



**Appletree Designs and Project Agreement**

**DATE** 2024

**PARTIES**

- 1. Appletree Designs Limited (“**Appletree Designs**”)
- and
- 2. **[Insert]** (“**the Client**”)

**AGREEMENT:**

- 1. The Client engages Appletree Designs to carry out the Services and supply the Goods (where relevant) as set out in the Specific Terms of Contract (Schedule 1).
- 2. Appletree Designs agrees to carry out the Services and supply the Goods (where relevant) on the terms of this Agreement.
- 3. The Client agrees to pay Appletree Designs for all Services carried out and Goods supplied (where relevant) and in accordance with the terms of this Agreement.
- 4. This Agreement is made up of the following documents (“**Agreement Documents**”) in order of precedence:
  - 4.1. This Agreement;
  - 4.2. The Specific Terms of the Agreement (Schedule 1);
  - 4.3. All quotations and descriptions supplied by Appletree Designs to the Client;
  - 4.4. Terms and Conditions (Schedule 2); and
  - 4.5. The following additional documents: \_\_\_\_\_.

**SIGNED**

**Signed by** )  
**Appletree Designs Limited** ) .....

**Signed by** )  
**[Insert]** ) .....

## Schedule 1 – Specific Terms of the Agreement

Clause		Description
1.	<b>Project:</b>	
2.	<b>Services:</b>	
3.	<b>Goods:</b>	
4.	<b>Project Price:</b>	As quoted via Xero
5.	<b>Deposit:</b>	50% for all Window Dressings 50% for furniture that is on back order *If furniture is instock full payment will be due before delivery. Design services – full payment before we commence work.
6.	<b>Commencement Date:</b>	
7.	<b>Estimated Completion Date:</b>	
8.	<b>Other Special Clauses</b>	

## Schedule 2 - Agreement Terms and Conditions

### Definitions

#### 1. Definitions

- 1.1. In this Agreement the following words and terms shall (unless the context otherwise requires) have the following meanings:
- “Agreement”* means the agreement between Appletree Designs and the Client including the Agreement Documents as set out in the Agreement;
- “Agreement Documents”* means the documents as set out in the Agreement;
- “Client’s Intellectual Property”* means all intellectual property rights owned by the Client and provided to Appletree Designs for the purpose of carrying out the Services;
- “Commencement Date”* means the commencement date as set out in Schedule 1;
- “Day”* means a calendar day;
- “Estimated Completion Date”* means the estimated completion date as set out in Schedule 1;
- “Goods”* means the goods, materials and other items to be supplied by Appletree Designs as set out in Schedule 1 and includes any goods and items outlined in any quotation or description document supplied to you;
- “Intellectual Property”* means all intellectual property rights including (but not limited to) copyright, in all concepts, designs, drawings, specifications, plans, reports, models and documentation collated, prepared or created in any medium by Appletree Designs (or persons on behalf of Appletree Designs) in carrying out the Services and provided to the Client in connection with the Project but not including the Client’s Intellectual Property.
- “PPSA”* means the Personal Property Securities Act 1999;
- “Project”* means the project being undertaken by the client as set out in Schedule 1;
- “Project Price”* has the meaning set out in Schedule 1 subject to any Variations as provided for under the Agreement;
- “Services”* means the services to be carried out by Appletree Designs as set out in Schedule 1 and includes any services outlined in any quotation or description document supplied to you;
- “You” or “Your”* means the Client as set out in the Agreement above;
- “Variations”* means any variation pursuant to clause 6 and any other matter which is stated to be a Variation;
- “We”, “Our” or “Us”* means Appletree Designs Limited; and
- “Working Day”* means a day other than a Saturday, Sunday, or statutory holiday on which banks are generally open for business in Wellington.
- 1.2. **Document:** A reference to a document is to that document as amended, novated or replaced from time to time.
- 1.3. **Headings:** Clause headings are for ease of reference only and do not affect its interpretation.
- 1.4. **Parties:** A reference to a party to this Agreement or another document includes that party’s successors and permitted substitutes or assigns.
- 1.5. **Plural and Singular:** Words importing the singular number include the plural and vice versa.
- 1.6. **Sections, Clauses and Schedules:** References to sections, clauses and Schedules are references to this Agreement’s sections, clauses and Schedules.
- 1.7. **Statutes and Regulations:** References to any statutory provision will include any statutory provision which amends or replaces it and any subordinate legislation made under it.
- 1.8. **Negative Obligations:** Any obligation not to do anything will be deemed to include an obligation not to permit or cause that thing to be done.

- 1.9. **Assignment:** References to assignments will include reference to sales, assignments, transfers, mortgages, pledges, charges or any other dispositions or alienations (whether of legal or of beneficial interests).

