

MINOR SERVICES AGREEMENT FORM

Agreement Title: TBA

Agreement Date: TBA

Contractor: TBA

Physical Address:
New Zealand
Postal Address:
New Zealand

Company: Pan Pac Forest Products Limited

Physical Address: 1161 State Highway 2, Wairoa Road,
Napier 4182, New Zealand
Postal Address: Private Bag 6023, Hawke's Bay Mail
Centre, Napier 4142, New Zealand

This Agreement is comprised of:

- (i) the Minor Services Agreement Form;
- (ii) Schedule 1 – Special Conditions;
- (iii) Schedule 2 – Terms and Conditions; and
- (iv) Exhibit A - Scope of Services, Compensation and Milestone Schedule

all of which are referred to, collectively, as this "Agreement". Items in the list are to be taken as mutually explanatory and in the event of any conflict or ambiguity the item appearing higher in the list will prevail over any item appear lower in the list.

Description of the Services	Price (in NZD)
	[insert]
TOTAL (Fixed) (" Price ")	[insert]
Contractor shall in no event perform services with a value in excess of the amount stated above without prior written authorisation from Company.	

Completion Date: [insert]

Invoicing Instructions: Refer to clause 6 of the Schedule 2 - Terms and Conditions

AGREEMENT EXHIBITS

Exhibit A – Scope of Services, Compensation and Milestone Schedule

Contact Person and Address

For Contractor:

Name:
Telefax: [insert]
Telephone: [insert]
Email:

For Company:

Name:
Telefax: 06 8310101
Telephone:
Email: panpac@panpac.co.nz

This Agreement has been executed by duly authorised representatives of the Parties,

For and on behalf of **Pan Pac Forest Products Limited**

Name:
Designation:

Signature:
Date:

For and on behalf of TBA

Name: [insert]
Designation: [insert]

Signature:
Date:

Original: Contractor to sign and return acceptance copy of this Agreement accepting all terms and conditions under which it is issued within five (5) days of the Agreement Date.

Schedule 1 – Special Conditions

Deletions, Additions, Amendments to the Terms and Conditions:

A new clause 32 is inserted as follows:

“Liability

- 32 (a) *Subject to sub clause (b) below, the Contractor’s maximum aggregate liability to the Company in contract, tort or otherwise in relation to any claims, damages, liabilities or expenses in any consecutive 365 day period, shall be [insert].*
- (b) *The limitation of liability in clause 32(a) above shall not apply to:*
- (i) *any Loss incurred by the Company arising out of any infringement of Intellectual Property rights of any third party; and
/or*
 - (ii) *fraud, wilful misconduct or any illegal or criminal act by the Contractor (or those for whom it is responsible).”*

SCHEDULE 2 - Terms and Conditions

Definitions

1. Capitalised terms used in this Agreement shall have the meanings set out in this clause 1 except where expressly provided otherwise:

Agreement has the meaning set out on the Minor Services Agreement Form;

Agreement Date has the meaning set out on the Minor Services Agreement Form;

Affiliate means, as to any person, any other person that

(a) controls directly or indirectly such person, or

(b) is controlled directly or indirectly by such person, or

(c) is directly or indirectly controlled by a person that directly or indirectly controls such person.

For the purposes of this definition, the term "control" (including the term "controlled by") means the right to exercise, fifty percent (50%) or more of the voting rights in the appointment of the directors of such person;

Business Day means any day other than a Saturday, Sunday or public holiday in Hawkes Bay, New Zealand;

Charges has the meaning set out in subclause 5(b);

clause means a clause in this Agreement and **subclause** means a subclause of this Agreement;

Company has the meaning given to that term in the Minor Services Agreement Form and its successors and permitted assigns;

Completion Date has the meaning set out in the Minor Services Agreement Form;

Contractor means the party defined as such in the Minor Services Agreement Form and its successors and permitted assigns;

Dispute means any dispute, difference, controversy or claim;

Event of Force Majeure means any event beyond the reasonable control of a Party, occurring after the Agreement Date and which is (or the effects of which are) unavoidable notwithstanding the reasonable care of the Party affected, including: strikes (excluding strikes occurring among the employees of a Party); acts of the public or foreign enemy, war, hostilities or warlike operations; rebellion, revolution, insurrection, mutiny, usurpation of the government, riot, terrorist acts; expropriation, confiscation or other such governmental acts; natural or physical disasters; or epidemic. For the avoidance of doubt, an Event of Force Majeure shall not include:

(a) reasonably foreseeable weather conditions;

(b) the failure of any subcontractor to furnish labour, services, materials or equipment on the dates agreed to unless such failure is itself due to an Event of Force Majeure;

(c) general economic conditions and exchange rate fluctuations;

(d) the financial condition of Contractor or any subcontractor; and

(e) the financial condition of Company.

