

TERMS OF ENGAGEMENT

1. Application

- a. These terms and conditions set out our agreement ("**Agreement**") with you (our Customer), and will apply whenever you, or your acting agent (such as a property manager or family member or lawyer), engage us (FMS) to act for you in performing the Services, unless we agree (in writing) to vary them. Acceptance of any quote or statement of work we provide you shall constitute acceptance of the terms and conditions contained in this Agreement.

2. Interpretation

- a. "**Customer**", "**you**", "**your**" shall mean the person or entity (or any person acting on behalf of and with the authority of such entity or person) entering into this Agreement with FMS for the provision of Services.
- b. "**FMS**", "**we**", "**us**", "**our**" shall mean Forensic Meth Services Limited and any agents, independent contractors, licensees or employees thereof.
- c. "**FMS report**" shall mean and includes the various reports entitled (depending on the type of report selected): "Baseline Methamphetamine Assessment", "Detailed Methamphetamine Assessment" and "Post Remediation Assessment", which will be provided to you within 3, 5 or 7 Working Days following completion of the property methamphetamine contamination sampling ("**Sampling**") in accordance with timeframe agreed with FMS in writing prior to commencement of the Services.
- d. "**Price**" shall mean the price payable for the Services as quoted by FMS and any other amounts owing to FMS by the Customer.
- e. "**Services**" shall mean the carrying out of the Sampling and includes: site inspection, visual assessment for key indicators of clandestine methamphetamine laboratories, methamphetamine swab sampling using methanol dampened gauze (all areas swabbed and sampled may be photographed) sampling of any suspicious substances and chemicals together with the provision of the FMS report. If necessary, Services may also include (where agreed): soil sampling, heavy metal analysis, iodine, volatile organic compounds and pH testing. If property is contaminated, Services may also include (where agreed) basic suggestions for remedial decontamination and safety.

- f. "**Working Day**" means any day any of the major trading banks are open for business in Auckland (but excluding a Saturday or a Sunday).

3. General

- a. FMS may sub-contract any part of the Services to be performed under this Agreement in accordance with this clause. The Customer agrees and acknowledges that FMS may engage and train, in its sole discretion, suitable individuals, agents, independent contractors, licensees or employees to undertake Sampling and such parties may not be licensed environmental testing professionals but will undergo forensic training with FMS for performing Sampling. No subcontractor has any authority to agree to any variation of this Agreement on behalf of FMS.
- b. FMS reserves the right to vary, modify or replace these terms and conditions at any time without notice and such changes shall take effect in respect of any subsequent provision of Services.
- c. This Agreement shall be subject to and construed according to the laws of New Zealand and subject to the jurisdiction of the New Zealand Court geographically closest to the registered office of FMS.
- d. We hold appropriate professional indemnity, public liability and statutory insurance and we can provide you with a copy of insurance certificate on request.

4. Services

- a. FMS agrees to provide the Services to the Customer on the following terms and conditions. These terms and conditions together with any quotation, statement of work or any other document issued by FMS together form the Agreement and will be deemed to contain the full agreement between the parties and supersedes and extinguishes all prior agreements, discussions, representations and arrangements between the parties.
- b. FMS, in its sole discretion, reserves the right to decline any order and/or request for Services.

5. Payment and Price

- a. The Price of the Services shall be as shown on the FMS invoice, which shall be in accordance with the FMS quote or as specified by us prior to commencement of the Services.
- b. The Price is exclusive of Goods and Services Tax which is payable by the Customer in addition to the Price.
- c. Unless otherwise agreed in writing by FMS, payment of the FMS invoice must be made in full prior to the provision of Services.
- d. FMS may agree, in its sole discretion, to carry out Services (limited to Sampling only) prior to receipt of payment. In this instance, the FMS invoice shall be payable by the Customer immediately on completion of sampling in order for the Customer to receive

the FMS report within the quoted timeframe. For the avoidance of doubt, the FMS report will not be released to the Customer until FMS receives payment in full.

