

Exponent Solutions Limited

Terms & Conditions

Updated 09th April 2024

1. Definitions

- 1.1 "Contract" means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 "EXPONENT" means Exponent Solutions Limited and personnel of EXPONENT or its permitted assigns undertaking Services.
- 1.3 "Customer" means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting EXPONENT to provide the Services as specified in any proposal, quotation, order, invoice, or other form.
- 1.4 "Services" means all Services (including consultation and/or installation services) or Goods (including materials, equipment, and/or documentation) supplied by EXPONENT to the Customer at the Customer's request. Where the context so permits the terms Services or Goods shall be interchangeable for the other.
- 1.5 "Site" means the address nominated by the Customer to which the Services are to be supplied by EXPONENT.
- 1.6 "Price" means the Price payable for the Services as agreed between EXPONENT and the Customer in accordance with clause 3.

2. Acceptance

- 2.1 Any Service(s) supplied by EXPONENT to the Customer is taken to have been exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order or accepts delivery of any Service(s).
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Amendments or Limited Waivers to the terms in this Contract must be made in writing and agreed upon by both parties.
- 2.4 In the event that the supply of Services requested exceeds the Customer's credit limit and/or the account exceeds the payment terms, EXPONENT reserves the right to refuse service.
- 2.5 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Price

- 3.1 The Price for Services from EXPONENT to the Customer shall be either:
- (a) as indicated on invoices provided by EXPONENT to the Customer in respect of Services provided or supplied; or
- (b) the Price as quoted by EXPONENT (subject to clause 3.2) which shall be binding provided that the Customer shall accept EXPONENT's quotation within thirty (30) days or by the Valid To date as stated on the EXPONENT quotation.
- 3.2 EXPONENT reserves the right to change the Price if:
- (a) a variation to the Services which are to be supplied is requested; or
- (b) a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
- (c) additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, limitations to accessing the Site, incorrect measurements, plans and/or specifications provided by the Customer, safety considerations, prerequisite work by any third party not being completed, etc.) which are only discovered on commencement of the Services; or
- (d) in the event of increases to EXPONENT in the cost of labour or materials which are beyond EXPONENT control.
- 3.3 Variations will be charged on the basis of EXPONENT's verbal or written quotation, and shown as variations on EXPONENT's invoice. The Customer shall be required to respond to any variation submitted by EXPONENT within ten (10) working days. Failure to do so will entitle EXPONENT to add the cost of the variation to the Price.
- 3.4 Unless otherwise stated the Price does not include:
- (a) Packaging fees and any other additional fees or charges imposed by our suppliers in respect of the Services; and
- (b) Freight charges; and
- (c) Goods and Services Tax (GST) and other government duties, levies, or taxes in respect of the Services. These will be charged to the Customer at the rates that apply at the time in addition to the Price.

4. Payment

- 4.1 At EXPONENT's sole discretion a deposit may be required, payable within seven (7) working days.
- 4.2 The Price will be payable by the Customer on the date/s determined by EXPONENT, which may be:
- (a) due fourteen (14) days following the invoice date; or
- (b) where we have agreed to extended credit terms with approved Customers, by the due date under those extended payment terms; or
- (c) the date specified on any invoice or statement as being the date for payment.
- 4.3 Payment may be made by electronic payment into EXPONENT's bank account as detailed on the invoice.
- 4.4 If the Customer fails to pay or delays payment on any monies owed by the due date, EXPONENT may restrict or withhold the sale of further Services on credit to the Customer. In addition, EXPONENT may, at any time, change the Customer's credit limit, place the Customer's credit account on hold or close the Customer credit account.
- 4.5 We may charge interest on any outstanding invoices at a rate of 2% of the invoice amount per month from the due date until payment is received in full. In addition, EXPONENT may charge the Customer any costs incurred (including but not limited to admin fees, debt collection agency costs and solicitor or legal costs) in recovering any outstanding monies owed.
- 4.6 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by EXPONENT nor to withhold payment of any invoice because part of that invoice is in dispute. Nothing in this clause 4.6 prevents the Customer from the ability to dispute any invoice.

5. Delivery

- 5.1 Services will be provided to the Customer's nominated address at the time of order.
- 5.2 EXPONENT will determine the method of delivery unless the Customer requests a particular method at the time of order.
- 5.3 EXPONENT will endeavour to meet the Customer's requested delivery date but will not be liable for any delays or consequential loss resulting from late deliveries that are outside of EXPONENT's control.
- 5.4 The Customer shall inform EXPONENT within ten (10) working days of any shortage in quantity, incorrect Services supplied or damage to Services provided. Where a shortage or incorrect supply has occurred EXPONENT's liability is limited to either (at EXPONENT's choice) replacing or repairing Services, supplying the correct Service(s) or supply of the missing quantity.
- 5.5 Digital Delivery of Software
- 5.5.1 For services that involve the delivery of software or digital content ("Digital Services"), delivery shall be deemed complete when the Customer receives the download link, access credentials, or any other digital means provided by EXPONENT for accessing the Digital Services.
- 5.5.2 EXPONENT will provide Digital Services through secure, reliable electronic methods as determined by EXPONENT, ensuring timely and efficient delivery. The Customer may request specific digital delivery methods, which EXPONENT will consider but is not obliged to accommodate.
- 5.5.3 The Customer is responsible for providing accurate digital contact information and ensuring their systems are compatible with the Digital Services. EXPONENT is not liable for delays, non-delivery, or compatibility issues arising from incorrect information or system incompatibilities provided by the Customer.

5.5.4 Upon delivery of Digital Services, the Customer is responsible for verifying the integrity and functionality of the delivered software. Any issues related to the digital delivery, such as corrupted files, incomplete downloads, or access issues, must be reported to EXPONENT within five (5) working days for rectification.