## **2. Our responsibilities**

- 2.1. We agree to:
- (a) Carry out the Services set out in Schedule 1;
  - (b) Use all reasonable endeavours to complete the Project by the Estimated Completion Date;
  - (c) Obtain your prior approval (which will not be unreasonably withheld) before appointing any Subconsultant if required in relation to the Project (we will be responsible to appoint, direct and pay any Subconsultant);
  - (d) Contact you to provide reasonable notice before visiting your property to carry out the Project on the Commencement Date.

## **3. Your Responsibilities**

- 3.1. You agree and acknowledge that:
- (a) You will pay us for the Services and Goods in accordance with this Agreement (including Schedule 1);
  - (b) You must provide all information required by us as soon as practicable;
  - (c) You will provide us with reasonable access to the site or any other location associated with the Services and Goods on the Commencement Date;
  - (d) Where the Project relates to a property or dwelling, you warrant that you own or are authorised by the owner of the property or dwelling to carry out the Project;
  - (e) You are responsible for all Goods delivered on-site both before and after their installation;
  - (f) The Estimated Completion Date is an estimate only and there may be factors outside the control of each party which mean the Project may not be able to be completed by the Estimated Completion Date.
  - (g) You understand that Appletree will specify and help choose items that meet the brief and provide all information around these choices including dimensions. Appletree does not refund or credit change of minds. The choice is ultimately yours.

## **4. Payment**

- 4.1. We will invoice you for the Project Price as set out in Schedule 1 and for any Variations. You acknowledge that unless otherwise stated in Schedule 1, we may send an invoice for the Project Price before the Commencement Date or send progress invoices during the Project.
- 4.2. You acknowledge that we may require a deposit of 50% for certain Goods before submitting an order with a supplier. For any furniture orders the balance is due prior to delivery. With window dressing orders an additional 25% will be invoiced and due prior to installation with the balance for such ordered Goods will be due the job is installed. We will advise you if a deposit is required and invoice you accordingly.
- 4.3. You agree to pay us all invoices received in full and in cleared funds within ten (5) Working Days ("Due Date").
- 4.4. We will require you to pay interest on any amount which is more than thirty (30) days overdue. Interest will be calculated at the rate of 2% per month on the overdue amount, calculated daily from the Due Date until the date on which payment of the overdue amount is made in full.

- 4.5. You acknowledge that any costs relating to the collection and recovery of outstanding payments may be passed on to you and you agree that we may obtain and share your credit information with any party in order to determine your creditworthiness or to recover outstanding amounts.

## **5. Refunds and Returns**

- 5.1. Subject to clause 5.2, the parties acknowledge all Goods are not refundable.
- 5.2. You may cancel an order in writing to us only if the order has not been placed with the supplier at the time we receive your notice. You acknowledge that if you cancel your order in accordance with this clause, this will be treated as a Variation and we are entitled to charge you consulting fees on a time attendance basis at our hourly rate of \$145.00 plus GST for any time spent advising you.

## **6. Variations**

- 6.1. You are entitled to request variations to the Project by submitting your request writing to us, including any variation to the scope, time of supply or scale of the Services and Goods supplied under the Agreement.
- 6.2. We will respond to your variation request as soon as reasonably practicable but no later than five (5) Working Days of receipt of your written request and advise you of any resulting change in the Estimated Completion Date and Project Price where possible or if this is not possible, propose to charge on a time attendance basis.
- 6.3. Following our response, the parties must agree in writing on the variation(s) to the Project, any change in the Estimated Completion Date and the Project Price or proposed charges (as the case may be).
- 6.4. You further agree that if there are additional services required for the Project that fall outside the Services, then we will advise you of the additional services required and obtain your written approval to carry out all additional services. Any approved additional services will be treated as a Variation and will be charged as quoted or otherwise based on our hourly rate of \$145.00 plus GST.

## **7. Liability and Guarantees**

- 7.1. The parties agree that they are only liable to the other party for reasonably foreseeable damages, losses, liabilities or expenses caused directly by a breach of the Agreement.
- 7.2. Except as provided for under clause 7.1, the parties agree that we are not liable for any claims, damages, liability, losses or expenses (including indirect, consequential or special loss or loss of profit) however arising, in relation to the Project.
- 7.3. The parties acknowledge and agree that we are not liable for any reason if:
- (a) We are unable to complete the Project by the Estimated Completion Date if this is due to factors outside of our control; and
  - (b) There are variations in colour and/or tonality of any final Goods provided to you from the sample products shown (for example, any wood and fabric materials). This is because certain Goods are made of natural materials meaning we have no control over the final colour or tonality and that certain climate conditions can cause a variation in colour or tonality if the Goods purchased at different times.
- 7.4. If either party is found liable to the other (whether in contract, tort or otherwise) and the claiming party has contributed to the loss or damage, the liable party will only be liable to the proportional extent of that party's own contribution.
- 7.5. The parties acknowledge and agree that where both parties are in trade and the Services are supplied and acquired in trade, section 43 of the Consumer Guarantees Act 1993 ("Consumer Guarantees Act") or section 5D of the Fair Trading Act 1986 ("Fair Trading Act") will apply to this Agreement (as applicable). The parties further agree that it is fair and reasonable for the parties to be bound by this clause and that:
- (a) The provisions of the Consumer Guarantees Act will not apply; and

