

Terms and Conditions for Work Undertaken:



Innovators Ltd

Terms and Conditions
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1.0 Definitions

The following terms and conditions document is a legal agreement between Innovators and its client, hereafter referred to as “Client” for the purposes of product design or development. These Terms and Conditions set forth the provisions under which the Client may use the services provided.

Innovators is design consultancy offering the Client product development, product design, prototyping and product validation services, plus other services as appropriate.

Project is used herein to refer to any work commissioned from Innovators by a Client. It encompasses all aspect of work undertaken including but not limited to: rendering, 3D modeling, product development, concept development, schematic capture, PCB layout, software development, 3D scanning, rapid prototyping, product assembly, 3rd party design validation.

Key Performance Indicators (KPIs) are defined as pre-agreed validation or element completion points, Client signoff points, significant IP completion points and delivery points.

2.0 Acceptance of Work

Quotations are valid for 7 days from date of issue, unless otherwise stated.

Innovators will carry out work only where a quotation has been accepted in writing by the Client for the work, unless otherwise agreed at Innovators discretion.

When the Client places an order or makes written undertaking to purchase an agreed service from Innovators, the order represents an offer to Innovators to purchase the proffered services which is accepted by Innovators only when a written commitment/acceptance is made by Innovators. No contract for the supply of services exists between Client and Innovators until Innovators gives such an undertaking. The written acceptance of the quotation equals acceptance by Innovators of the Clients offer to purchase services from Innovators and this acceptance of work is a valid contract between the Client and Innovators.

The Client agrees to check the details of the quotation are correct before giving written acceptance of it and should print and keep a copy for their records.

Innovators is free to withdraw from contract at any time prior to written acceptance from an authorised officer of Innovators.

Additional work requested by the Client which is not specified in the agreed quotation is subject to an additional quotation by the Innovators on receipt of specification. If the work is needed as part of an existing project, then this may affect timescale and overall delivery schedule of the project.

The Client agrees to provide any needed information and support required by Innovators in good time to enable Innovators to complete its work as part of an agreed project.

3.0 Permission, Copyright and IP Ownership

The Client and any visitors to the Innovators web site at <http://www.Innovators.net.nz> may not use any of the pages, images, text or code on the web site for use on other web sites or to create a web site or templates without prior written permission from Innovators.

Ownership of completed designs, prototypes, images, code and source files created by Innovators for a project shall be rendered to the Client upon final payment of amount(s) as quoted which are outstanding at completion of the development. Thereafter, Innovators retains no rights in the IP that has been generated in the process of the development and undertakes to maintain the clients' trade secrets insofar as it is possible to do so. Where Innovators retains some rights in the end product, due to a prior agreement about joint venture, this clause remains in force.

The client acknowledges that the developer owns or holds a license to use and sublicense various preexisting development tools, routines, subroutines and other programs, data and materials that the developer may include in the software developed. This material shall be referred to as "Background Technology". The developers Background Technology and limits to their interest therein will be disclosed to the client when their inclusion or use becomes appropriate.

The developer retains all right, title and interest, including all copyright, patent rights and trade secret rights in the Background Technology. Subject to full payment of the consulting fees due, the developer grants the client a nonexclusive, perpetual worldwide license to use the Background Technology in the software developed for and delivered to the client, and all updates and revisions thereto. However, the client shall make no other commercial use of the Background Technology without the developers' written consent.

The Client hereby agrees that all IP and information made available to Innovators for use in the project are either owned by the Client or used with full permission of the original owners. The Client agrees to hold harmless, protect and defend Innovators from any claim or suit that may arise as a result of using the supplied IP and information.

The Client agrees that Innovators may include development credits and links within any files Innovators designs, builds or amends. If Innovators designs a product or component for a Client then the Client agrees that Innovators may include a development credit and link displayed on its web site, unless the Client feels that commercial sensitivity overrides this.

The Client agrees that Innovators reserves the right to include any work done for the Client in a portfolio of work both in paper and electronic publication, unless such can be deemed to be harmful to the Clients business.

