

Conditions of Engagement



NZIQS

NEW ZEALAND
INSTITUTE
OF
QUANTITY
SURVEYORS

THE CONSTRUCTION COST SPECIALISTS

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Foreword

This foreword does not form part of the Agreement made under these Conditions of Engagement.

Introduction

These Conditions of Engagement are recommended for the purpose of procuring and providing professional consulting services. They have been developed to apply to the scope of services offered by members of the New Zealand Institute of Quantity Surveyors Incorporated (NZIQS) acting in a consulting role.

NZIQS members suitably qualified to act in a consulting role are identified by membership categories of ANZIQS, MNZIQS, FNZIQS, Life Member NZIQS and may be additionally identified as Reg QS (Registered Quantity Surveyor).

Where the Consultant Practice is a limited liability company or a partnership, at least one director or partner shall be a 'qualified' member of the NZIQS.

Use of this Document

These Conditions of Engagement have been prepared to assist all members of the NZIQS to achieve better practice in ensuring their commissions are properly and legally confirmed in writing. This document is prepared as a reference point for NZIQS members and can be utilised as:

- A stand-alone formal document covering an Agreement between a Client and a Quantity Surveyor to provide professional consulting services; and/or
- A reference point for incorporation within established practice Conditions of Engagements and specialised practice Short Form Agreements (SFA) and/or
- A document amplified as required to suit particular commissions by utilising the Special Conditions.

This document and the NZIQS SFA are available to download from www.nziqs.co.nz. Members should seek specific advice when entering into particular Agreements.

Definition of Purpose

This document is designed to establish an Agreement between the Client and the Quantity Surveyor for any one of a range of project types and sizes. To formalise the commission it is necessary to agree and record the Conditions of Engagement, the scope of Services, and the schedule of fees and disbursements that apply.

Copyright

Copyright in this document is held by the New Zealand Institute of Quantity Surveyors Incorporated. The use of this document is encouraged as best practice in New Zealand.



A: Form of Agreement for Engagement of Quantity Surveyor

This allows for the Signing of the Agreement between Client and Quantity Surveyor and provides a basis for the definition of the Parties, etc.

This is an Agreement made on the day of (year).....

Between the Parties.....

..... ("the Client")

AND

..... ("the Quantity Surveyor")

The Client engages the Quantity Surveyor to provide the Scope of Services set out in Section F ("Services") and agrees to pay the Quantity Surveyor as described in Section G and to undertake its other obligations set out in this Agreement.

The Quantity Surveyor agrees to perform the Services set out in this Agreement.

The following Sections shall form the Agreement:

- Section A: Form of Agreement for Engagement of Quantity Surveyor;
- Section B: General conditions of engagement;
- Section C: Obligations;
- Section D: Special conditions;
- Section E: Scope of Services;
- Section F: Fees & reimbursements;
- Section G: Appendices;
- Other documents:.....

Signed for the Client by:

Signed for the Quantity Surveyor by:

Signature

Signature

Name.....

Name

Position

Position

In the presence of:

In the presence of:

.....

.....

Signature of Witness

Signature of Witness

.....

.....

Name of Witness

Name of Witness

NB:

This document should be signed by an authorised person.

Signatures should be witnessed.

All pages should be initialled by the signatories.



B: General Conditions of Engagement

This sets out the general responsibilities of the Parties - Client and Quantity Surveyor - applying to this commission.

B1 Information and Intellectual Property

- 1.1 Certain information (whether in documentary form or otherwise) may be reasonably required by the Quantity Surveyor so that the Services can be provided. The Client will take all necessary steps to provide such information to the Quantity Surveyor and will bear any associated costs.
- 1.2 The Quantity Surveyor retains the design and copyright of documents and information supplied to the Client and the intellectual property rights of any documents which pre-existed this agreement and/or were not produced in the course of providing the Services.
- 1.3 The Client may use or copy documents and information prepared by the Quantity Surveyor in the course of providing the Services, but only for the purpose for which they are intended and for no other purpose.

