

1. DEFINITIONS AND INTERPRETATION

1.1 The following definitions apply to these General Conditions.

Agreement means all agreements and other arrangements between the Company and the Client in respect of the provision of the Services by the Company to the Client including these General Conditions and the terms contained in, or referred to in, the Proposal.

Client means the person who acquires Services from the Company.

Client Information means all documents, instructions, specifications, codes, requirements, samples, measurements and other information and materials provided by the Client to the Company in relation to the performance of the Services.

Company means Explicom Pty Ltd ABN 55 613 860 138.

Fees means the fees payable by the Client to the Company in respect of the Services, as specified in the Proposal.

General Conditions means these General Terms and Conditions of Service.

Party means the Company or the Client.

Proposal means any proposal, quotation or other documentation of the Company that sets out the Services, the Fees and any other information or terms and conditions in relation to the performance of those Services.

Report means all reports and other documents created by the Company or its representatives and consultants in the course of the Services that are provided to the Client.

Services means the services to be performed by the Company under the Agreement as more particularly specified in the Proposal relevant to those Services or as otherwise agreed between the Parties.

Site means the place where the Services are to be performed.

1.2 Headings are for convenience only, and do not affect interpretation.

1.3 A reference to **dollars** or **\$** is an amount in Australian currency.

GENERAL CONDITIONS

1.3 The Company will provide the Services to the Client in accordance with these General Conditions and any other terms and conditions of the Agreement.

1.4 These General Conditions prevail over any inconsistent terms (including the Client's terms and conditions). To avoid doubt, the Parties agree that this clause 2.2 applies even if the Client's terms and conditions contain provisions that deem the terms to be accepted by Company if Company does a particular thing and Company does that particular thing.

1.5 Nothing in this Agreement affects any non-excludable statutory rights or remedies that Client may have.

2. SERVICES

2.1 In providing the Services, the Company does not provide the services of, and does not take the place of designers, architects, builders, contractors, manufacturers, producers, operators, transporters, owners or other third parties, who, notwithstanding the provision of the Services by the Company, are not released from any of their respective obligations of whatever nature to the Client. In particular, any information and/or advice supplied by the Company in connection with the provision of the Services shall not be held or construed to amount to approval or acceptance of the items in connection with which the information and advice is supplied. Such parties are responsible for acting as they see fit, according to the information and advice provided by the Company.

3. INFORMATION

3.1 The Client must provide the Company with all of the Client Information required to enable the Company to perform the Services. The Client Information will remain the property of the Client.

3.2 In performing the Services, the Company may collect additional information in relation to the Client including information obtained by taking samples and conducting surveys, inspections, verifications, assessments, audits and appraisals.

3.3 Any samples taken by the Company in performing the Services may be retained by the Company after termination of the Agreement or may be disposed of by the Company after that period in the Companies absolute discretion, unless otherwise agreed in writing by the Client. If the Client requires the samples to be retained, the Company is entitled to charge the Client reasonable storage costs for the samples. Neither the Company nor its representatives will be liable for any loss, deterioration, destruction or damage to any of the samples.

3.4 The Client must reimburse the Company for all costs associated with the safe disposal of any Client Information or samples.

3.5 The Client must notify the Company in writing if any Client Information to be received by the Company includes material which is classified as a dangerous substance or which requires special handling procedures.

3.6 All materials, equipment, tools and information provided by the Company to the Client will be and remain the exclusive property of the Company.

3.7 The Company will not be liable for any incorrect information, advice, judgment, recommendation, finding, decision, conduct or Report, which is based upon any inaccurate or incomplete Client Information, or where any change is made to the Client Information without prior notification to the Company.

3.8 The Company will not be liable for a delay or failure to perform the Services if there is a failure or delay by the Client or its representatives: (a) in providing the Company with Client Information or access to the Site; or (b) in approving the performance of the Services. If any of these events occur the Company may charge the Client for any additional costs and expenses incurred in performing the Services at the Company's usual hourly rate, unless otherwise agreed in writing by the Company.

3.9 The Company may (but is not required to) retain records relating to the Services.

4. INTELLECTUAL PROPERTY RIGHTS

5.1 Nothing in this Agreement transfers ownership of any intellectual property rights and each party reserves all rights.

5.2 The Client grants the Company including its representatives a non-exclusive, royalty-free, perpetual, transferable, sublicensable and worldwide licence to make use of any intellectual property rights owned by the Client for the purposes of performing its obligations under the Agreement.

5.3 Company grants to Client a non-exclusive, perpetual, irrevocable, worldwide, royalty free, licence to use any Report provided to the Client under this agreement for the Clients internal business purposes.

5. SITE

5.1 The Client must provide the Company with access to any Site necessary to enable the Company to perform the Services.

5.2 If the Company considers in its reasonable opinion that the Site is unsafe, the Company may suspend the performance of the Services until such time as the Client makes the Site safe. In such circumstances, the Client must reimburse the Company for all costs and expenses incurred during the period of suspension at the Company's usual hourly rate, unless otherwise agreed in writing by the Company.

6. SUBCONTRACTING

6.1 The Company at its sole discretion may subcontract the performance of all or a portion of its obligations under the Agreement without prior notice to the Client;

7. FEES AND PAYMENT

7.1 All Fees and other charges may be invoiced by the Company to the Client at completion of the project or on a monthly basis, in the absolute discretion of the Company, unless otherwise specified in the Proposal.

