

TERMS OF SERVICE

1. **How These Terms Apply** These Terms of Service (**Terms**) are to be read together with the description of the specific Services and any specific exclusions listed in our Services Proposal, the invoice payment terms on your Invoice, and any special terms we may state in our Services Proposal.
2. **Our Contract** Your acceptance of the Services Proposal and these general Terms together constitute our agreement with you (this **Contract**). This Contract governs the agreement between **Cambie Architectural Design Limited (Company Number 7898860) of 8 Charles Major Place, Hawera, 4610 (us)** and you, the named customer in the Services Proposal, in respect of the Services.
3. **Us** Any reference to 'us' in these Terms include any contractor, employee, assignee, transferees or approved subcontractor that we use.
4. **Business Days** Any reference to 'Business Days' in these Terms means a day on which banks in New Zealand are ordinarily open and excludes a Saturday, a Sunday or a public holiday. Any other reference to a 'day' shall mean a calendar day.

OUR SERVICES

5. **Services** Our Services are specifically described in our Services Proposal but include the following categories of Services:
 - a. Design Services
 - b. Building Consent Application Services
 - c. Project Management Servicestogether with any other specific Services we outline in our Services Proposal (**Services**).
6. **Subcontractors** Either we or our approved subcontractors will perform the Services for you.
7. **Separate Contractors** We shall co-operate with any separate contractors you engage for the execution of your works or project (**Separate Contractors**).
8. **Services Exclusions** All project specific exclusions are listed in our Services Proposal and are incorporated into these Terms.

The following are Services Exclusions that will always apply to our Services unless we expressly agree in writing to include them and document this in our Services Proposal:

- a. Engagement of or payment processing for Separate Contractors; and/or
- b. Procurement of any certifications, compliance statements or records of work from any Separate Contractor in relation to the physical works for your project; and/or
- c. Design Services for structures exceeding two stories; and/or

- d. Costs related to local authority fees for consent application and any related processing costs, fees or expenses; and/or
- e. Designs relating to relocated structures.

OUR OBLIGATIONS TO YOU

9. **Standards of Service** We will perform the Services to accepted industry standards including, where applicable, under the Building Act 2004 and the Health and Safety at Work Act 2015 and the Code of Ethics of Architectural Designers NZ Inc.
10. **Updates on Timing** We will advise you of any anticipated delay to provide a Service. In the event the Services are not completed by the anticipated or proposed date advised by us, you acknowledge and agree that you shall not be entitled to any damages (liquidated damages, or any other type of damages or costs) in respect of the delay.

YOUR OBLIGATIONS TO US

11. **Project Budget** You shall be responsible for obtaining project budget cost estimates and all and any financing relating to your project budget.
12. **Design Services Only** Where you have selected us to perform Design Services only, you shall be responsible for the engagement, co-ordination, and observation of all Separate Contractors. You shall also be responsible for the lodgement of any Building Consent Application including, to avoid any doubt, the submission of all documents, drawings and management of any requests for information issued in connection with that application.
13. **Building Consent Application Services** Where you have engaged us to perform Building Consent Application Services for the design commissioned from us, you shall be responsible for all fees, costs and expenses relating to the application fees, additional services to manage any requests for information issued by a local authority and any other costs listed as a Variation in the Terms that relates to the Building Consent Application.
14. **Project Management Services** Where you have selected us to perform Project Management Services, you shall be responsible for:
 - a. Making the final decision on any tender proposals from builders; and
 - b. Agreeing the final build contract type with your builder and engaging the builder; and
 - c. Arranging a suitably qualified separate contractor to perform all construction administration and observation services related to your project; and
 - d. Agreeing who will be responsible for contract works insurances for the duration of your project; and
 - e. Limiting any changes to the detailed design; and

