

## TERMS OF ENGAGEMENT

---

These are the standard Terms of Engagement of Duke & Cooke Ltd (the Company) upon which we will provide our valuation and/or consultancy services as outlined in our Scope of Works (the Services).

### Obligations of the Valuer

The Company undertakes to perform the Services using reasonable skill, care and diligence subject to any financial, physical, time or other restraints imposed by the Client or necessarily resulting from the nature of the project.

### Obligations of the Client

The Client shall provide to the Company, free of cost, as soon as practicable following request, all information requested by the Company which is within the Client's power to obtain.

Services are provided on the basis that the Client has provided the Company with a full and frank disclosure of all information and other facts which may affect the valuation. No liability is accepted by the Company in respect of the agreed Services where such disclosure has not been made.

The Client must co-operate with the Company and not obstruct the proper performance of the Services, including allowing the Company reasonable access to the site and other locations associated with the Services.

As soon as the Client becomes aware of anything that will materially affect the scope or timing of the Services, the Client must inform the Company in writing.

### Limitations of Liability

The Services will be provided solely for the use of the Client and Other Interested Parties named in the report and no distribution or publication is permitted without the written authority of the Company. The Company does not accept responsibility to any other party.

In providing the Services, the Company shall exercise the degree of skill, care and diligence normally expected of a competent professional. While every effort will be made to ensure the accuracy of the opinions, information and forecasts expressed in the report, no liability is accepted for any incorrect statement, information or forecast within.

All opinions of value are subject to the Conditions, Assumptions and Valuation Policies contained in the Services report.

Notwithstanding any other provisions of this agreement, the liability of the Company for damages or losses (in contract, tort or otherwise, including gross negligence) in any way connected with the provision of Services is the lesser of five times the agreed fee, excluding disbursements and GST, with a maximum limit of \$50,000. In addition, liability is restricted to direct loss or damage.

The Company has not and will not during the term of this Agreement, or at any time after it, assume any obligation as the Client's Agent or otherwise which may be imposed upon the Client from time to time pursuant to the Health and Safety in Employment Act 1992 ("the Act") arising out of the engagement. The Client agrees that, for the purpose of the Act, the Company will not be the person who controls the place of work in terms of the Act.

The Services shall be for the stated Scope of Works purposes alone, and we do not purport to be suitably qualified to provide professional advice in the identification of structural issues and building or site contamination in respect of the property/properties being valued. We advise clients to take separate professional advice on these matters.

### Variations

The Client may request variations to the Services, in which case the Company will issue a variation to the original Scope of Works which could include a variation to the fees for the Services if necessary.

### Termination

The Client may terminate our Services engagement at any time. If our engagement is terminated, the Client must pay the Company all fees due and expenses incurred up to the date of termination.

### Payment for Services

All fee quotations or estimates supplied to the Client by the Company will be provided based on the agreed Services and any Variations requested by the Client.

We reserve the right to submit interim invoices for Services where it is considered necessary and fair and reasonable to do so.

An interim invoice may be issued for disbursements, including travelling, accommodation and other reasonable expenses incurred by the Company in the provision of our Services.

Where arrangements are made for payment, other than payment on collection, all accounts are payable on the 20<sup>th</sup> of the month following invoice.

If any payment is not made as provided above, without prejudice to any other rights and remedies the Company may have in respect of recovery of the unpaid amounts, the amount or amounts unpaid shall be liable to carry interest from the original due date to the date of payment, at a rate of 2% per month.

The Client shall pay all costs, expenses, and charges, including legal costs (on a solicitor and own client basis) that are incurred by the Company in recovering any money owing to it by the Client.

Although the Client may expect to be reimbursed by a third party for the Company's fees and expenses, and although our invoices at the Client's request or with the Client's approval be directed to a third party, nevertheless the Client will remain responsible for payment to Duke & Cooke if the third party fails to pay us.

### **Copyright of Documents**

The Company shall retain copyright of all documents it has prepared. The Client shall be entitled to use them or copy them for the purposes of the Services. The Client shall have no right to use any of the documents where any or all the fees and expenses payable to the Company have not been paid in accordance with this Agreement.

### **Consumers Guarantee Act**

If the Client is obtaining the Services for business purposes the provisions of the Consumer Guarantees Act 1993 are excluded in relation to that service. If the Client is not obtaining the Services for business purposes then to the extent that any provision in this agreement is inconsistent with the Consumers Guarantees Act, the provisions of the Act will prevail.

### **Privacy Statement**

The Company may collect personal information from you, including your:

- ) name
- ) contact information, both postal and electronic
- ) billing or purchase information
- ) property ownership or occupation interests

Personal information is collected to:

- ) deliver our Services as stated in our Scope of Works
- ) maintain contact
- ) deliver property valuation services to third parties (this relates purely to commercial property rental information which may be used for market comparison purposes)

The Client authorises the Company to collect, retain and use personal information as outlined in this Privacy Statement. The Client may request access to, and correction of, any personal information and the Company will comply with its obligations under the Privacy Act 2020. If you would like to ask for a copy of your information, or to have it corrected, please contact us.

### **Force Majeure**

Neither the Company nor the Client will be liable for any act, omission, or failure under this agreement (except failure to meet an obligation to pay money) if that act, omission or failure arises directly from a force majeure event (being circumstances beyond the reasonable control of the party concerned, including, without limitation, extreme weather conditions, civil disruption, or industry wide industrial action).

### **Acceptance**

Unless otherwise communicated, the Client confirms the Services outlined in the Scope of Works and agrees to the Terms of Engagement.