B2 Changes to Scope of Services

The Client may change this Commission in writing and may request the Quantity Surveyor to make proposals for changes to the scope of Services. Where commissioned Services are replanned, delayed, changed in scope or timing, or additional Services carried out, fees will be adjusted accordingly, upon Agreement in writing.

B3 Confidentiality

- 3.1 The terms of this Agreement are confidential to the Parties.
- 3.2 Neither the Quantity Surveyor nor the Client will, during the term of this Agreement or after its termination, copy, use, disclose or distribute to any person or entity, otherwise than as necessary for the proper performance of the Services under this Agreement, or as required by law, any confidential information which is not in the public domain and which is reasonably regarded by the other party as confidential to it, which the party has become aware of in the course of performing this Agreement.

B4 Relationship

The relationship between the Quantity Surveyor and the Client is an independent contracting arrangement. Nothing in this Agreement, or the way in which it is performed, will create any relationship of employment, partnership, joint venture or other type of relationship between the Parties.

B5 Disputes

- 5.1 In the event of any dispute or difference arising out of or in connection with this Agreement, or the subject matter of this Agreement, including any question about its existence, validity or termination, the following provisions will apply:
 - 5.1.1 In the first instance the Parties will use their best endeavours to resolve the dispute by discussion amongst themselves.
 - 5.1.2 If discussion between the Parties does not resolve the dispute, the Parties must immediately refer the matter to mediation to be conducted by a mediator agreed by the Parties (failing Agreement to the identity of the mediator, the mediator will be selected by the President of the New Zealand Law Society). The costs of the mediator are to be borne equally by the Parties.
 - 5.1.3 If the dispute is not settled by mediation, the dispute shall be referred to and finally resolved by arbitration under the Arbitration Rules of the New Zealand Dispute Resolution Centre which Rules are deemed to be incorporated by reference into this clause.
 - 5.1.4 The Parties hereby exclude all rights under Clause 5 of the Second Schedule to the Arbitration Act 1996 to appeal to the High Court from any Award made pursuant to this clause.



B6 Termination

- 6.1 Either party may terminate the Agreement made under these conditions on the expiry of twenty working days notice. Notice of termination must be given in writing.
- 6.2 Upon termination the Client shall pay to the Quantity Surveyor all amounts due and payable, along with the incidental costs of termination, should such termination be beyond the control of the Quantity Surveyor.

B7 Assignment

Neither the Client nor the Quantity Surveyor may assign this Agreement without the prior written consent of the other. Consent to such assignment may not be unreasonably withheld.

B8 Liability and Insurance

- 8.1 If the Quantity Surveyor breaches this Agreement the Quantity Surveyor shall be liable to the Client for any reasonably foreseeable claims, damages, liabilities, losses or expenses caused directly by the breach. The Quantity Surveyor shall not be liable to the Client under this Agreement for the Client's indirect, consequential or special loss, or loss of profit, howsoever arising, whether under contract, tort or otherwise.
- 8.2 The maximum liability of the Quantity Surveyor (whether in contract, tort or otherwise) in relation to claims, damages, liabilities, losses or expenses, shall be five times the value of fees (exclusive of GST and disbursements) with a maximum limit of \$NZ250,000 (Two hundred and fifty thousand dollars) unless otherwise recorded in Section F.
- 8.3 If either Party is found liable to the other (whether in contract, tort or otherwise) and the claiming Party and/or a Third Party has contributed to the loss or damage, the liable Party shall only be liable to the proportional extent of its own contribution.
- 8.4 Without limiting the defences a Party may have under the Limitation Act, neither party shall be liable for any loss or damage occurring after a period of six years from the date on which the Services were completed.
- 8.5 The Quantity Surveyor shall have no responsibility or liability for costs, loss or damage of whatever nature arising from:
- 8.5.1 Any errors or omissions contained in documentation or information that has been provided by others.
- 8.5.2 Any act, omission or lack of performance or negligent or fraudulent act or omission on the part of the Client or separate consultant, contractor, supplier to the Client, or any employee or agent of the Client, separate consultant or Third Party.
- 8.6 The Quantity Surveyor agrees to arrange and keep in force Professional Indemnity Insurance for an amount of not less than the amount referred to in Section F of this Agreement. The Quantity Surveyor undertakes to use all reasonable endeavours to maintain this policy of insurance for six years after the completion of the Services.

