

Terms of Business

These Terms of Business apply to any products or services supplied by Vitality Works and should be read in conjunction with any Agreement, proposal, quote, contract or Work Schedule (each an "Agreement") prepared by Vitality Works.

Your use of our Services is sufficient to be taken as acceptance in full of the current version of these Terms of Business. It is not necessary for us to get your express agreement or signature to these Terms and Conditions. If you do not agree to these Terms of Business at any time, please discontinue use of the Services and contact us.

Unless otherwise agreed in writing or set out in an Agreement, these terms apply to the exclusion of any inconsistent provisions, which may appear on any order form, or other documentation issued by you. They will apply to any variations to a Proposal, Quote, Contract or Work Schedule, and to any additional services provided, which may be the subject of verbal agreement.

1. Services

Vitality Works will provide the Services described in the Work Schedule in a timely, diligent and competent manner and at such locations and times as agreed between the parties in writing. Vitality Works will use its best endeavours to meet any Work Schedule proposed by the Client or Vitality Works will propose an alternative Work Schedule that is reasonably proximate to that Work Schedule for approval by Client and if approved Vitality Works will perform the Services in accordance with that Work Schedule. Vitality Works will ensure that all personnel providing Services maintain appropriate training or qualifications to provide those Services.

2. Access and Information

Client acknowledges that Vitality Works' performance is dependent on Client cooperating with Vitality Works in connection with your Agreement. Without limiting the foregoing, Client may be required to provide: (a) site inductions (b) access to the rooms/buildings/premises in which the Services will be provided; (c) audio-visual equipment (if applicable to the Services); (d) security passes, parking and storage space for equipment; (e) wastepaper bins in all rooms; and (f) anything of similar nature reasonably required by Vitality Works to perform the Services. Client will provide Vitality Works with any information reasonably required by Vitality Works to assist with the performance of the Services. Client acknowledges that: (a) in providing of the Services, Vitality Works may receive individual medical history and consent forms from each participant (each a Medical Form); (b) each Medical Form is a medical record, and as such must be treated as confidential; (c) Client will not have access to any Medical Forms, and Vitality Works will not release any Medical Form to the Client or any third party without the written authority of the relevant participant; (d) Vitality Works may not use the Medical Forms to provide Client with the names of those participants who received Services.

3. Agreed Price

Vitality Works will invoice the Agreed Price for the services (cancellations, additional and extraordinary work will be additional charges) as set out in the Work Schedule or otherwise agreed. You agree to pay the Agreed Price, in accordance with the Work Schedule within 30 days of the receipt of the relevant invoice.

Any reasonable out-of-pocket expenses associated with the provision of the Services which have not been expressly included in the Agreed Price and/or Work Schedule, including, but not limited to, printing, courier expenses, flights, consumables will be invoiced at cost plus 10% in the invoice immediately following the expense being incurred.

4. Interest

If Client does not pay any invoice by 30 days after the invoice date, Vitality Works may charge Client interest at the rate of 2%

above the cash target rate determined by the Reserve Bank of New Zealand applying at the date of the invoice.

5. File storage/destruction

Vitality Works will store its Client file records for 7 years after completion of the Services, following which they may be destroyed without further notice to Client.

6. Cancellation or reasonable postponement of the Services

Client may require a reasonable adjustment to any Work Schedule on written notice to Vitality Works, or Client may cancel the Services at any time, in each case in accordance with the Cancellation and Postponement Policy referenced in the work schedule.

7. Confidentiality

Obligation of Confidentiality - Neither party will, without the prior written consent of the other, disclose to any third party any Confidential Information which is received from the other and will only use such Confidential Information for the purposes of providing or receiving Services or for its internal record keeping purposes. Each party will exercise the same level of protection and care to safeguard the Confidential Information it receives from the other party that it customarily uses in safeguarding its own confidential information and at a minimum will use reasonable endeavours. Confidential Information disclosed under your Agreement will be subject to this clause 7 for 2 years following the initial date of disclosure other than personal information which will be held as required by law.

Exceptions - These restrictions will not apply:

- (a) to any information which: (i) is or becomes generally available to the public other than as a result of a breach of an obligation under this clause 7; (ii) is acquired from a third party without an obligation of confidentiality; or (iii) is or has been independently developed by the recipient or was known to the recipient prior to receipt; or
- (b) to any disclosure of Confidential Information: (i) to a party's respective insurers or legal advisors; (ii) to a third party, to the extent that this is required by any court of competent jurisdiction, by a governmental or regulatory authority, or where there is a legal right, duty or requirement so to disclose (in which case the party so disclosing will, where reasonably practicable and legal, first give the other party at least 2 business days' notice in writing); or (iii) by Vitality Works to its Related Company or a third party as may be necessary for the delivery of the Services, subject to such third party agreeing in writing to be bound by similar terms and conditions.