- e. FMS may agree in its sole discretion to provide Services and the FMS report to the Customer prior to receipt of payment. In this instance, and unless agreed otherwise, the FMS invoice shall be due on the 3rd Working Day following the date on which an invoice is issued to the Customer. For the avoidance of doubt, the invoice will be issued to the Customer by FMS on provision of the FMS report.
- f. Payment must be made by direct deposit to FMS nominated bank account as shown on the FMS invoice. FMS does not accept cash or cheque.
- g. Payment must not be made directly to any FMS employee, agent, licensee or contractor.
- h. All payments by the Customer must be made in full and without any deduction or right of set-off or counterclaim.
- i. FMS shall not be bound by any error or omission made by FMS on any invoice, quotation, estimate, or any other document issued by FMS.
- j. If the Customer fails to make payment by the due date the Customer shall pay interest on the amount outstanding at the rate of 5% above FMS' bank's current variable lending rate from the due date for payment until payment is made. Any expenses, costs, disbursements and legal costs incurred by FMS in the enforcement of any rights contained in this Agreement or in the recovery of money shall be paid by the Customer, including any reasonable solicitor's fees or debt collection agency fees.

6. Failure to Access Fee & Cancellation

- a. You agree to provide us with access to the property for the purposes of enabling us to undertake the Sampling and shall ensure that the property is prior to commencement and remains in a state and condition that is safe for FMS (its employees, contractors, licensees and agents) and causes no disruption or obstruction to the carrying-out of any Sampling and/or the Services. If FMS cannot gain access to a property (at the time mutually agreed by the Customer and FMS) or if FMS (acting reasonably) considers that the Customer has not carried out its obligation to ensure that the property is safe for the provision of Services, the Customer agrees and acknowledges that FMS is entitled to terminate the Services and charge (or retain if payment has already been made) 50% of the Price, even if no Services have been provided to the Customer.
- b. FMS recommends that the Customer obtains confirmation in writing from the property owner, owner's agent, property manager or tenant prior to submitting an order for Services.

7. Rescheduling & Resampling

- a. From time to time, FMS may be required to reschedule provision of Services. In this event, FMS will contact the Customer directly and will use its best endeavours to provide at least 24 hours' prior notice of any rescheduling.

- b. The parties agree and acknowledge that following Methamphetamine property testing, FMS may courier samples to Analytica and/or Hill Laboratories in Hamilton for further testing and analysis. In the event that samples have been couriered by FMS but do not arrive at Analytica and/or Hill Laboratories in Hamilton due to any third-party fault, the parties agree that provision of the relevant FMS report shall be postponed until FMS have re-sampled the property. In this event, FMS will not charge any additional costs for re-sampling. However, for the avoidance of doubt, the Customer shall remain liable to pay the Price in full in accordance with clause 5.

8. Alarm systems

- a. The Customer agrees that (as part of its access obligations) any security systems must be disarmed prior to provision of Services.
- b. If the Customer instructs and authorises FMS to disarm and re-arm any home security systems at commencement and completion of Services, the parties agree that FMS shall not be liable towards the Customer (or any other person) for any loss or damage of any kind, arising directly or indirectly, from FMS or any employee or independent contractor of FMS, operating or failing to operate any home security system.

9. Health & Safety

- a. Without limiting and in addition/clarification of your obligations at 6.a the Customer will take all reasonable steps to provide a safe working environment for FMS and our agents, independent contractors, licensees or employees (by way of example (but without limitation) this includes but is not limited to: animals being under control at all times, occupants of a property being informed of the FMS methamphetamine site assessment. The Customer is also responsible to provide safe access to a roof space if additional testing is required.
- b. FMS and our agents, independent contractors, licensees or employees will provide all tools and equipment required to perform the site assessment and Sampling including sampling kits, ladders, health and safety equipment such as suitable coveralls, shoe covers, gloves and face masks.
- c. All FMS agents, independent contractors, licensees or employees must adhere to FMS Health and Safety Management Plan and policy in the provision of Services.
- d. The parties agree and acknowledge that following the provision of Services, FMS may provide health and safety recommendations to the Customer. For the avoidance of doubt, FMS is not liable for any loss, damage or personal injury which results from any person failing to comply with any FMS health and safety recommendation, including any inaccurate recommendation.
- e. FMS reserves the right to abandon the provision of Services and terminate this Agreement, at any time, if FMS and our agents, independent contractors, licensees or employees have any reason to believe that their personal safety is at risk. This includes but is not limited to: threatening behaviour, domestic incidents, disputes, dangerous or threatening pets/animals, unsafe or unsanitary conditions.