B9 Sub-Consultants

- 9.1 Where the Quantity Surveyor intends utilising sub-consultants for specific Services, details shall be recorded in Section F of this Agreement. Unless specifically agreed by the Client and Quantity Surveyor, a sub-consultant's engagement shall not change the basis of this Agreement.
- 9.2 If any change is agreed, it shall be fully described and recorded in writing in Section D.

B10 Consumer Guarantees Act

- 10.1 Nothing in this Agreement shall restrict, modify or negate the Client's rights under the Consumer Guarantees Act 1993 where the Services acquired are of a kind ordinarily acquired for personal,



domestic or household use or consumption and the Client is not requiring the Services for the purpose of a business.

- 10.2 The Client and the Quantity Surveyor agree that, where the Services are provided for the Client's business purposes, the provisions of the Consumer Guarantees Act 1993 are excluded in relation to the Services.

B11 Extensions of Time

- 11.1 During the commission circumstances may arise which are outside the Quantity Surveyor's control and make performance of the Services impractical for the time being, in whole or in part.
- 11.2 The Quantity Surveyor shall promptly notify the Client of any such circumstances.
- 11.3 The time for completion of Services affected by such circumstances shall be extended to the extent necessary (as reasonably determined by the Quantity Surveyor).

B12 Completion

When all Services under Section E have been performed and all money payable under section F received, this Agreement shall terminate.

B13 Governing Law and Jurisdiction

This Agreement is governed by the laws of New Zealand and the Parties submit to the non-exclusive jurisdiction of the courts of New Zealand.



C: Obligations

This sets out the obligations of the Parties – Client and Quantity Surveyor – to each other.

C1 Obligations of the Client

1.1 In addition to the General Conditions of this Agreement, the Client shall fulfil the following obligations towards the Quantity Surveyor:

1.1.1 Payment:

The Client must pay the Quantity Surveyor for the Services according to the terms and conditions set out elsewhere in this Agreement.

1.1.2 Information:

The Client must provide all information as necessary for the Quantity Surveyor to provide commissioned Services.

1.1.3 Decisions:

The Client must respond to any written request for a decision within a reasonable time to avoid or minimise any delay to the provision of the Services.

1.1.4 Assistance:

The Client must co-operate with the Quantity Surveyor and ensure that the Quantity Surveyor has access to the site or other locations as required for the performance of the Services.

1.1.5 Other Consultants:

Where the Quantity Surveyor has to direct and/or co-ordinate the work of Separate Consultants commissioned by the Client, the Client must ensure that requirements under B8 (Liability and Insurance) are included in their commissions. The Client must arrange and pay for these Services and advise the Quantity Surveyor where appropriate.

1.1.6 Instructions to Others:

If the Quantity Surveyor has to direct and/or co-ordinate services carried out by Other Consultants and/or Third Parties directly contracted to the Client, all instructions to these Parties shall be given through the Quantity Surveyor.

1.1.7 Other Matters:

As soon as the Client is aware of anything materially affecting the scope or timing of the Services, the Client must inform the Quantity Surveyor in writing.

1.1.8 Health & Safety:

The Client shall provide a list of known identified hazards relevant to the Services and any Health & Safety Plan operated by the Client. The Quantity Surveyor does not assume any obligation under the Health & Safety in Employment Act, unless that obligation is part of the Services.

1.1.9 Approvals:

Where approval of the Client is sought under this Agreement, it shall not be unreasonably withheld or delayed.

C2 Obligations of the Quantity Surveyor

2.1 In addition to the General Conditions of this Agreement, the Quantity Surveyor shall fulfil the following obligations towards the Client:

2.1.1 Services: The Quantity Surveyor shall:

2.1.1.1 Provide the Services set out in Section E;

2.1.1.2 Advise the Client promptly if additional briefing is required to avoid any delay in providing the Services;

2.1.1.3 Notify the Client promptly in writing if a Client direction or any other circumstance is a change within the meaning of clause B4.