8. Intellectual Property

- (a) Client Materials - Client will own the Intellectual Property Rights in any materials which are or were created by or licensed to Client prior to, or outside of, any engagement with Vitality Works (Client Materials), subject to the remainder of this clause 8. If Client grants permission to Vitality Works to use the Client Materials, Client grants to Vitality Works a non-exclusive, royalty-free, world-wide, perpetual right to use, copy, adapt, modify, sub-license and market such Client Materials, but only for the purpose of the provision of the Services and for no other purpose.
- (b) Pre-Existing Works - The Intellectual Property Rights in any materials or software (whether written or machine-readable) which are or were created by or licensed to Vitality Works prior to, or outside of, the Client's engagement of Vitality Works, and any subsequent modifications to same (Pre-Existing Works) will remain vested in Vitality Works or a third party. To the extent that Pre-Existing Works are embedded in any Deliverables, Client will have a

licence to use them in accordance with clause 8(c) below.

- (c) Deliverables - Vitality Works will own the Intellectual Property Rights in all deliverables which are not Client Materials and in all other materials or software created under these terms whether by or on behalf of Vitality Works solely or both parties jointly (Deliverables). Provided Client has met its payment obligations under these terms of Business or Work Schedule, Client will have a perpetual non-exclusive, non-transferable licence to use these Deliverables (and any Pre-Existing Works to the extent that these are embedded in the Deliverables) for Client's own internal use and only for the purposes for which they were delivered, but Client must not provide any Deliverables (or any Pre-Existing Works, to the extent that these are embedded in the Deliverables), or copies of them, to any third party. Any Deliverables that are not expressly specified in the Schedule as "Client Materials", "Deliverables" or "Pre-Existing Materials" will be considered "Deliverables".

9. No exclusivity

Vitality Works will not be prevented or restricted by anything in these Terms of Business or Work Schedule, save only for its obligations with respect to Confidential Information, from providing services to other clients.

10. Restraint

Neither the Client nor any of its Related Company may for a period of 12 months from the date of your Agreement solicit, approach or endeavour to entice away any person employed by Vitality Works or any of its Related Company during the period during which the Services are provided, unless that person responds to a bona fide advertisement published by Client or the relevant Related Company which is targeted to a wide audience of potential applicants.

Neither Vitality Works nor any of its Related Company may for a period of 12 months from the date of your Agreement solicit, approach or endeavour to entice away any person employed by Client or any of its Related Company, during the period during which the Services are provided, unless that person responds to a bona fide advertisement published by Vitality Works or the relevant Related Company which is targeted to a wide audience of potential applicants.

11. Termination

Termination for cause: Either party (Non-Defaulting Party) may terminate an Agreement, proposal, quote, contract or Work Schedule prepared by Vitality Works, with immediate effect by providing a written notice to the other party (Defaulting Party) if: (a) the Defaulting Party is in material breach of these Terms of Business, or terms set out in the Agreement, proposal, quote, contract or Work Schedule, and such breach is not capable of being remedied or if it is capable of being remedied is not remedied within 10 Business Days of the notice to remedy issued to the Defaulting Party; (b) where Client is the Defaulting Party, Client fails to pay any invoice by its due date; (c) the Defaulting Party is subject to an Insolvency Event.

On termination of the Agreement, Client must pay Vitality Works all outstanding fees up to the date of termination (whether or not invoiced) and any additional costs or expenses Vitality Works incurs up to the date of termination as a direct result of such termination. Providing the Client gives Vitality Works sufficient notice, Vitality Works will take reasonable steps to mitigate any such costs or expenses. This obligation survives the termination of your Agreement.

12. Relationship of the parties

Each of the Client and Vitality Works are independent contractors. Nothing in your Agreement will constitute or be deemed to constitute a partnership.

13. Liability and acknowledgement of risk

Nothing in your Agreement excludes or limits any liability of either party that cannot be excluded or limited by law.

Without limiting the foregoing, regardless of the basis on which Client is entitled to claim damages from Vitality Works (including fundamental breach, negligence, misrepresentation, or other contract tort or equity claim), to the extent permitted by law, Vitality Works' total liability for all claims under or in connection with your Agreement is limited in the aggregate to an amount equivalent to one times the fees paid under work schedule applicable to the affected Services at the time the first claim is made.

Further, neither party will be liable to the other for any loss or damage that was not in the reasonable contemplation of the parties at the time of entering into the Agreement or for any lost profits, lost business opportunity, anticipated savings or any special, indirect, consequential, economic, punitive or exemplary loss or damage, even if informed of the possibility of such loss or damage.

To the maximum extent permitted by law all warranties, conditions, representations or terms not expressly set out in your Agreement or in a proposal are hereby excluded.

