

## Boilerplate Clauses for Settlement Agreements

### **Background 1**

The Parties to this agreement are parties to proceedings in the High Court of New Zealand, [xx] registry filed under CIV [xx] (the Proceedings)

The Parties have agreed to settle the Proceedings and matters arising from and connected to the Proceedings on the terms set out in this Agreement

### **Background 2**

In [date] [plaintiff] commenced proceedings in the High Court at [xx] under CIV [xx] (the proceedings) against [defendant/s] (collectively the defendants) alleging that the defendants [were negligent/breached contract etc] resulting in damage to [plaintiff] for which the defendants are liable (the claim).

The defendants deny liability for the claim. The defendants have filed and served a statement of defence in the proceedings.

The parties have agreed to settle all issues between them arising out of the proceedings and/or the claim on the terms of this agreement.

### **Background 3**

X engaged Y to carry out [xx]

Disputes have arisen between the parties about [xx] including in relation to [xx] (the dispute)

X and Y have agreed to settle the dispute fully and finally on the terms set out in this settlement agreement.

## **AGREEMENTS**

### **Entire Agreement**

This agreement constitutes the entire agreement between the parties with respect to the subject matter of the proceedings and it replaces all in the negotiations, representations, warranties, understanding and agreements, whether oral or written, between the parties with respect to matters covered in this Agreement.

The provisions of this Agreement shall bind the parties in all respects and the Parties each accept the risk of mistake in respect of all matters relevant to the settlement and are obliged to assume such risks for the purposes of the Contractual Mistakes Act 1977.

**Full and final settlement 1**

The settlement recorded in this Agreement is in full and final settlement of all claims, past, present or contingent, arising out of, or connected to, in any way whatsoever the [xx].

**Full and final settlement 2**

The [plaintiff/defendant] accepts the obligations of the [plaintiff/defendant] that are set out in paragraph [xx] in full and final settlement of all claims the [plaintiff/defendant] has or may have in respect of any matters which in any way arise out of or relate to the Dispute, against all or any of the [plaintiff/defendant] or any of its related companies, servants, employees or agents.

**Full and final settlement 3**

In full and final settlement of all claims which [xx] had/has or might have against [xx] arising out of or connected with the proceedings and/or the claim, the defendants agreed to pay the sum of [\$xx] (GST inclusive if any) on or before [xx]. Upon payment being made by the defendant, the defendant shall be fully discharged from any and all liability arising directly or indirectly out of the proceedings and/or claim and issues in dispute.

**Payment/discontinuance**

The defendant will [the defendants will jointly] pay to the plaintiff the sum of \$[xx] inclusive GST if any.

The settlement sum will be paid into the trust account of the solicitors acting for [xx] in full on or before [xx].

Within 5 working days of receipt of the settlement sum, the parties shall execute a notice of discontinuance to be prepared by the plaintiff, and the plaintiff shall file the executed notice of discontinuance in the High Court.

**Discontinuance**

Upon [xx] receiving the payment, [xx] will file and serve a properly executed notice of discontinuance of the proceedings with no issue as to costs

**Costs**

Each party shall bear its own legal and other costs in relation to the Proceedings, including their own cost of, and incidental to, the negotiations between them to settle the Proceedings, prepare and execute this Agreement including, but not limited to, the preparation, execution and filing of the notice of discontinuance.

**Waiver**

A failure, delay or indulgence by any party in relation to exercising any power or right in respect of any breach of the obligations by any other party under this Agreement shall not prevent subsequent enforcement of those obligations and shall not be deemed to be a waiver of any subsequent breach.

**Confidentiality 1**

Unless otherwise required by law or to comply with any of their respective obligations under this Agreement, the parties agree and undertake not to discuss with or disclose to any person (other than their legal advisors in connection with any dispute arising out of this Agreement) the terms of this Agreement.

**Confidentiality 2**

The terms of the settlement are to be kept confidential to the parties except where they are required to be disclosed in consequence of the Official Information Act 1982 or by a court.

**Confidentiality 3**

The parties agree that this settlement is confidential, except as required by law, but agree that confidentiality the parties may disclose the fact that a settlement has been reached but not the terms of that settlement.

**Confidentiality 4**

The parties agree that the existence and terms of this agreement and dealing is generally between them, their lawyers, their experts and their indemnifiers except for the purpose of raising the agreement as a defence to any claim or proceeding brought against them and/or to enforce the terms of the agreement and/or to the extent that any party is required to disclose by law.

**No admission of liability 1**

The settlement sum is paid by the defendant with no admission of liability.

**No admission of liability 2**

No party admits any liability to the other under this Agreement

**No admission of liability 3**

The parties agree that this agreement is not in any way constitute an admission of liability on behalf of the defendant.

**Further Assurances**

Each party must do everything (including executing and delivering any document) necessary to give full effect to this agreement and the transactions contemplated by it.

*Please take your own advice in relation to documenting settlement. These boilerplate clauses are offered to assist but you should not rely on them without obtaining your own independent legal advice*