- f. The parties agree that indoor animals must be secured during the provision of Services.

10. Removal of Items & Damage

- a. The Customer agrees and acknowledges that in some instances, FMS may be required to re-position or remove items or suspicious material from the property for further Sampling.
- b. If any items are removed from the property for further testing, the parties expressly agree that FMS is not liable for any remediation or redecoration costs or any other loss, cost, expense or damage caused howsoever and the Customer indemnifies FMS in respect thereof.
- c. Without limiting clause 10.b FMS will use all reasonable endeavours to store and return any items (where possible) to the Customer within a reasonable time following completion of the Sampling.
- d. The Customer agrees and acknowledges that FMS (including any FMS agent, independent contractor, licensee or employee) is not liable for any loss or damage caused to property in the provision of Services.

11. Privacy and Confidential Information

- a. The parties agree that: knowledge of where property keys are located, PIN codes for any home security systems and any other confidential information provided by the Customer to FMS including any photographs taken by FMS (including by its agents, independent contractors, licensees or employees) in the provision of Services will remain private and confidential information and will not be transmitted or disclosed to any other party without the Customer's express permission.
- b. The parties agree that any FMS report provided to the Customer must not be shared, copied or reproduced by the Customer without written approval from FMS.
- c. The parties agree that FMS will not disclose any confidential information obtained from you to any other person, and will not disclose to you any confidential information received from another client or prospective client, unless required by law or to protect the health and safety of its Customer and / or third parties.
- d. The parties expressly agree and acknowledge that FMS may use recording devices (including smartphone cameras) to: photograph the exterior of the property prior to provision of Services, photograph all areas swapped and sampled, record visual evidence of Methamphetamine contamination in the property and to record any pre-existing evidence of property damage (if deemed necessary by FMS).

12. Conflict of Interest

- a. We have policies in place to identify and respond to conflicts of interest. If a conflict of interest or potential conflict of interest arises, we will consult with you about the best way to resolve the matter.

13. Termination of Services

- a. FMS may immediately terminate this Agreement when any of the following events happen:
 - If the Customer defaults in performing its obligations under this Agreement and the default, if capable of being remedied, is not remedied within 24 hours of notice to remedied; or
 - If the Customer defaults in performing its obligations under this Agreement and the default is in FMS' reasonable opinion incapable of being remedied; or
 - Upon the occurrence of any of the events specified in clause 9.e.

Termination of this Agreement will not prejudice or affect the rights, remedies or claims of FMS.

- b. If this Agreement is terminated, FMS is entitled to recover, and the Customer will be liable to pay FMS for the full value of the Price and any reasonable costs that FMS incurs as a result of early termination.

14. Copyright & Intellectual Property

- a. All of the trademarks, patents, copyright, designs or other intellectual property rights (whether or not registered) in respect of the Services remain FMS' property notwithstanding the sale/supply of the Services to the Customer. FMS Reports must only be used by the Customer for the specific purpose they have been provided and not be copied, reproduced, distributed, modified, published, uploaded, posted, or transmitted in any way without our prior written consent. FMS reserves all copyright in its website and in all documents and information on its website.
- b. The Customer agrees and acknowledges that FMS expressly prohibits the Customer from using any FMS trademarks, trade names, graphics, designs or intellectual property and reserves its right to take action against the Customer in the event of any Customer breach.

15. Consumer Guarantees Act 1993 and Fair Trading Act 1986

- a. Where Services are provided for the purposes of a business, the Customer agrees that the provisions contained in the Consumer Guarantees Act 1993 shall not apply.
- b. Nothing in this Agreement is intended to have the effect of contracting out of the Consumer Guarantees Act 1993 and the Fair Trading Act 1986 except to the extent permitted by statute.

16. No Additional Warranty

- a. FMS warrants that it is skilled and experienced and possesses the expertise needed to perform the Services. The warranty provided in this clause 16.a. is instead of, and FMS disclaims, to the extent permitted by law, all other warranties, liabilities and representations expressed or implied including, but not limited to, the implied

warranties of merchantability and fitness for a particular purpose in connection with the Services.