Indemnify means to indemnify, defend and hold harmless;

Intellectual Property has the meaning set out in subclause 16

Losses means claims, suits, costs, liabilities, judgements, fines, penalties or demands;

Milestone Schedule means the milestone and payment schedule set out in Exhibit A;

Minor Services Agreement Form means the minor services agreement form forming part of this Agreement;

Party means any person who executes this Agreement;

Price has the meaning set out on the Minor Services Agreement Form.

Scope has the meaning set out in clause 4;

Services has the meaning set out in clause 2; and

Terms and Conditions means the terms and conditions of this Agreement.

The Services

2. The scope of services described in Exhibit A to this Agreement (the "Scope") and all ancillary or incidental services implied by the description of such service, referred to collectively as the "Services") shall be performed by Contractor in accordance with the descriptions in this Agreement.

Completion Date

3. The Agreement will commence on the Agreement Date or such other date as the parties agree and will continue until the Completion Date unless otherwise terminated in accordance with this Agreement.

Increase or decrease in Scope

4. The Company may, in its absolute discretion and for any reason including where Company opts to procure Services (or services similar to the Services) from an alternative contractor, increase or decrease the

Scope of the Services (which includes the time of performance). If the change in Scope is material, Company shall issue a variation order to Contractor describing the changes it requires to the Services. The Parties shall discuss and negotiate in good faith any adjustments to the Milestone Schedule and/or Price arising from such variation order. Company shall be entitled to issue a variation order and Contractor shall comply with such variation order pending agreement of the required adjustments to the Milestone Schedule and/or Price and the Parties shall continue to work together in good faith to agree such adjustments.

Price

5. (a) Contractor is deemed to have satisfied itself as to the correctness of the documents, specifications and descriptions, and the amount and sufficiency of the Price. Subject to clause 4 only, the Price shall be consideration for all of Contractor's obligations under this Agreement.

(b) Contractor declares that it has taken into account in establishing the Price, all taxes (including income taxes), fees, levies, imposts, duties, charges, dues or assessments of whatsoever nature payable and the like (the "Charges"). Contractor agrees that it shall be liable for all Charges or other dues or assessments of whatsoever nature payable from the Agreement Date arising out of Contractor's performance of the Services and shall indemnify Company against any and all liabilities and claims in relation to the Charges.

Invoicing and Payment

6. Not more than once a month Contractor shall submit one (1) original invoice (clearly stamped "Original") and one (1) copy setting out the details of any milestone achieved entitling Contractor to payment pursuant to the Milestone Schedule in the English language and stating the number of this Agreement to the address specified on the Minor Services Agreement Form and marked for the attention of Company's contact person.

7. All invoices must clearly state Contractor's: (i) Bank Name; (ii) Bank Address; and (iii) Account Number.

8. Undisputed invoices will be paid within thirty (30) days from the receipt by Company of such invoice, subject to applicable laws. Payment shall be deemed made as of the date of transfer from Company's bank. The currency of all payments pursuant to this Agreement shall be as specified on the Minor Services Agreement Form.

9. Company shall be entitled to offset and deduct any amounts owing from Contractor to Company and shall provide Contractor with particulars of any issues giving rise to such deductions.

10. There shall be no interruption to the progress of this Agreement pending settlement or resolution of any dispute or disagreement in relation to this Agreement.

Representations of Contractor

11. Contractor represents and warrants that as at the Agreement Date:

(a) it is duly incorporated and validly existing under the law of its jurisdiction of incorporation;

(b) it has the power to own its assets and carry on business as it is being conducted;

(c) it has the power and authority to execute, deliver and perform its obligations under this Agreement;

(d) the execution, delivery and performance of this Agreement do not and shall not contravene or conflict with:

(i) its constitutional documents;

(ii) any agreement or instrument binding on it or its assets or constitute a default or termination event (however described) under any such agreement; or

(iii) any law or regulation or judicial or official order applicable to it;

(e) it has taken all necessary action and obtained all required or desirable consents to enable it to execute, deliver and perform this Agreement and any such authorisations are in full force and effect; and

(f) it has adequate experience, expertise, funds, equipment and personnel to comply with its obligations under this Agreement.