7.2 Invoices must be paid by the Client within 30 days of the date of the invoice.

- 7.3 Without prejudice to any other right or remedy that it may have, if the Client fails to pay the Company on the due date, the Company may suspend all Services until payment has been made in full.
- 7.4 The Client must reimburse all reasonable expenses incurred by the Company in providing the Services.
- 7.5 Any amount referred to in the Agreement is exclusive of GST and any other tax unless it is expressly included. If GST is imposed on any supply (or deemed supply) made by any Party under or in connection with the Agreement, then the consideration for that supply is increased by an amount equal to the amount of that consideration multiplied by the rate at which GST is imposed in respect of that supply. The Party which makes the supply under or in connection with the Agreement must provide to the recipient of that supply a GST tax invoice as required by legislation. Words defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause.
- 7.6 The Client may not deduct or set-off from any Fees or moneys otherwise due to the Company by the Client any money due to the Client by the Company (including for any breach of the Agreement).
- 8. FORCE MAJEURE**
- 8.1 Company will not be in breach of this Agreement if the breach is caused by an event beyond its reasonable control (**Force Majeure Event**).
- 8.2 If the Company is prevented for any reason beyond its control, including a Force Majeure Event, from performing Services, the Client agrees: (a) to reimburse the Company for any expenditures actually made or incurred, (b) to pay the proportion of Fees in respect of the Services performed and (c) to release the Company from all responsibility for, or to complete, partial or total non-performance of the Services
- 9. LIMITATION OF LIABILITY**
- 9.1 To the maximum extent permitted by law and subject to clause 1.5:
- (a) Company excludes all implied terms (statutory or otherwise - including implied warranties) of any kind;
- (b) Company excludes all liability for indirect and consequential loss or damage of any kind. Without limiting what is or is not indirect or consequential loss, the Parties agree that the following are taken to be indirect or consequential losses: (i) loss of revenue of any kind and loss of profits of any kind; (ii) failure to realise expected profits or savings of any kind; (iii) additional or wasted costs; (iv) down time or lost production costs; and (v) any other types of losses, of any kind, that are similar to any of the losses described in (i) – (iv);
- (c) Company's total liability for loss or damage of any kind not excluded by other provisions in this Agreement is limited in aggregate for any and all claims to the Fees.
- (d) Company liability is reduced to the extent that it was caused or contributed to by an act or omission by Client or by any of Client personnel (including subcontractors);
- (e) clauses (a) – (d) apply to loss or damage of any kind (direct, indirect or otherwise), however caused, whether in contract, tort (including negligence), under any statute or otherwise, arising from or related in any way to this Agreement (including arising from or related in any way to the Services); and
- (f) if a statute implies a term into this Agreement, and it cannot be excluded, then company liability for breaching it will be limited (at Company option) to resupply or paying the cost of resupply of the Services. Company may choose not to limit its liability in any of these ways.
- 9.2 The Company will not be liable for any claim, loss, liability, cost or expense which arises in connection with: (a) Any person relying on a Report or drawing conclusions from any Report which are not expressly stated in that Report; and (b) Any expectation by any person that the measurements referred to in a Report will have a measurement uncertainty less than that required by applicable industry standards.
- 9.3 The Client will release and indemnify the Company and its officers, employees and agents from and against all claims, losses, liabilities, costs and expenses (including reasonable legal fees) arising from any claim by a third party in connection with a Report, including where the Report is disclosed in full or in part to the third party with the consent of the Company.
- 10. CONFIDENTIALITY**
- 10.1 A Party must keep the other Party's confidential information confidential and only disclose or use it to meet its obligations under this Agreement. Before a Party discloses any confidential information to a third party, they must tell them that it is the other party's confidential information and that it must only be used to assist the disclosing party to meet its obligations under this Agreement.
- 10.2 On expiry or termination of the Agreement or at the direction of either Party, each Party must return or destroy the other Party's Confidential Information which is in its possession or under its control.
- 11. TERMINATION**
- 11.1 A Party may terminate the Agreement by giving not less than 30 days notice in writing to the other Party.
- 11.2 On termination of the Agreement: (a) the Client must immediately pay to the Company all of the Company's outstanding unpaid invoices (and interest, if any, on any outstanding sums) and, in respect of Services performed but for which no invoice has been submitted, the Company may submit an invoice, which will be payable immediately on receipt; (b) the Client must return all of the Company's materials, equipment, tools and information and if it fails to do so, then the Company may enter the Client's premises and take possession of the materials, equipment, tools and information; (c) the accrued rights and liabilities of the Parties as at termination are not affected; and (d) clauses 3, 4, 7, 9, 10, 11, and 13 survive termination.
- 12. AMENDMENT AND ASSIGNMENT**
- 12.1 These General Conditions can only be amended or replaced by another document executed by the Parties.
- 12.2 The Company may assign its rights or subcontract its obligations in connection with the performance of the Services in its discretion without the consent of the Client. The Client may only assign its rights under the Agreement with the prior written consent of the Company.
- 13. General**
- 13.1 The Agreement contains the entire agreement between the Parties in respect of the Services. Any previous understanding, agreement, representation or warranty in respect of the Services is replaced by the Agreement, and has no further effect. Any right that Company may have under the Agreement is in addition to, and does not replace or limit, any other right that the Company may have.
- 13.2 The Agreement is governed by the laws of Queensland. Each Party submits to the jurisdiction of the courts of that State or Territory and of any court that may hear appeals from any of those courts, for any proceedings in connection with the Agreement.
- 13.3 This Agreement does not confer any rights or benefits upon any third parties and any such rights or benefits are excluded. To avoid doubt, this exclusion applies to rights or benefits of any kind, however arising, including under any form of third party beneficiary law or legislation.
- 13.4 The Parties agree that the meaning of a provision will not be construed against a party because that Party drafted the provision or the meaning would favour that Party.