2.1.2 Duty of Care:

In providing the Services, the Quantity Surveyor will use the reasonable skill, care and diligence normally expected of a competent professional.

2.1.3 Duty of Independent Judgement:

Where the Services require the Quantity Surveyor to certify, decide or use discretion under a contract between the Client and a Third Party, the Quantity Surveyor must act independently and with professional skill and judgement according to the terms of contract between the Client and the Third Party.

2.1.4 Other Consultants:

The Quantity Surveyor is not responsible for the Services and/or work of Other Consultants.

2.1.5 Ordering Client Materials or Services:

The Quantity Surveyor must obtain the Client's approval before purchasing or ordering any goods or Services, materials or equipment on behalf of the Client.

2.1.6 Conflicts of Interest:

The Quantity Surveyor must try to ensure that conflicts of interest do not arise and notify the Client immediately in writing if a conflict of interest may arise or has arisen or has been perceived to exist.

When a conflict of interest exists or has been perceived to exist, the Client must give informed consent for the Quantity Surveyor to continue the engagement. The Quantity Surveyor must ensure that decisions, advice and opinions can be seen to be evidence-based and free of bias.

2.1.7 Health & Safety:

The Quantity Surveyor must have in place a Health & Safety Management Plan and shall comply with the Health & Safety Management Act.

D: Special Conditions

The following special conditions prevail over any other provisions of this Agreement:

[Leave blank if no Special Conditions are required]



E: Scope of Services

This allows for recording commissioned Services provided to the Client by the Quantity Surveyor. The schedule must be completed as fully as possible and supplemented with additional documentation, where appropriate. Where a service to be provided is not listed below, then that Service (or scope of Services) must be filled in and described as fully as possible in an appropriate space.

Relevant check Boxes should be filled in, either Yes or No, or or

E1 Pre-Design

1.1	Pre-design Estimate	<input type="checkbox"/>	<input checked="" type="checkbox"/>
1.2	Co-ordinate Consultant appointments	<input checked="" type="checkbox"/>	<input type="checkbox"/>
1.3	Feasibility Cost Studies	<input checked="" type="checkbox"/>	<input type="checkbox"/>
1.4			
1.5			
1.6			
1.7			

E2 Concept Design

2.1	Preliminary Budget Estimate		
2.2	Economic advice		
2.3	Preliminary contract advice		
2.4	Update Feasibility Cost Studies		
2.5			
2.6			
2.7			
2.8			

E3 Preliminary Design

3.1	Cost studies.		
3.2	Elemental Estimate / Cost Plan.		
3.3	Budgetary restraint recommendations.		
3.4	Cost projections.		
3.5	Cashflow forecasts.		
3.6	Design modification advice.		
3.7	Budgetary cost checks.		
3.8	Co-ordinate specialist estimates.		
3.9			
3.10			
3.11			
3.12			

E4 Developed Design

4.1	Monitoring Cost Plan.	
4.2	Budgetary Cost Checks.	
4.3	Value Management.	
4.4		
4.5		
4.6		
4.7		
4.8		

E5 Detailed Design

5.1	Schedules of Quantities (NZS 4202 or equivalent).	
5.2	Provisional / remeasured Schedules of Quantities.	
5.3	Specified Schedules of Quantities.	
5.4	Trade Package Schedules of Quantities.	
5.5	Final Project Estimate.	
5.6	Evaluate tenders / offers.	
5.7	Report on Tenders.	
5.8	Checking priced Schedules.	
5.9		
5.10		
5.11		
5.12		

E6 Construction

6.1	Financial administration of Changes.	
6.2	Adjust Monetary Allowances.	
6.3	Progress Payment Valuations.	
6.4	Financial Statements.	
6.5	Cashflow forecasts.	
6.6	Evaluate Claims.	
6.7		
6.8		
6.9		
6.10		