Contractor Warranties, Permits, Approvals and Remedy of Defects

12. Contractor represents and warrants that:

(a) it possesses the necessary skill, competence, materials and qualified staff to perform the Services;

(b) the Services will be performed with the reasonable skill, care and diligence to be expected of a competent contractor experienced in

- carrying out services of a similar nature, scope and complexity to the Services;
- (c) the Services will be performed in accordance with the requirements of all applicable laws in the jurisdiction(s) in which the Services are performed.
13. Contractor shall acquire all permits, approvals and/or licences from all necessary authorities in the country or countries where the Services are to be performed.
14. Contractor agrees that if at any time prior to the completion of the Services, any of the Services are found to be not in compliance with this Agreement (including the warranties set out above), Contractor shall, at its own cost provide any additional services necessary to re-perform and/or remedy such deficient Services.

Insurance

15. Contractor shall be solely responsible for ensuring that it has secured and maintains valid policies of insurance in respect of the Services taken out with reputable and admitted insurers in respect of all insurances required by all applicable laws in the jurisdiction in which the Services are performed.

Intellectual Property

16. Company and Contractor shall continue to retain all right, title and interest to their respective patents, utility models, registered designs and models, trademarks, service marks, applications for any of the foregoing and the rights to apply for any of the foregoing, ownership of inventions, copyrights, proprietary information and/or technical know-how, any other similar rights (collectively, the "Intellectual Property") developed, acquired or obtained prior to the Agreement Date.
17. Contractor agrees, at its own expense, to Indemnify Company against any Losses the Company may incur based upon a claim, whether rightful or otherwise, that the Services, or any part thereof, constitutes an infringement of any patent, copyright, trademark or trade secret and Contractor hereby agrees to pay all resulting damages and costs. In case the Services, or any part thereof, are held in such suit or action to constitute infringement and/or use is enjoined, Contractor shall, at its own expense, either procure for Company an irrevocable, royalty-free licence to continue using such Services or, with Company's prior written approval, replace the same with substantially equal but non-infringing Services, provided that no such replacement shall in any way relieve or amend Contractor of its warranty obligations hereunder.

Termination

18. (a) Company shall have the right to terminate this Agreement (by notice in writing to Contractor) for Contractor default if:
- Contractor fails to carry out the Services or any part of them in accordance with this Agreement;
 - Contractor engages in any wilful misconduct or commits any act of gross negligence; or
 - Contractor becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against it or any event occurs which has a similar effect.
- (b) Company shall have the right to terminate this Agreement (by notice in writing to Contractor) for its convenience in whole or in part in its absolute discretion and for any reason. In the event of such termination, Company shall pay to Contractor, as full and final compensation, all amounts due and not previously paid and reasonable costs for the Services carried out by Contractor in relation to the terminated part of the Services up to the date of termination.

Liability for Loss

19. At no time, including upon any termination, shall Company have any liability to Contractor for any consequential losses or for any loss of profit, loss of revenue, loss of contract, loss of opportunity, loss of goodwill, loss of production or down time costs or related losses.

Disclosure, Assignment and Subcontracting

20. Contractor must each keep confidential and must not, without the written consent of Company, divulge to any third party any information furnished directly or indirectly by Company in connection with this Agreement or the Services whether such information has been furnished prior to, during or following termination of this Agreement.
21. Contractor shall not assign, transfer or subcontract this Agreement or any part of it without the prior written consent of Company.

Force Majeure

22. (a) No failure or omission by either Party to carry out or observe any of the terms and conditions of this Agreement shall give rise to any claim against the Party in question or be deemed a breach of this Agreement if such failure or omission arises from an Event Of Force Majeure.
- (b) The Party prevented from carrying out its obligations shall immediately give notice in writing to the other Party specifying:
- the nature of the Event of Force Majeure;

- the date upon which it became unable to perform its obligations as a consequence of the Event of Force Majeure; and
 - the steps it is taking to mitigate those circumstances.
- (c) Either Party may, without any liability upon either of the Parties, terminate this Agreement by written notice to the other Party if the Event of Force Majeure continues for a period in excess of ninety (90) consecutive or one hundred and twenty (120) non-consecutive calendar days.