- f. Managing payment requests and drawings from any finance provider for your project; and
 - g. Any other specific directions we outline to you in the Services Proposal.
15. **Separate Contractor Engagement** Engage your selected Separate Contractors including, but not limited to, the following:
- (i) Architect; and/or
 - (ii) Quantity Surveyor; and/or
 - (iii) Engineer(s); and/or
 - (iv) Planning consultant(s); and/or
 - (v) Surveyor; and/or
 - (vi) Fire design; and/or
 - (vii) Civil works contractors; and/or
 - (viii) Legal service providers; and/or
 - (ix) Builder and related sub-trades; and/or
 - (x) Landscaping designer; and/or
 - (xi) Kitchen designer; and/or
 - (xii) Interior designer; and/or
 - (xiii) Any other sub-trade or consultant or contractor that you will require to complete your project.
16. **Authority for Approval Decisions** You must nominate a single individual with authority to give instructions or approval to us, and where you are working with a professional consultant that you wish to delegate approval and authority to, you must provide us with written confirmation of their contact name, status and basis on which approval or instructions can be accepted by us.
17. **Payment of Amounts Owning** You must pay the total amount of the amounts owing or meet our time and materials costs (whichever one applies to your Services Proposal) for the Services stated in our accepted Services Proposal and included in any Variation Order issued after acceptance of the Services Proposal (the **Project Price**).
18. **Progress Payments** If we require it, you agree to pay us the Project Price in instalments at agreed milestones or in agreed frequencies during our performance of the Services (called **Progress Payments**) at the times and in the amounts set out in the Services Proposal. You accept and agree that you will have funds available to meet these Progress Payments and that you cannot defer these to a final lump sum payment on completion unless we agree to this as a Variation.
19. **Scope Changes to a Minimum** You acknowledge and accept that if you request a Variation (such as a change to your selections, the scope, or the order of any stage of the works) we may not be able to accommodate this in the timeframe you expect. We ask that you keep scope changes to a minimum to

limit any disappointment if we cannot extend your job to meet these change requests.

DEPOSIT

20. **Deposit and Time for Payment of Deposit** You agree that payment of the Deposit is required to confirm acceptance of the Services Proposal and that certain amounts may not be refundable if you decide to terminate this Contract prior to us starting the Services
21. **Refund of Deposit** If you decide to terminate this Contract before we commence the Services, we will be entitled to retain an amount equal to 15% of the Project Price Services Proposal to cover our administration and expenses up to and including the date of termination.
22. **Where Services have Commenced** Where you cancel this Contract after the Services have commenced and the deposit does not adequately meet our time spent up to the date of termination, we shall invoice you for the balance of our time up to and including the date of termination. We shall not be obliged to supply any preliminary or draft drawings to you where you have terminated prior to completion of our Services. We shall retain full ownership rights in accordance with these Terms.

FEES

23. **All Services Proposals Supplied as a Cost Estimate by Default** Unless our Services Proposal specifically states that we offer a fixed price, all of our Services Proposals are issued as an estimate of the costs for the specific scope based on assumption of a capped number of labour hours and the materials for the design or scope of work (**Cost Estimate**). However, all prices are estimates only and are subject to the final confirmation of actual hours and materials for the Services.
24. **Additional Labour Hours Requests are Subject to a Variation Order** If additional labour hours are requested by you to complete the Services in a shorter timeframe than initially agreed, this will be a Variation and subject to the clause 25 below (**Variations**). You will be liable to meet these additional labour costs at our charge up rate for time and materials.