E7 Post Construction

7.1	Final Account.	
7.2		
7.3		
7.4		
7.5		

E8 Other Services

8.1 Quantity Surveying

8.1.1	Replacement cost estimate	
8.1.2	Cost audit.	
8.1.3	Cost to complete.	
8.1.4	Tax depreciation schedules.	
8.1.5	Design / Build evaluation.	
8.1.6	Insurance valuations	
8.1.7	Maintenance schedules / life cycle costs.	
8.1.8	Advice on Tendering Conditions.	
8.1.9	Attendance at Meetings as required	
8.1.10	Expert Witness or assistant in litigation or arbitration processes.	
8.1.11	Adjudicator in terms of the Construction Contracts Act 2002.	
8.1.12	Mediator in matters of dispute arising from construction contracts.	
8.1.13	Engagement of Consultants	
8.1.14	Recommendations on proposed Tenderers / Consultants, etc	
8.1.15	Contract procurement options.	
8.1.16		
8.1.17		
8.1.18		

8.2 Project Management

[Where the Quantity Surveyors' Services encompass Project Management or Programming, then the criteria normally expected in performance and professionalism of others in these fields shall be provided by the Quantity Surveyor.]

Project Management Services may include one or all of the following as agreed:

8.2.1 Planning

8.2.1.1	Establishing activities schedule.	
8.2.1.2	Providing for Client participation.	
8.2.1.3	Arranging meetings and taking executive action.	
8.2.1.4	Carrying out value analysis.	
8.2.1.5	Assisting with Government dealing and public matters.	
8.2.1.6		
8.2.1.7		
8.2.1.8		
8.2.1.9		

8.2.2 Studies

8.2.2.1	Site selection.	
8.2.2.2	Marketing surveys and feasibility studies.	
8.2.2.3	Conducting needs function and strategy planning.	
8.2.2.4	Reports on progress, finance and technical matters.	
8.2.2.5	Evaluation of the function of completed facilities.	
8.2.2.6		
8.2.2.7		
8.2.2.8		
8.2.2.9		

8.2.3 Financial

8.2.3.1	Conducting cost planning.	
8.2.3.2	Assessing financing arrangements	
8.2.3.3	Keeping project cost accounts.	
8.2.3.4	Certifying payment for project Services to consultants, contractors, subcontractors and suppliers.	
8.2.3.5	Facilitating the settlement of disputes between Parties.	
8.2.3.6	Arranging tenders for total project or work sections.	
8.2.3.7	Monitoring construction progress to enable achievement of performance objectives.	
8.2.3.8		
8.2.3.9		



8.2.4 Design

8.2.4.1	Preparing briefs.	
8.2.4.2	Recommending and engaging consultants.	
8.2.4.3	Conducting engineering and Services analysis.	
8.2.4.4	Ensuring compliance with authority requirements.	
8.2.4.5	Arranging material testing.	
8.2.4.6	Arranging operation and maintenance manuals.	
8.2.4.7	Assisting in quality control of materials.	
8.2.4.8		
8.2.4.9		

8.2.5 Construction

8.2.5.1	Preparing briefs.	
8.2.5.2	Recommending and engaging consultants.	
8.2.5.3	Conducting engineering and Services analysis.	
8.2.5.4	Ensuring compliance with authority requirements.	
8.2.5.5	Arranging material testing.	
8.2.5.6	Arranging operation and maintenance manuals.	
8.2.5.7	Assisting in quality control of materials.	
8.2.5.8		
8.2.5.9		

F: Fees & Disbursements

Takes into account varying methods of payment for services provided by Quantity Surveyors and covers the diverse services offered.

F1 Percentage Fee:

[The Fee shall be based on the final cost of the project which shall include all margins and the value of Client supplied items and/or separate work which would normally be part of the contract.]

[Where the fee covers only precontract services, the percentage shall apply to the lowest bona fide tender – or, if not available, based on the 100% estimate.]

1.1	Services listed in Section F	%
-----	------------------------------	---

1.2 Method of Payment

1.2.1	Periodic:	Monthly/	Strike out/fill in
-------	-----------	----------	--------------------

1.2.2	Milestone	%	@	
		%	@	
		%	@	
		%	@	
		%	@	
		%	@	
		%	@	
		%	@	
		%	@	

1.2.3	Partial (describe)	

F2 Lump Sum Fee:

2.1	Services listed in Section F	\$
-----	------------------------------	----

2.2 Method of Payment

2.2.1	As set out in 1.2.1 to 1.2.3 above	Or other
-------	------------------------------------	----------

2.2.2	Other	

F3 Time Charge

[Where Quantity Surveying Services are commissioned on a 'Charge-up' basis, the actual hours expended shall be recorded and the Fee shall be calculated by applying the number of hours worked within each category as tabled below.]