Disputes and Arbitration

23. (a) The Parties shall endeavour to settle by good faith negotiation any Dispute of any kind arising between them out of or in connection with this Agreement.
- (b) If the Parties fail to settle the Dispute within thirty (30) days or such other period as the Parties may agree, then the Dispute must be referred to a sole arbitrator, to be agreed between the parties or appointed under the *Arbitration Act 1996*, for resolution in accordance with the *Arbitration Act 1996*.
- (c) Notwithstanding any Dispute or arbitration, the Parties shall continue to perform their respective obligations under this Agreement.

Protection of Property and Personnel

24. This clause 24 applies to Services carried out at Company's workplace (as that term is defined in the Health and Safety at Work Act 2015) ("Workplace"). Contractor shall ensure that its employees, contractors, sub-contractors, agents and invitees comply with the provisions of the Health and Safety at Work Act 2015 and its amendments and all applicable regulations and codes of practice issued thereunder. Without limiting those obligations, Contractor shall:
- hold comprehensive safety management plans including current hazard identification schedules for all contractors and their employees who will work at Company's Workplace in respect of all Services to be performed throughout the term of this Agreement;
 - comply with, and ensure all employees, contractors, sub-contractors, agents and invitees will comply with, any relevant codes of conduct, site requirements, policies and procedures, including those relating to health and safety and security and any other requirements of Company as notified to Contractor from time to time.
 - be responsible for ensuring that it and any of its agents, subcontractors and employees take all reasonably practicable steps to eliminate risks to health and safety, or to minimise those risks as far as reasonably practicable;
 - utilise experienced and skilled personnel who have been adequately trained to industry based safety standards for the performance of the Services;
 - obtain and be familiar with all relevant legislation, rules, regulations, standards and industry practices affecting the Services at the Workplace;
 - ensure that any plant, equipment, machinery, vehicles and tools are in a safe working condition. Contractor will not permit the use of equipment that is damaged or does not meet prescribed safety standards; and
 - so far as is reasonably practicable, Contractor will consult, co-operate and coordinate activities with the Company and all other persons operating at the Workplace in relation to health and safety.

Miscellaneous

25. This Agreement is the entire agreement between Company and Contractor with respect to the Services and neither Party shall be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set out in this Agreement. No amendments to or waivers of the terms or conditions of this Agreement shall be valid unless reduced to writing and signed by both Parties.
26. If any provision of this Agreement is prohibited or rendered invalid or unenforceable, the validity and enforceability of all other provisions of this Agreement shall not be affected.
27. Any notice provided for by this Agreement shall be in writing and shall be deemed effective as follows:
- if delivered personally, upon delivery;
 - if sent by post, upon certified receipt;
 - if sent by a courier service, upon receipt; or
 - if sent by facsimile transfer and if sender's transmission report shows the entire facsimile to have been received by the recipient, when dispatched.
28. A notice received or deemed to be received in accordance with this Agreement on a day which is not a Business Day or after 5 p.m. on any Business Day, according to local time in the place of receipt, shall be deemed to be received on the next following Business Day. Notices under this Agreement shall not be sent by e-mail. Notices shall be addressed to the addresses set out on the Minor Services Agreement Form.

29. Except as otherwise expressly provided, this Agreement is not intended to confer any legally enforceable rights on any person other than the Parties, their successors in title and their assignees, including pursuant to the Contract and Commercial Law Act 2017.
30. In addition to those provisions of this Agreement that by their nature are to be deemed to survive the termination or expiration hereof, the following provisions shall also survive the termination or expiry of this Agreement whether by completion of the execution of the Services or otherwise: clauses 1 (*Definitions*), 5 (*Price*), 6 (*Invoicing and Payment*), 12 (*Contractor Warranties*), 14 (*Remedy of Defects*), 22(*Force Majeure*), 23 (*Disputes and Arbitration*) 25 to 31 (*Miscellaneous*). This clause 30 (*Survival*) is without prejudice to any accrued rights and obligations of the Parties as at the date of any termination or expiry of this Agreement.
31. This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the laws of New Zealand.

EXHIBIT A

SCOPE OF SERVICES, COMPENSATION AND MILESTONE SCHEDULE

Scope of Services

[insert]

Compensation and Milestone Schedule

[insert]