VARIATIONS

25. **Variations to Project Price or Time** We reserve the right to issue a Variation Order to change the Project Price or extend the time to complete the Services in the following circumstances:
- a. **A change to the service type** to that documented in the Services Proposal, whether or not the Services have commenced; and/or
 - b. **A redesign due to project budget constraints** requested due to a change in your project budget, whether due to a revision, a miscalculation or additional costs incurred from other Separate Contractors; and/or

- c. **Public hearing assistance** a Building Consent Application resulting in a public hearing for a municipal agency (including, but not limited to, zoning board of appeals, planning board, architectural review board); and/or
 - d. **Co-ordination of Separate Consultants** where our Services Proposal has not included Project Management services, and we are required to perform co-ordination with your Separate Consultants to enable us to perform our Services or at your specific request; and/or
 - e. **Additional requests for information from local authority** where we have supplied the Services and additional requests for information are made by the issuing authority for the Building Consent; and/or
 - f. **Late changes** a change to any design or drawings after you or any representative authorised by you (including architects, structural engineers, or other Separate Contractor you direct us to take instructions from) have approved the final version (including where you extend the site area for any element of the design); and/or
 - g. **Inaccurate or non-received council records** where we do not receive clear records from council or issuing authorities which impacts on our ability to complete our Services; and/or
 - h. **Consent delays due to undetectable or hidden defects** where additional time is required from us to alter, change, or edit the design or drawings due to the discovery of hidden or unidentifiable difficulties in the building structure that were not disclosed (or not known by you) prior to the approval of the final design. These include, but are not limited to, obscured building defects, latent defects, an error in a third party's design, remediation works imposed by the issuing consent authority that affect the design. This is not an exhaustive list and we reserve our right to exercise our reasonable judgment as to what constitutes "hidden or unidentifiable difficulties" based on our industry expertise; and/or
 - i. **Any other impact outside of our control** a requirement for us to extend the time it takes to complete the works due to the impact of any other changes listed above or which are a Variation.
26. **All Rights Reserved to Decline a Variation** Where a Variation has been requested by you directly to extend scope, decrease a timeframe, or increase a Service type to a higher tier, we reserve our right to decline to treat this as a Variation. In some circumstances, we may elect to treat the request as a new scope of Services and will agree with you if a new Services Proposal is to be supplied.
27. **How We Will Confirm a Variation** We shall supply you with a written Variation Order stating the changes to the Services Proposal, how the price change has been or will be calculated and state any additional costs to accommodate the Variation. This will be supplemental and in addition to the Services Proposal attached to or incorporated into these Terms.
28. **How We Value Variations** Due to the nature of our Services, any Variations will be chargeable at our current hourly rate plus any reasonably incurred third-party costs, expenses or disbursements as notified to you.
- INVOICING AND PAYMENT CLAIMS**
29. **Time and Method for Payment** All amounts specified in an Invoice will require payment immediately unless we have specified a longer due date in writing in our Invoice or Services Proposal (**Amounts Owing**). We do not offer trade or extended credit terms. We will issue Invoices to you by email. You may pay by any of the methods specified on the Invoice.
30. **No Set Off or Deduction Payment of Amounts Owing** Amounts owing which are due and payable must be made without set-off or deduction of any kind. You also agree that you will not be entitled to withhold payment in respect of any undisputed amount.
31. **If You Dispute the Amount We Claim in Our Invoice** If you receive an Invoice and you consider you owe us a lesser amount, you must issue a valid payment schedule (a term used in s21 of the Construction Contracts Act 2002) to us within **seven (7) Business Days** of receiving our Invoice. If you have not responded with a valid payment schedule in writing within this timeframe, we are entitled to treat any amount stated in our Invoice as an Amount Owing and it remains immediately due and payable. If you do respond with a valid payment schedule stating a lesser amount or no amount, and we do not agree, we reserve our rights to use the Dispute Resolution procedures set out in these Terms.
32. **Non-Payment of Amounts Owing** If you do not pay an Amount Owing by the due date and you have not issued us with any valid payment schedule or any later date we have agreed in writing, this becomes an Overdue Amount Owing. After a period of **seven (7) Business Days**, we shall have the right to apply late payment interest at a rate of 8% above the standard BNZ bank rate at the time. This shall be calculated daily and compound monthly at that rate if we elect to do this. This applies before and after any judgment (if applicable).
33. **Debt Collection or Recovery Costs** If an Overdue Amount Owing remains unpaid for **fourteen (14) Business Days** or more, we reserve our rights to engage the services of a debt collection agency or solicitor to take proceedings to recover the Overdue Amount Owing. You will be liable for the costs incurred by us in the collection of any unpaid amounts including but not limited to legal costs,

debt collection fees and internal administration fees.