- (b) Section 9 (misleading conduct), 12A (unsubstantiated representations), 13 (false or misleading representations) or 14 (false representations and other misleading conduct in relation to land) of the Fair Trading Act will not apply to either party's conduct or representations.
- 7.6. Where the Goods are subject to a specific manufacturer's warranty then the parties agree that this manufacturer's warranty will apply to the Goods. We will endeavour to provide you with a copy of the specific manufacturer's warranty as soon as reasonably practicable. The Goods will not be covered under warranty for normal wear and tear or for damage caused to them due, amongst other reasons, to improper use or cleaning.
- 7.7. You agree to indemnify us against and from any liability which we may incur to any person and against all claims, demands, proceedings, damages, losses or costs and expenses made against, suffered or incurred by us, directly or indirectly as a result of any breach of your obligations under the Agreement.

## **8. Retention of Title**

- 8.1. The parties acknowledge that unless agreed in writing, we will retain ownership of all Goods that are supplied by us until you have satisfied all your obligations under this Agreement, including the obligation to pay all monies due to us for the Services carried out.
- 8.2. Until title to the Goods passes to you under clause 8.1, you agree to:
- (a) Hold the Goods as a bailee (where possible);
  - (b) Clearly designate the Goods as our property and store any Goods in such a way that they are identified as ours and not yours (where possible); and
  - (c) Maintain the Goods in good order and condition and preserve the Goods in their present form.
- 8.3. Without prejudice to our other rights and remedies under this Agreement, we are entitled to re-take possession of any Goods at any time prior to payment in full being received for the Services and Goods.
- 8.4. You grant us with an irrevocable right and authority to enter onto any site or other location and place where such Goods are situated and to take and resell the Goods and to retain the proceeds from such sale. Any shortfall arising from such sale will be a debt due and owing by you to us.

## **9. Personal Property Securities Act 1999**

- 9.1. You acknowledge that our retention of title in clause 8 gives rise to a security interest in all present and after acquired Goods supplied by us to you to secure the performance of your obligations under the Agreement.
- 9.2. You undertake to:
- (a) Promptly do all things, execute all documents and/or provide any information which we may reasonably require to enable us to perfect and maintain the perfection of our security interest (including by registration of a financing statement);
  - (b) Give us no less than 14 days prior written notice of any proposed change in your name and/or any other change to your details (where relevant); and
  - (c) Immediately on request by us (and at your expense) obtain from any third party such agreements and waivers of any security interest that a third party has in the Goods, to ensure that at all times we have a first priority security interest in the Goods.
- 9.3. You waive your rights to receive a copy of any verification statements under the PPSA and agree that as between you and us:
- (a) You will have no rights under (or by reference to) sections 114(1)(a), 116, 120(2), 121, 125, 129, 131, 133 and 134 of the PPSA; and
  - (b) Where we have rights in addition to those in Part 9 of the PPSA, those rights will continue to apply.

## **10. Intellectual Property**

- 10.1. The parties agree that we will retain ownership in all Intellectual Property (including all designs, plans and the Agreement Documents). However, where all amounts owing to us have been paid by you in full, we grant you a licence to use any designs, plans and the Agreement Documents for the sole purpose of maintaining and using any Goods and the Project.
- 10.2. You agree to not use any designs, plans and the Agreement Documents for any other purpose or to disclose these to any other person except with our prior written consent.

## **11. Termination**

- 11.1. Either party can terminate the Agreement by written notice if the other party:
- (a) Commits an act of bankruptcy;
  - (b) Enters into any scheme or arrangement or compromise with its creditors;
  - (c) Is or is deemed to be insolvent;
  - (d) Goes into liquidation or receivership; or
  - (e) Has not remedied any default set out below within ten (10) Working Days of receiving written notice from the other party of such default;
- Default means where a party:
- i. Without reasonable cause suspends the Project;
  - ii. Fails to perform their obligations in accordance with the Agreement;
  - iii. Abandons the Agreement prior to the completion of the project; or
  - iv. Has become incapable of complying with their obligations under the Agreement
- 11.2. Either party is permitted to terminate the Agreement at their sole discretion by giving at least one (1) month written notice to the other party.
- 11.3. If an event occurs which:
- (a) Is beyond the control of either party (and for the avoidance of doubt includes an epidemic); and
  - (b) Is neither directly or indirectly caused by either party; and
  - (c) Prevents the performance of the Services and/or supply of Goods (where relevant) under the Agreement,
- then all Services and supply of Goods will be suspended until it becomes practicable to recommence the Services and supply of Goods. For the avoidance of doubt, such events will not include personal events such as ill-health, lack of funding or resources.
- 11.4. Where an event occurs under clause 11.3:
- (a) We will be allowed additional time as reasonable in the circumstances to carry out the Services and supply of Goods under the Agreement and you will have no claim against us in relation to any extension of the Estimated Completion Date;
  - (b) If the suspension under clause 11.3 continues for longer than four (4) months, then the Agreement may be terminated by either party giving written notice to the other and neither party will have any claim against each other except for any default or breach which occurred prior to the suspension;
  - (c) Any suspension under clause 11.3 (other than for the default of the Contractor) will be treated as a Variation; and
  - (d) For the avoidance of doubt, despite any suspension under this clause, you must pay all amounts owing to us for Services carried out and Goods supplied up until the suspension in accordance with the terms of the Agreement.

- 11.5. Upon the expiry or termination of the Agreement for any reason:
- (a) We are entitled to invoice you for any Services carried out and Goods supplied to date;
  - (b) You must pay any reasonable costs that we incur solely because of the early termination of the Agreement (unless such termination is a result of our default);
  - (c) Subject to clause 11.4, such expiry or termination will be without prejudice to the rights and remedies of either party in respect of any breach of the Agreement by the other party, where such breach occurred prior to the termination of the Agreement; and
  - (d) All other provisions, with special reference to liability (including any exclusions of liability) and the payment provisions will remain in full force and effect.

## 12. Disputes

- 12.1. The parties agree to act in good faith to resolve any disputes between themselves within ten (10) working days.
- 12.2. In the event that the parties are unable to settle a dispute between themselves within ten (10) Working Days, either party may refer the dispute to mediation. The parties must appoint a mediator within five (5) Working Days of the dispute being referred to mediation. If the parties cannot agree on a mediator, then the mediator shall be appointed by the President for the time being of the New Zealand Law Society
- 12.3. In the event that the parties do not reach an agreement in mediation within twenty (20) Working days of the appointment of a mediator, either party may refer the dispute to arbitration by a single arbitrator in accordance with the Arbitration Act 1996. The arbitrator must be agreed on between the parties within five (5) working days of the dispute being referred to arbitration. If the parties cannot agree on an arbitrator, then the arbitrator will be appointed by the President for the time being of the New Zealand Law Society.

## 13. General Terms

- 13.1. **Governing Law:** This Agreement shall be governed by the laws of New Zealand and the parties agree to accept the non-exclusive jurisdiction of the New Zealand Courts.
- 13.2. **GST:** Where there is a reference to any payment under the Agreement, GST (or any similar tax) is to be added to the amount of that payment.
- 13.3. **No Assignment:** Neither party may assign this Agreement or any of their rights or obligations under this Agreement at any time without first obtaining the other party's prior written consent.
- 13.4. **Notices:** Any notice given under this Agreement must be sent by email to the address of the relevant party set out below and as designated from time to time by the parties. Service of such notices will be deemed to be received upon transmission provided that any notice sent by email after 5 pm on a Working Day will be deemed to have been received on the next Working Day.

### Appletree Designs:

### Appletree Designs Limited

Care of:

Rachel Steinmetz

Email Address:

rachel@applereedesigns.co.nz

**Client:**

[insert]

Care of:

[insert]

Email Address:

[insert]



- 13.5. **Relationship Between the Parties:** Nothing in this Agreement constitutes or is deemed to constitute any party as the partner, agent, employee or officer of any other person, and no party shall make any contrary representation to any other person.
- 13.6. **Entire Agreement:** This Agreement records the entire arrangement between the parties relating to matters dealt with in this Agreement and supersedes all previous arrangements, whether written, oral or both, relating to such matters.
- 13.7. **No Waiver:** A waiver by any party of a breach of any term, provision or condition of this Agreement will not constitute a precedent for or bind that party to grant a waiver of any subsequent breach of the same or any other term, provision or condition of this Agreement.
- 13.8. **Partial Invalidity:** If any provision of this Agreement is or becomes invalid or unenforceable, that provision shall be deemed deleted from this Agreement and such invalidity or unenforceability shall not affect the other provisions of this Agreement, all of which shall remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provisions.
- 13.9. **Further Assurances:** Each party shall do all things and execute all documents reasonably required in order to give effect to the provisions and intent of this Agreement.
- 13.10. **Amendment to Agreement:** No amendment, addition or variation to this Agreement will be effective unless agreed in writing by both parties.
- 13.11. **Counterpart:** This Agreement may be executed in one or more counterpart copies (including emailed copies) which, read together, shall constitute one and the same document.