5.5.5 EXPONENT's liability for any issues arising from the digital delivery of software is limited to providing a new download link, access credentials, or an alternative digital delivery method, at the discretion of EXPONENT.

6. Warranty

- 6.1 EXPONENT agrees to provide the following Warranties to the Customer – Six (6) month warranty to repair or replace Services for faulty workmanship or design from the date of system handover or from date of delivery for faulty equipment or materials.
- 6.2 For Equipment or Materials not manufactured by EXPONENT, the warranty provided by the manufacturer or supplier will be passed on to EXPONENT's customer.
- 6.3 Warranties given exclude claims for or damage resulting from:
- (a) Alterations or tampering of the Services provided; or
- (b) Failure of proper maintenance or use outside of instruction, specification, or design; or
- (c) Any accident, act of God or other like cause; or
- (d) Other events beyond the control of EXPONENT.

7. Returns

- 7.1 Goods returned for credit must be returned within ten (10) working days from the date of invoice.
- 7.2 Goods returned must be in original packaging and in good condition fit for resale, Goods returned must be accompanied with a copy of the packing slip and/or invoice and Goods Return Authorisation form.
- 7.3 It is at EXPONENT's discretion to issue a credit for returns, where a credit has been agreed:
- (a) All freight or handling costs will remain owed; and
- (b) A restocking fee for the returned Goods will be applied.

8. Site Access

- 8.1 The Customer will ensure clear and safe access to the Site at all times to enable EXPONENT to undertake Services.
- 8.2 The Customer will provide EXPONENT all Site related information (including but not limited to; health & safety inductions, Site guidelines, facilities) to allow EXPONENT to comply with Site specific requirements and regulations.
- 8.3 EXPONENT will not be liable for any damage to the Site (including but not limited to; buildings, structures, concrete, or grass areas) arising from the Services. Any remedy or correction required by the Customer of EXPONENT will be an additional cost to the Customer in accordance with clause 3.2 section C.

9. Compliance with Regulations

- 9.1 Both parties will comply with any laws, regulations, and standards of Government and/or local and other public authorities in relation to the Services requested.
- 9.2 Where Services are provided for the purpose of a business or trade The Consumer Guarantees Act 1993 will not apply to any Services provided by EXPONENT to the Customer.
- 9.3 These terms are governed by the laws of New Zealand.

10. Privacy

- 10.1 The Customer authorises EXPONENT to collect and retain personal information about the Customer to be used for credit, supply of Services, and marketing purposes.
- 10.2 The Customer authorises EXPONENT to collect, retain and use the Customer's personal information to determine the Customer's creditworthiness, this includes providing relevant credit information about the Customer to a Credit Provider or Credit Reporting Agency for the purpose of obtaining a credit report.
- 10.3 The Customer may at any time request from EXPONENT the personal information held by EXPONENT about the Customer and request correction or amendment of any personal information.
- 10.4 The Customer may at any time make a written request for the destruction of personal information held by EXPONENT unless:
- (a) the information is required to fulfil the obligations of this contract; and/or
- (b) the information is required to be retained by law.

11. Intellectual Property

- 11.1 All intellectual property rights of any design or Services provided by EXPONENT to the Customer, will remain the property of EXPONENT and cannot be used by The Customer without the written consent of EXPONENT.
- 11.2 The Customer agrees that EXPONENT may use any designs or Services created for the Customer, for any marketing purposes.
- 11.3 Any design or drawings provided to EXPONENT from the Customer must not infringe on any intellectual property rights of any third party.
- 11.4 Separate Agreement for Transfer of IP Rights: Notwithstanding the provisions of Clause 11.1, EXPONENT may agree to transfer certain IP rights to the Customer under specific conditions, which shall be outlined in a separate written agreement ("IP Transfer Agreement"). This agreement will detail the specific IP rights to be transferred, any conditions or limitations of such transfer, and any compensation or terms agreed upon by EXPONENT and the Customer. The IP Transfer Agreement shall be considered an exception to the general terms of IP ownership as stated in Clause 11.1 and must be executed by duly authorized representatives of both parties.

12. Reservation of Title for Goods

- 12.1 The Customer agrees that ownership of Services will remain with EXPONENT until payment of all monies owed to EXPONENT from the Customer is received in full.
- 12.2 The customer may resell the Services for full market value in the normal course of the Customer's business provided the Customer holds any proceeds of the resale on trust for EXPONENT.
- 12.3 Services not resold must be protected and properly stored clearly identifiable as EXPONENT property until payment of all monies owed is received in full.
- 12.4 If the Customer defaults payment or becomes insolvent, EXPONENT and/or EXPONENT's chosen agent may enter upon any premises or site where the Services are held without notice and recover possession of the Services.

13. Errors and Omissions

- 13.1 The Customer acknowledges and accepts that EXPONENT shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by EXPONENT in the formation and/or administration of this Contract; and/or
- (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by EXPONENT in respect of the Services.
- 13.2 In the event such an error and/or omission occurs in accordance with clause 13.1 and is not attributable to the negligence and/or willful misconduct of EXPONENT; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.

14. General Conditions

- 14.1 Failure to enforce any terms or to exercise any right under these terms at any time shall not be treated as a waiver, nor shall it affect EXPONENT's right to enforce any of these terms in the future.
- 14.2 EXPONENT may amend these terms and conditions at any time by written notice to the Customer. The amended terms will apply to all Services provided from the date of the written notification.
- 14.4 EXPONENT will not be liable for any failure to provide Services or fulfil obligations to the Customer or for any loss or damage caused by an event or circumstance outside of EXPONENT's control. Services or obligations may resume after the termination or alleviation of the ForceMajeure when deemed safe and/or suitable and when agreed by both parties.