



Standard Terms of Service

PURPOSE AND EFFECT OF THIS DOCUMENT

The purpose of this document is to record the terms and conditions that will apply to every Agreement for the provision of services by Optimism Projects Limited to a client.

These terms and conditions are subject to any terms or conditions of a contract or agreement, offer and acceptance documents or correspondence, proposal, tender, acceptance document or similar (Contract Documents) which are expressed to prevail over them.

In the event of any conflict between Project Agreements and this document, the Project Agreement will prevail, provided however that they are recorded in writing in a way that is legally binding.

This document records the terms and conditions applying as at the effective date.

We may at any time notify you of a change to these terms and conditions. If we do that then the changed terms and conditions will apply to any contract formed with you after we have done so.

1. INTERPRETATION

In this document:

- Optimism Projects Limited is referred to as “we” “us” or “our”.
- A client is referred to as “you” or “your”.

2. FIXED PRICE AND DELIVERY DATES

Subject to below, if we agree to a fixed price or delivery dates we will make every effort to deliver the Services by the agreed date/s and we will charge you no more than the agreed fixed price.

However in the following circumstances we are not bound to a fixed price or fixed timeframe:

- 2.1. If we agree to a request from you to vary the agreed Services or the way in which they are delivered.
- 2.2. If we agree to any other material variation (such as additional objectives, content or locations; change of key personnel, etc).
- 2.3. If you do not supply agreed resources, materials and information or feedback, approvals and decisions etc within agreed timeframes.
- 2.4. If our Services are suspended for reasons of non- payment (refer clause 4.3)
- 2.5. A “force majeure” occurs.

3. CLIENT CONTACTS

- 3.1. To better ensure effective communication and the supply by you of deliverables (as described in clause 2.3) you must, prior to commencement of any Project, nominate suitably qualified and authorised personnel who can represent you to do so. These persons (known as SPC (Single Point of Contact) and SME (Subject Matter Expert)) must be available to communicate with us at all material times, and if they are not then it is likely that under clause 2.3 we will be unable to deliver at the fixed price or within agreed timelines.
- 3.2. Likewise, we will identify a Learning Partner or Project Manager as Optimism's SPC for you.
- 3.3. If there is a change to either your SPC or SME once the project has started, we will charge per hour for all project or content reviews, rebriefings or changes resulting from the change of personnel.

4. PAYMENT

- 4.1. The terms of payment will usually be recorded in Project Agreements. If no terms of payment are agreed you will pay us by the 20th of the month, following issue of our invoice detailing our Services, calculated in accordance with the Project Agreement.
- 4.2. Payment must be made, together with GST and any other agreed costs or expenses, no later than the due date/s without set-off or deduction.
- 4.3. If a payment is not made by due date we may charge you interest at the Penalty Rate, calculated on the overdue amount/s from due date until payment, and you will also indemnify us for any costs we incur in collecting or attempting to collect the payment/s. We may also in such event suspend delivery of our Services until your account is no longer in arrears.

5. DELIVERY OF SERVICES

- 5.1. Unless otherwise agreed in Contract Documents our Services will be delivered at the times and in the manner (which includes choice of personnel and location) as we determine.
- 5.2. To enable us to deliver our Services we are reliant upon your timely co-operation to supply requested information and resources, and ensure availability of your personnel to participate to the extent required to achieve project outcomes.
- 5.3. We reserve the right to subcontract some of our Services, although if we do that we will ensure that service delivery is not compromised and we will be liable for any sub-contractor failure.

6. CONFIDENTIAL INFORMATION

- 6.1. If in the course of a Project you supply us with information which is Confidential Information, we will do what we reasonably can to keep it confidential. We will not use it for any purpose other than the Project. Likewise, you will keep confidential and protect any of our Confidential Information.
- 6.2. If in the course of a Project you supply us with any Personal Information, you will ensure that you have the authorities required from its owner to meet the requirements of the Privacy Act 2020 sufficient to enable us to use that information in the manner contemplated for the Services or Project.

7. INTELLECTUAL PROPERTY

- 7.1. We own all pre-existing Intellectual Property rights in all of our learning and performance methods and systems, which we may use or adapt to deliver a Project and nothing we do will affect those rights or our ownership of them.
- 7.2. Subject to payment being made, you shall own the Intellectual Property relating to the content of bespoke deliverables as defined in the Statement of Work. We retain ownership of the Intellectual Property relating to the source files of all deliverables.