[Where the scope of Quantity Surveying Services is changed or any additional Services are required to be carried out in completing this commission, the fee will be adjusted on a 'Time charge' basis.]

3.1	Hourly Rates:	Principal / Partner / Director	\$	Per hour
		Registered Quantity Surveyor	\$	Per hour
		Senior Quantity Surveyor	\$	Per hour
		Quantity Surveying Technician	\$	Per hour
		Junior Quantity Surveyor	\$	Per hour
		Clerical Assistant	\$	Per hour
		Travel Time	\$	Per hour
			\$	Per hour
			\$	Per hour
			\$	Per hour
			\$	Per hour

F4 Disbursements

[The Quantity Surveyor may with the written authority of the Client, purchase such incidental goods and/or Services as are reasonably required to perform the scope of Services. The cost of these expenses shall be payable as disbursements by the Client in addition to the Fees.]

The following Disbursements are covered by this commission:

4.1	Disbursements:	Description:	Charge or %	Application
		Communications		
		Printing, Copying, etc		
		Travel Costs		
		Vehicle mileage	\$	Per km



F5 Liability & Insurance

[Clause C10 covers the Limit of Liability and the amount of Professional Indemnity Insurance. The extent and nature of the Quantity Surveyor's obligations are recorded below:]

5.1	Maximum Liability:	Description:	Agreed Limit / Insert Amount:	<input checked="" type="checkbox"/> or <input checked="" type="checkbox"/>
		Standard Maximum	5 (Five) times Fee	<input type="checkbox"/> <input type="checkbox"/>
		Maximum Limit	\$250,000.00	

F6 Payment of Fee Accounts

[Clause D1.1 refers to the Client's obligation covering the payment of professional fees and any change to that arrangement must be recorded here.]

- 6.1 The Client may order changes to the scope of Services in writing or may request the Quantity Surveyor to submit proposals for changes to this Commission. Where the Quantity Surveyor considers a direction from the Client or any other circumstance is a change within the meaning of clause B4, the Quantity Surveyor shall notify the Client as soon as practicable.
- 6.2 The Client shall pay the Quantity Surveyor for the fees, expenses and disbursements at the times and in the manner set out below. Where this commission has been entered into by an agent (or a person purporting to act as an agent) on behalf of the Client, the agent and Client shall be jointly and severally liable for payment of all fees, expenses and disbursements due to the Quantity Surveyor under this Agreement.
- 6.3 All amounts payable by the Client to the Quantity Surveyor shall be paid within 20 (twenty) working days of the relevant invoice date. Late payment shall constitute a default and the Client shall pay the default interest on overdue amounts from the date payment falls due to the date of payment at the rate of the Quantity Surveyor's overdraft rate plus 2% and, in addition, the Client shall pay any Debt Recovery costs that are incurred and these costs will be added to the amount outstanding from the Client.

6.4	Payment Terms	Payment Methodology:	Agreed Terms:	<input checked="" type="checkbox"/> or <input checked="" type="checkbox"/>
		Cheque / Direct Credit / etc		
		Payment due date:	20 Working Days after date of invoice.	
		Alternative payment due:		

F7 Signatures

The above is agreed by the signatures of Client and Quantity Surveyor:

	Names:	Signatures:
CLIENT:		
QUANTITY SURVEYOR:		

F8 Appendices

[Complete on separate sheets as required.]

Appendix 1	Scope and Purpose of Services	
Appendix 2	Fees, Expenses & Payments	
Appendix 3	Client's Representative	
Appendix 4	Key Personnel, Representatives, etc	
Appendix 5	Subconsultants	
Appendix 6	Other Consultants	
Appendix 7	Hazard Identification & Notification	
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Appendix 12		
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