Client acknowledges that Vitality Works does not manufacture any materials provided in the provision of Services, including but not limited to vaccines. As a result, Vitality Works cannot guarantee supply of the relevant materials required for provision of the Services. Client acknowledges that shortages of any such materials are not the responsibility of Vitality Works.

Vitality Works reserves the right to refuse to provide any Services to any of the Client's participants if, acting reasonably, Vitality Works or any of its personnel providing the Services determines that providing the relevant Services to the Client participant would compromise or risk his or her health or safety, including but not limited to the circumstances where Vitality Works or any of its personnel determines that any Medical Form is inaccurate or incomplete.

The Medical Form for each participant of the Services is required by Vitality Works to ensure that the Services that Vitality Works provides are suitable for the Client participants. Any details that are inaccurate or incomplete on the relevant Medical Form for each participant and which could not reasonably have been detected by Vitality Works or its personnel at the time of providing the Services, may cause Vitality Works to provide inappropriate services and advice, for which Client acknowledges that Vitality Works does not accept liability, to the extent permitted by law.

Client acknowledges that although rare, some patients are known to suffer adverse reactions, including but not limited to severe allergic reactions or anaphylactic shock, without any prior history of adverse reactions. Vitality Works will direct its personnel performing the Services to monitor Client's employees for an appropriate period after each individual service, but does not accept liability for participants who may suffer an adverse reaction.

14. New Zealand Consumer Law

These Terms of Business do not affect any guarantees that cannot be excluded under New Zealand Consumer Law (being the Consumer Guarantees Act 1993 and the Fair Trading Act 1986). To the extent permitted at law, if New Zealand Consumer Law does apply to the Services then any recourse is limited to, at Vitality Work's discretion, resupplying the Services or refunding all or some of the Agreed Price (as required).

15. Insurance

Vitality Works will maintain: (a) professional indemnity insurance in respect of liability under your Agreement for an amount of at least \$10 million in the annual aggregate; and (b) public liability insurance for an amount of at least \$5 million in the annual aggregate.

Each party will comply with all workers compensation or similar legislation in respect of its employees.

16. Dispute Resolution

If a dispute arises in relation to the provision of the Services (Dispute), then:

- (a) each party will use its best endeavours to settle the Dispute by agreement and act in good faith and cooperate with the other party to resolve the Dispute;
- (b) if the Dispute is not settled by agreement within 30 days, then, unless both parties agree:
 - i. full written particulars of the Dispute must be promptly given to the other party; and
 - ii. the matter must then be referred to mediation in Auckland administered by the New Zealand Disputes Resolution Centre (NZDRC) before either party commences any litigation;
- (c) the mediation under this clause must be conducted in accordance with the NZDRC Rules for Mediation operating at the time the matter is referred to the NZDRC (Guidelines) except to the extent that the Guidelines are inconsistent with the terms of your Agreement. The Guidelines set out the procedures to be adopted for the mediation, the process of selection of the mediator and the costs involved;
- (d) neither party will initiate any litigation during the dispute resolution process outlined in paragraphs (b) to (c) above, unless proceedings are necessary for preserving the party's rights; and
- (e) each party will continue to comply with all its obligations in your Agreement until the Dispute is resolved.

17. GST

Definitions: For the purposes of this clause 17, "acquisition", "consideration", "GST", "GST Law", "input tax credit", "recipient" "supply", "taxable supply", "tax invoice" and "value" have the meaning given by section 195-1 of the Goods and Services Tax Act 1985.

GST exclusive consideration: Except where express provision is made to the contrary, the consideration payable by a party for a taxable supply made by the other party pursuant to your Agreement represents the value of the taxable supply and is expressed to be exclusive of any GST.

Consideration to be increased by GST amount: Notwithstanding any other provision of your Agreement, if a party makes a taxable supply in connection with your Agreement (the supplier), then the party liable to pay for the taxable supply (the recipient) must also pay, at the same time and in the same manner as the GST exclusive consideration is otherwise payable, an additional amount equal to the amount of any GST payable in respect of the taxable supply.

Further and additional payments: Where your Agreement requires the recipient of a taxable supply to make further and additional payments, whether by way of reimbursement or contribution or other payments, for an amount paid or payable by the supplier in respect of an acquisition from a third party for which the supplier is entitled to claim an input tax credit, the additional amount payable by the recipient will be reduced by the amount of the input tax credit and increased by the amount of GST payable by the supplier in respect of the supply.

Tax Invoice: The right of either party to payment under this clause 17 is subject to a valid tax invoice, which complies with GST Law, being issued and delivered by the supplier of the taxable supply to the recipient.