- b. FMS makes no warranty, representation or assurance that the Services carried-out will categorically detect contamination that may be associated with methamphetamine being manufactured or used in the property in which the Services are provided on the basis that:
- Only the specific area(s) and site(s) the subject of the Sampling should be construed as being representative of the status of the property and/or indicative of the presence of the hazardous materials specifically being tested for with results being applicable only to the specific day, time and the actual site where the Sampling was carried out at the time Sampling was performed. There may be other contaminated areas of the property or hazardous materials that may be present but have not been tested for (we take no responsibility nor hold any liability for those matters). Only areas identified in the relevant FMS report are examined and Sampled;
 - The Customer agrees and acknowledges that there may be other contaminants/hazardous materials and/or or varying degrees of Methamphetamine contamination in other areas that were not tested by FMS (we take no responsibility nor hold any liability for those matters);
 - There can be variation of methamphetamine contamination levels at a site as contamination is not even and fluctuates depending on a range of factors (including without limitation different surface materials that have a high or low affinity to methamphetamine;
 - The Customer agrees and acknowledges that the presence of Methamphetamine and other hazardous substances can be masked through extensive cleaning of surfaces or painting and decorating. The Customer is advised to check and advise FMS if any extensive cleaning, painting and renovating of the property has been recently completed.

17. Customer Indemnification

- a. The Customer indemnifies FMS for any loss or damage, including any third-party claims that may arise in the provision of Services as well as any losses, damages, expenses and legal costs (on a solicitor and own client) that FMS may reasonably sustain or incur as a result, whether directly or indirectly, of any breach by the Customer of the provisions of this Agreement.

18. Disclaimer

- a. In New Zealand, the Consumer Guarantees Act 1993, the Commerce Act 1986, the Fair Trading Act 1986 and other statutes may imply warranties or impose obligations on FMS which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of such implied warranties, conditions or terms imposed on FMS, its liability shall, where it is allowed, be excluded or if not able to be excluded, only apply to the minimum extent required by the relevant statute.

- b. Subject to clause 18(a) above, FMS shall not be liable towards the Customer (or another person) for any loss or damage of any kind (arising directly or indirectly from Services or from remedial recommendations made by FMS) however caused.
- c. Notwithstanding any other provision of this Agreement and without prejudice to clause 18.b, if for any reason FMS becomes liable for loss or damage that would have otherwise been excluded then its total liability to the Customer arising out of any claim for damages for any cause will be limited to a refund to the Customer of the monetary amount of the value of that part of the Services giving rise to the claim.
- d. Neither party shall be deemed in default of this Agreement to the extent that performance of its obligations or attempts to cure any breach are delayed or prevented by reason of any Act of God, war, terrorism, fire, natural disaster, accident, act of government, strikes, unavailability of material, or any other cause beyond the reasonable control of such party.
- e. The Customer hereby disclaims any right to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by FMS.

19. Dispute

- a. Unless the disputed matter falls within the jurisdiction of the Disputes Tribunal, no party to this Agreement shall begin any court proceedings relating to any dispute arising out of this Agreement (including any dispute as to the validity, breach or termination of this Agreement or as to any claim in tort, in equity pursuant to any statute) unless that party has complied with the following paragraphs of this clause.
- b. Any party who claims that a dispute has arisen under or about this Agreement must give written notice to the other party specifying the nature of the dispute. On receipt of the notice by the other party, the parties to this Agreement:
 - Must co-operate and use their best endeavors to resolve the dispute quickly; and
 - Must, if they do not within seven days of receiving the notice (or any further period as they may agree in writing) resolve the dispute, refer the dispute to mediation (“the mediation”)
- c. The mediation shall be conducted in terms of the LEADR New Zealand Inc. Standard Mediation Agreement.
- d. The mediation shall be conducted by a mediator and at a fee agreed by the parties, failing agreement between the parties, the mediator shall be selected, and the mediator’s fee shall be decided by the Chair for the time being of LEADR New Zealand Incorporated.

20. Miscellaneous

- a. The illegality, invalidity or unenforceability of a provision of this Agreement under any law shall not affect the legality, validity or enforceability of that provision under

another law or the legality, validity or enforceability of any other provision of this Agreement.

- b. Failure or omission by a party at any time to enforce or require strict or timely compliance with any provision of this Agreement will not affect or impair that provision in any way or the rights of that party to benefit from the remedies it may have as to any breach of any provision.