34. **Administration Fees** In the event we are obliged to perform any additional actions to recover any monies owed by you, we reserve the right to apply reasonable administrative fees for phone calls, texts, emails, and in-person visits to follow up and recover any Overdue Amount Owing in addition to any costs or expenses.
35. **Suspension of Services for Overdue Amounts Owing** If there is an Overdue Amount Owing and such default continues for **seven (7) Business Days** then we shall be entitled to immediately suspend the Services without notice and such suspension shall be on the same basis as if it were a suspension under s24A(2) and (3) of the Construction Contracts Act 2002.

INTELLECTUAL PROPERTY

Meanings in this Clause The following meanings will apply:

36. **Client Pre-Existing Intellectual Property** Intellectual Property rights owned by you prior to our engagement and contained in any documents, drawings, designs, or other materials provided to us for the purposes of providing the Services.
37. **Designer Pre-Existing Intellectual Property** All Intellectual Property rights owned by us prior to our engagement, and required, provided, or used by us in providing the Services (including, but not limited to, any concept drawings supplied as examples, design methodologies, processes, templates, or other materials that have not been prepared exclusively for your use).
38. **New Intellectual Property** All Intellectual Property rights collated, collected, prepared or created by us (or persons acting on behalf of us) in providing the Services (including in all drawings, designs and other materials – documents including in electronic form) but excludes Client Pre-Existing Intellectual Property and Designer Pre-Existing Intellectual Property.
39. **Ownership of Intellectual Property** All New Intellectual Property held in any medium, whether electronic or otherwise, and forming part of the Services, shall be owned by us. We shall retain the right to commercialise, exploit or use in any manner the New Intellectual Property that it owns.
40. **Designer Pre-Existing Intellectual Property** This remains our property and we retain the right to commercialise any of the Designer Pre-existing Intellectual Property.
41. **Client's Pre-Existing Intellectual Property** This remains your property and you grant to us a non-exclusive, non-transferable royalty-free licence to use and copy Pre-Existing Intellectual Property to the extent reasonably required to us to provide the Services.
42. **Warranty Relating to Third Party Infringement** You confirms that any Client Pre-Existing Intellectual Property will not infringe any Intellectual Property or other rights of any third party.
43. **Licence to Use Designer Pre-Existing Intellectual Property** We grant you a royalty-free, non-transferable licence to use and copy the Designer Pre-Existing Intellectual Property to the extent reasonably required to enable you to make use of the Services or the New Intellectual Property.
44. **Licence to Use New Intellectual Property** We grant you a non-exclusive, non-transferable licence to use the New Intellectual Property, subject to you complying with all of your obligations under these Terms, including those in respect of payment of fees and other expenses.
45. **No Commercial Use of Designer Pre-Existing Intellectual Property unless by Us** You shall not be entitled to make use of any of the Designer Pre-Existing Intellectual Property or New Intellectual Property for replication or commercialisation purposes, however we grant you a royalty-free, non-transferable licence to use the New Intellectual Property, solely for the purposes of the project as defined in our Services Proposal.
46. **Copies of Design and Drawings** Upon termination or completion of the Services, and subject to payment of any fees, we will provide you with **one copy** of any plans or drawing prepared as part of the Services, in hard copy or non-editable (e.g. PDF) electronic format. We will not be required to provide the plans or drawings in an editable electronic format.
47. **Where Services are Terminated Prior to Completion** If the Services are terminated prior to their completion, you shall only be entitled to use the New Intellectual Property that has been created as at the time of termination.
48. **Using New Intellectual Property with another Architectural Designer** Where you wish to use the New Intellectual Property for additions or alterations to the drawings, design or materials that shall be provided by someone other than us, you must obtain our prior written consent, which shall not be unreasonably withheld.
49. **Re-Use of the New Intellectual Property** Any re-use of the New Intellectual Property (for example to reproduce the project on a different site) requires our prior written consent. We reserve all rights to use our sole discretion when deciding on consent and we may request a royalty for such re-use, at a rate to be agreed.

QUALITY GUARANTEE

50. **Consumer Guarantees Act** If you are a customer in trade or business and the Services acquired from us under this Contract are for business purposes, the provisions of the Consumer Guarantees Act 1993 (CGA) shall not apply. Otherwise, the provisions of the CGA shall apply.

51. **Defect Liability Period** If the Services are defective, you must notify us within **thirty (30) Business Days (Defect Liability Period)** from the date you become aware of it. Our liability will be reduced in proportion to the extent that you have contributed to the claim, liability, damage, loss, or expense, regardless of whether the contribution arises in contract, tort or otherwise.
52. **Building Act** Any guarantee offered under this Contract is in addition to any implied warranties under ss 362l to 362k of the Building Act 2004 and is subject to the exceptions in that Act and those listed in these Terms.
53. **When We Are Not Liable to Remedy a Defect** Any guarantee owed by us to you under relevant laws or these Terms will not apply where:
- a. The defect is not notified to us within the applicable Defect Liability Period; and/or
 - b. The fault or defect is a result of:
 - (i) something done by you or someone else, and not by us (including our subcontractors); and/or
 - (ii) you not maintaining any structure in a sound and reasonable condition in accordance with all and any instructions, guidance or requirements issued by us to you in respect of the operation, maintenance, cleaning, repair, or other use of the structure in such a way that it caused the defect; and/or
 - (iii) something beyond human control that occurred after completion of our Services or works, for example an extreme weather event or natural disaster or natural event such as an earthquake, lahar or tsunami that causes the defect; and/or
 - (iv) any part of the structure commissioned as part of the Services being misused, abused, neglected, or damaged after installation.

INSURANCE

54. **Insurance Risk** We confirm that we hold all appropriate insurances for the purposes of performing the Services, including but not limited to, professional indemnity insurance and public liability insurance.

LIMITATION OF OUR LIABILITY

55. **Exclusion of Our Liability** To the fullest extent permitted by law, and subject to our obligations during the Defect Liability Period or under any applicable law that imposes guarantees on us, we exclude all liability to you for any direct or indirect claims, expenses, losses, damages and costs (including any incidental, special and/or consequential damages or loss of profits, loss of anticipated savings or loss of expenses suffered or

incurred by you resulting (either directly or indirectly) in connection with the Services.

56. **Project Management Services** Where you have selected Project Management Services, the following additional exclusions and limitations to our liability shall apply:
- a. We accept no liability for the failure to perform by any Separate Contractors engaged to perform construction or other Services in respect of your project; and/or
 - b. We accept no liability for the failure of any Separate Contractor to comply with the design we have supplied; and/or
 - c. Changes made to our designs after we have released these to your Separate Contractors and which are not changes, alterations or amendments made by us as part of the Services.
57. **Limit of Our Liability** Our maximum liability to you in respect of our Services (whether in contract, tort (including negligence) or otherwise) shall be limited to **an amount equivalent to our fees** (exclusive of GST and disbursements) with a maximum limit of \$250,000.
58. **Reduced, Varied or Altered Services** Where our Services have been:
- a. Reduced, varied, or altered to those set out in an initial Services Proposal; and/or
 - b. Terminated prior to completion
- our liability will be limited to only that portion of the Services that have been performed.
59. **When Limitations of Liability Cannot Apply** These clauses do not limit our liability to the extent that it cannot be limited at law; and/or arises out of or in connection with any wilful default, fraud or criminal conduct by us.

DISPUTE RESOLUTION

60. **When This Clause Applies** The parties agree that any dispute, controversy, or claim arising between the parties out of or in connection with this Contract, or in relation to any question regarding its existence, breach, termination, or invalidity (in each case, a dispute) will only be resolved by following the process described in these Terms.
61. **Resolve Between Contact Persons First and Senior Management Second** Where a dispute arises, either party may give notice to the other and request a formal meeting with a view to resolving it (a **Dispute Notice**). The party who is the recipient of a Dispute Notice (the **Recipient**) will, within 48 hours of receiving the Dispute Notice, notify the other party to confirm receipt of the Dispute Notice, and both parties will promptly attempt to resolve the dispute by consultation.

62. **Parties Can Use Mediation** If the dispute is not resolved within **ten (10) Business Days** (or any longer period agreed by the parties) of receipt of the Dispute Notice by the Recipient, either party may submit the dispute to be resolved by mediation by giving notice to the other party. This notice must be in writing by email or letter only and must be addressed to the party.
63. **Choice of Mediator** The mediation will be conducted before a single mediator, on the terms of the Resolution Institute Standard Mediation Agreement (NZ version). The mediator will be agreed between the parties or, failing agreement, within **five (5) Business Days** of receipt of a Dispute Notice, appointed by the Chair for the time being of Resolution Institute or his/her nominee.
64. **Services to Continue to be Performed** Except to the extent this Contract expressly permits otherwise, all parties will continue to perform its obligations under this Contract, notwithstanding any dispute. To avoid doubt, notwithstanding the existence of a dispute, you must still comply with your obligations to pay us in accordance with the terms of this Contract unless the dispute specifically relates to a disputed amount on an Invoice. In that case, you must pay the undisputed portion of that Invoice.
65. **Interlocutory Relief Permitted at any Time** Nothing in this Contract will prevent either party from seeking urgent interim relief from a court of competent jurisdiction.
66. **Adjudication** Nothing in these Terms limits any rights the parties may have to refer a dispute for adjudication under the Construction Contracts Act 2002.
67. **Parties Can Use Mediation** If the dispute is not resolved within **ten (10) Business Days** (or any longer period agreed by the parties) of receipt of the Dispute Notice by the Recipient, either party may submit the dispute to be resolved by mediation by giving notice to the other party. This notice must be in writing by email or letter only and must be addressed to the party.
70. **Entire Agreement** This Contract sets out the entire agreement between the parties.
71. **Construction Contracts Act** This Contract is a construction contract as defined under the Construction Contracts Act 2002.
72. **Signing Not Required** It is not necessary for this Contract to be signed unless we insist on it. You are bound by these Terms if you continue to act in a way that is consistent with the arrangement and discussions you have had with us in relation to the Services Proposal, and we have incurred time and expense in procuring materials or commenced any part of the Services or works for you, or if you have paid a Deposit.
73. **Electronic Acceptance** The parties agree that any legal requirement may be met by using electronic means in accordance with the Contract and Commercial Law Act 2017. In this clause the term "legal requirement" has the meaning given to it by section 219(2) of the Contract and Commercial Law Act 2017.

END

GENERAL

67. **Governing Law** This Contract shall be governed by the laws of New Zealand and the parties irrevocably submit to the exclusive jurisdiction of the courts of New Zealand.
68. **Severability** If, and to the extent any provision or part of a provision is illegal or unenforceable, such provision or part of a provision will be severed from this Contract and will not affect the continued operation of the remaining provisions of this Contract.
69. **Promotional Materials** We reserve all rights to use images, videos, photographs and any other media format to display samples of our completed projects, plans, drawings or other content on any platform of our choice without any prior consent or notification to you. Such platforms include, but not limited to, website and social media platforms used in the course of our business. You provide a waiver of all and any intellectual property rights in such images and acknowledge that the copyright to such images or media belongs to us. We warrant that we will not include any identifying imagery or information that would personally identify any