18. Notices

Any notice given under your Agreement must be in writing and may be:

- (a) delivered by hand, in which case the notice will be taken to be received on delivery;
- (b) sent by pre-paid post to the registered address of the party, in which case the notice will be taken to be received on the second Business Day after the day of posting; or

- (c) transmitted by electronic mail, in which case the notice will be taken to be received at the time it is recorded as 'sent' and appears in the 'Sent' folder of the sender's electronic mail system.

If the delivery is not on a Business Day or is after 5.00pm (recipient's time) on a Business Day, the notice is taken to be received at 9.00am (recipient's time) on the next Business Day.

19. General

Precedence: If there is any conflict, inconsistency or ambiguity between any provisions or parts of your Agreement the provisions will prevail in the following decreasing order of precedence: (a) the Terms of Business; (b) a Schedule; (c) any document incorporated by reference.

Assignment: Your Agreement cannot be assigned by either party without the prior written consent of the other party.

Force majeure: Vitality Works is not liable for any act, omission or failure relating to the Services if that act, omission or failure is directly a result of a cause beyond its reasonable control. This includes extreme weather conditions, civil disruption, act of terrorism, or industrial action. If such an event occurs Vitality Works will give Client notice of this, and will continue to use its best endeavours to carry out its obligations to Client.

Acts of Government: Vitality Works is not liable for any act, omission or failure relating to the Services if that act, omission or failure is directly a result of an act of government. If such an event occurs Vitality Works will give Client notice of this, and will continue to use its best endeavours to carry out its obligations to Client.

Whole Agreement: The Agreement replaces any previous individual agreements, arrangements or understandings between Client and Vitality Works or any of its Related Company. The Agreement constitutes the whole agreement between Client and Vitality Works in relation to the Services.

Variation: Your Agreement may only be varied in writing and signed by both parties.

Severability: Part or all of any provision of your Agreement that is illegal or unenforceable will be severed from your Agreement and will not affect the continued operation of the remaining provisions of your Agreement.

Governing Law: Your Agreement will be governed by and construed in accordance with the laws in force in New Zealand and each party submits to the exclusive jurisdiction of the courts of New Zealand.

20. Definitions

Unless expressed or implied to the contrary:

Agreement refers to any Proposal, Quote, Contract or Work Schedule, agreed by you and Vitality Works in any form, which describes the products and services to be delivered by Vitality Works to you as set out in the Agreement.

Agreed Price has the meaning given to this term in any agreed Proposal, Quote, Contract or Work Schedule provided and includes any part payment made by way of a deposit.

CLIENT, YOU and YOUR means the person or company who contracts with Vitality Works to provide products and services. An Agent may represent the Client who acts with the Client's authority and arranges or directs services on the Client's behalf.

Confidential Information means all information that the disclosing party provides or makes available to the recipient party in connection with your Agreement (regardless of the form in which the information is provided) that is marked as "confidential" or that is by its nature manifestly confidential.

Insolvency Event means in relation to a party any of the following occurring: (a) an order being made, or that party passing a resolution, for its winding up; (b) an application being made to a court for an order for its winding up which application is not stayed, withdrawn or dismissed within 5 Business Days of being made; (c) has an administrator, receiver, liquidator,

statutory manager, mortgagee's or chargee's agent appointed, becomes subject to any form of external administration, or ceases to continue business for any reason; or (d) any analogous event (including any analogous event under the laws of any applicable jurisdiction).

Intellectual Property means any type of intellectual property anywhere in the world including without limitation: (a) any patents, utility models, copyrights (including future copyrights) registered or unregistered trade marks or service marks, trade names, brand names, indications of source or appellations of origin, eligible layout rights, plant variety rights, registered or unregistered designs, drawings, specifications or technology or commercial names or designations; (b) any invention, discovery, trade secret, know-how, computer software or confidential, scientific, technical or product information and any developments or improvements to equipment, products, technology processes, methods or techniques; (c) any other rights which result from intellectual activity in the industrial, scientific, literary or artistic fields whether industrial, commercial or agricultural and whether dealing with manufactured or natural products; and (d) any pending application or right to apply for registration, letters patent, deed of grant, certificate or document of title for anything which is referred to in paragraphs to (c) of this definition and any medium in which anything which is referred to in those paragraphs is stored or embodied.

Medical Form has the meaning given to this term in clause 2.

Related Company has the meaning given to this term in the Companies Act 1993.

Vitality Works means New Zealand Wholistic Health and Wellbeing Company Limited (NZBN: 9429032538540) as trading as Vitality Works.

Work Schedule has the same meaning and purpose as Agreement as given in clause 20.

21. Interpretation

In your Agreement, unless specified to the contrary or the context requires otherwise: (a) the singular includes the plural and vice versa; (b) words denoting any gender include all genders; (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning; (d) headings are for convenience and do not affect interpretation; (e) a reference to "\$", or "dollar" is a reference to New Zealand currency; and (f) a reference to a party includes its executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns.