SCIENCE excludes to the extent permitted by law all warranties, conditions, undertakings, inducements and representations either made by it or implied by law relating to the Services (except those made in the Contract).
- 7.2 The Client agrees that it is acquiring the Services for the purposes of a business as defined in the Consumer Guarantees Act 1993. The provisions of that Act therefore do not apply to the Services.
- 7.3 Under no circumstances shall GNS SCIENCE be liable under or in connection with the Contract or in relation to the Services or the Deliverables for any consequential or indirect loss or damage whatsoever, including loss of profit, use or production, or for any punitive damages.
- 7.4 GNS SCIENCE's liability under or in connection with the Contract or in relation to the Services or the Deliverables in respect of any one claim, series of related claims and in the aggregate (whether in contract, tort or otherwise) shall be limited to a maximum amount equal to the amount paid or payable to GNS SCIENCE under the Contract.
- 7.5 The Client agrees that if GNS SCIENCE ever becomes liable to the Client in respect of misrepresentation, repudiation, breach of contract or any other matter to which the Contract and Commercial Law Act 2017 relates, the Client's only remedy will be damages from GNS SCIENCE up to the maximum amount set out in clause 7.4.
- 7.6 If the Client uses the Deliverables for any purpose for which they were not intended or specifically commissioned, or makes them available to any third party except as specifically contemplated by the Proposal and at any event without any disclaimer of liability to third parties included on the Deliverables by GNS SCIENCE, the Client indemnifies and holds harmless GNS SCIENCE for any event arising from such use or supply.

8 MISCELLANEOUS

- 8.1 CONFLICT OF DOCUMENTS—If there is any conflict between the terms of any two or more of:
- a. these terms and conditions; and/or
 - b. the Proposal; and/or
 - c. any other document that GNS SCIENCE and the Client agree forms part of the Contract;
- the order of precedence shall be as set out in this clause 8.1.
- 8.2 CANCELLATION BY THE CLIENT—The Contract shall not be cancelled by the Client except by agreement in writing, upon terms agreed between GNS SCIENCE and the Client, including payment for all work done and expenses incurred or committed to as at the cancellation date and any other reasonable costs incurred by GNS SCIENCE because of the cancellation.
- 8.3 CANCELLATION BY EITHER PARTY—Either party may terminate the Contract immediately by notice in writing to the other party if the other party ceases business, goes into liquidation, becomes insolvent, appoints a receiver or enters into a formal proposal for a compromise with its creditors under the Companies Act 1993.
- 8.4 PRESERVATION OF RIGHTS AND REMEDIES—Cancellation or termination of the Contract or completion of the Services shall not affect:
- a. either party pursuing whatever rights and remedies may be available to it under the Contract which accrued up to and including the cancellation, termination or completion date; and
 - b. the provisions of the Contract which by their nature survive cancellation, termination or the completion of the Services, including clauses 5 (Intellectual Property), 7 (Liability), 8.5 (Confidentiality) and this clause.
- 8.5 CONFIDENTIALITY—All information supplied to GNS SCIENCE under the Contract by the Client that relates to the business affairs of the Client and is specifically identified as confidential at the time it is supplied may only be used for the purpose for which the information was supplied and may not be disclosed without the Client's written consent except:
- a. to any of GNS Science's affiliates and professional advisers;
 - b. to any appropriate third party as necessary for the purposes of the Services;
 - c. if such information was already known to GNS SCIENCE, is in the public domain or has been legitimately received from a third party; or
 - d. as required by law, judicial process, obligation to Parliament or to a Minister of the Crown.
- 8.6 ADDITIONAL COST—In the event of GNS SCIENCE incurring additional costs by reason of the Client failing to give GNS SCIENCE instructions or sufficient instructions pertaining to the Contract, or delivery of the Services or failing to fulfil other specified responsibilities to enable provision of the Services the price of the Services may be increased at the option of GNS SCIENCE to cover such additional costs.
- 8.7 ASSIGNMENT—The benefit of the Contract shall not be assigned by the Client without the prior consent of GNS SCIENCE in writing.
- 8.8 DISPUTES—Any dispute concerning the Contract shall be settled by full and frank discussions between the parties. In the absence of any agreement within 30 days of notification of any dispute the matter, at the request of either party, may be referred to a single arbitrator to be agreed upon between the parties. Failing agreement upon an arbitrator within 14 days, either party may request the then current president of the Wellington District Law Society to appoint an arbitrator. The arbitrator shall then decide upon the matter in accordance with provisions of the New Zealand Arbitration Act 1996 or any re-enactment thereof. The parties agree that any decision by the arbitrator shall be fully and finally binding. Both parties waive their respective rights to further appeal or redress in any court or tribunal, except solely for the purpose of obtaining judgment rendered by the arbitration.
- The parties agree that all costs and expenses of the arbitration proceedings shall be borne in accordance with the decision of the arbitrator.
- 8.9 WAIVER—Any waiver by GNS SCIENCE of any rights arising from the Contract shall not be construed as a continuing waiver, or a waiver of other breaches of the same, or other terms of the Contract by the Client. No delay or forbearance by GNS SCIENCE shall be construed as a waiver of any GNS SCIENCE right.
- 8.10 PARTNERSHIP OR AGENCY—Nothing in the Contract shall create a partnership or agency between the parties.
- 8.11 ENTIRE CONTRACT—The Contract sets forth the entire agreement and understanding between the parties relating to the subject matter contained in the Contract and no modifications, or amendments, shall be effective unless made in writing and signed by the parties.
- 8.12 CONFLICT—Nothing in the Contract shall prevent GNS SCIENCE from providing the same or similar services to any other party.
- 8.13 PUBLICATION—To further scientific research and enquiry and without limiting the provisions of clause 5.1

GNS SCIENCE may publish in a generalised version the know how, ideas, concepts and other intellectual property created or developed from the Contract or arising from the Services provided that GNS SCIENCE may not disclose the name of the Client and shall keep confidential any confidential information under clause 8.5 relating to the business affairs of the Client.

- 8.14 GOODS—Where the supply of Services under the Contract includes the sale of goods to the Client or where the Contract is for the sale of goods references to "Services "and to "Deliverables" in these terms and conditions shall be read as also referring to any such goods supplied. GNS SCIENCE accepts no responsibility for any goods not being fit for any particular purpose or for their failing to meet stated performance figures and any statement as to performance, whether in writing or otherwise, shall not constitute a condition, warranty or representation.
- 8.15 PRIVACY—The provisions of the Contract shall not create any obligations enforceable at the suit of any person who is not a party to this Contract, whether under the Contract and Commercial Law Act 2017 or otherwise.
- 8.16 LAW—The Contract shall be deemed to have been entered into in New Zealand and shall be governed by the laws of New Zealand and the parties submit to the jurisdiction of the Courts of New Zealand.