8. ACCEPTANCE OF DIGITAL DELIVERABLES

- 8.1. We guarantee successful implementation of digital deliverables we have created, and you have 20 working days after receiving the final files to identify any functional issues or bugs and, provided that it is our error, we will fix those without charge.
- 8.2. If the error or change requested is not due to our fault (for example user errors, administration errors, environmental changes, or other action by you) we will charge you by the hour for our involvement.
- 8.3. Troubleshooting and ongoing maintenance will be charged by the hour at our standard rate unless a maintenance agreement is in place.

9. CANCELLATION

- 9.1. You may cancel the Project Agreement for any reason by providing sixty (60) working days written notice to Optimism with the following provisions:
 - Prior to the agreed start date of the Project, you will be liable for payment of the deposit, and Optimism will be entitled to keep the full deposit.
 - After the start date of the Project, Optimism will be entitled to keep the full deposit and invoice for all work completed and/or scheduled up to the final date of the notice period, and you are liable for payment of the invoice.

10. DISPUTES

- 10.1. If you are unhappy with any aspect of a Project or the delivery of Services you will immediately notify our SPC of the concern and we will then try to resolve the concern to your satisfaction. If we are unable to achieve this you must then notify us (in accordance with clause 10) and we will endeavour to find a satisfactory solution.
- 10.2. If within 20 days after a dispute is raised to us it remains unresolved it shall be referred to mutually agreed mediation.
- 10.3. In the event of any legal action regarding a Project, New Zealand law will apply and the New Zealand courts will have sole jurisdiction.

11. WARRANTIES AND LIABILITY

- 11.1. We will undertake any Project and provide Services in a professional and diligent way, always in an endeavour to achieve the best outcome for you, to ensure delivery meets agreed expectations.

- 11.2. We and you each agree to act in good faith to ensure a satisfactory outcome from any Project.
- 11.3. The only other promises we make are those specifically recorded in this document or any relevant Project Agreement and no warranties are implied (by law or otherwise). To the maximum extent permitted by law the Consumer Guarantees Act 1993 and the Fair Trading Act 1986 will not apply.
- 11.4. We are not liable to you for any indirect or consequential loss claims and our maximum liability to you in respect of any Services provided is an amount equal to money we have received from you for performing the Services concerned.

12. GENERAL MATTERS

- 12.1. Any notice served by you or us must be served at the address specified in any Project Agreement but if a Project Agreement has no address for service, the notice must be served at the party's address for service (if it is a registered legal entity). In any event any notice must also be sent to the other party's SPC and will not be deemed served if not received by the SPC, or if there is no SPC, by a director or officer of the recipient party.
- 12.2. Our relationship with you is as a contractor providing Services and no other relationship (such as by way of example agency or partnership) is implied.
- 12.3. In these terms and conditions certain words (eg Force Majeure and Project) commence in upper case. This is to connote that they have a defined meaning, as below:
 - 12.3.1. "Confidential Information" means information of a special commercially sensitive personal or proprietary nature which is imparted in confidence or which the recipient knows or ought to know is confidential.
 - 12.3.2. "Project Agreement" means documents of the nature described in the paragraph above entitled "Purpose and effect of this document".
 - 12.3.3. "Force Majeure" means anything which occurs beyond the control of a party and frustrates their ability to perform, such as a natural disaster, war or political unrest, strike or "act of God".
 - 12.3.4. "Intellectual Property Rights" includes copyright, a trade mark, trade name or logo, patent rights, know how or similar rights which may be registered or unregistered.
 - 12.3.5. "Personal Information" means information of a person, as defined and controlled by the Privacy Act 1993.
 - 12.3.6. "Penalty Rate" means 13% per annum.
 - 12.3.7. "Project" means an agreed undertaking to provide specific Services to you.
 - 12.3.8. "Services" means professional services (such as learning and performance strategies or solutions and associated published digital files or non-digital materials) which we provide to you from time to time.
 - 12.3.9. "Variation" means a written and agreed alteration to the original scope of the contracted Services.