4.0 Client Responsibilities

The Client is solely responsible to test the designs and any prototypes Innovators provides. The Client is solely responsible to ensure that any resulting products are tested, manufactured, packaged, labeled (including adequate warnings), sold, and used in a safe and careful manner and in compliance with all applicable laws, regulations, and appropriate industry standards. This does not absolve Innovators from its responsibility to provide a validated design that meets the specification requirements agreed throughout the project.

Unless otherwise specifically stated in writing, the Client is solely responsible for obtaining any applicable or necessary approvals. The Client assumes all responsibility for any information and/or specifications it provides to Innovators and agrees that, unless specifically stated, Innovators may rely on such information and/or specifications without independent verification.

The Client is responsible for full disclosure of all matters relating to the product development and to provide Innovators with immediate revisions in instruction, should alterations to the Clients requirements come to light during the development process.

The Client is responsible for providing information and feedback requested and responses to issues raised by Innovators or its officers, in a timely manner. Innovators will not be held liable for the schedule or cost consequences of late provision of such information by the Client.

5.0 Project Activity

During a development project it is important that Client communicates information to the Innovators to achieve the required result. The Client has responsibility to create a single point of contact within their organisation, to prevent conflicting data flows. Innovators undertakes to do the same.

The Client agrees that for 3D modeling work they are eligible for up to 3 hours of alterations. All alterations are to be requested in writing by the Client. After the 3 hours of alterations have been completed, Innovators reserves the right to advise the Client of such and send a separate quotation to the Client and to request payment for any further alterations. Innovators reserves the right to request payment be received for further alterations before continuing work. Upon completion of agreed design the Client is asked to confirm in writing by email or postal mail that the design is signed off as complete and agree that any further design alterations are chargeable.

Innovators undertakes that at all times reasonable care and skill will be exercised in provision of services. Further, Innovators undertakes to inform the Client if unexpected areas of skill-lack are encountered in the course of any development project, allowing the Client the option of bringing in a third party of their choosing for support. Innovators undertakes to source external services as required to ameliorate such an eventuality, if practicable.

On request, Innovators will, at any stage prior to project completion, create a copy of all project data for the Client, if all relevant invoices have been paid in full.

Once the project is completed, Innovators will provide the Client with a full set of all documents and files relating to the project, if all project invoices have been paid.

After the project completion, the Client or a third party of their choosing may wish to edit their data or models themselves to make updates. However, the Client agrees that in so doing they assume full responsibility for any issues which occur as a result of changing the design files. If the Client or a third party of their choosing edits the design files and this results in functional errors, then Innovators reserves the right to quote for work to repair the data.

Innovators reserves the right to assign subcontractors in whole or as part of a project if needed. Innovators undertakes that such arrangements will be seamless in their integration with the core responsibilities and that from the Clients perspective there will be no disruption consequent upon this.

Innovators will keep a copy of the design data when a design or development project is being worked on and undertakes to maintain full onsite and offsite backups. However, the Client agrees that Innovators has no responsibility for maintenance of data once project handover has taken place.

All communications between Innovators and Client shall be by telephone, email, Skype or postal mail, except where agreed at Innovators's discretion. All verbal communications shall be immediately backed up by a written record, published to all relevant parties in order to maintain reliable tracking of project history.

6.0 Payment Terms

For any work Innovators requires a payment to be committed in writing in advance for the work being carried out and all payments to be completed before handover of files, except where agreed at Innovators own discretion.

A payment schedule shall be agreed prior to commencement of work by Innovators. Short duration projects (less than two weeks of elapsed time) shall be payable upon completion and prior to handover of project data. Longer duration projects will require stage payments which will be payable according to pre-agreed KPIs or according to a pre-agreed schedule.

Once the final payment has been received and the work finished, the files will be handed over to the Client. The Client may specify, with reason, the format of data to be provided and the medium of the provision.

The Client may request that Innovators cancel a project in writing by email or postal mail to Innovators and the project is cancelled only if Innovators confirms work has not been started on the project. If Innovators has begun or part completed the work and the Client no longer requires the outcomes but have agreed to the work, they are still obliged to pay Innovators for the work that has been completed.

All invoices are submitted by email except where required otherwise by regulations or agreed at Innovators's discretion.

7.0 Indemnification

The Client agrees to use all Innovators services and facilities at their own risk and agree to defend, indemnify, save and hold Innovators, its directors, officers, employees, and agents harmless from any and all demands, liabilities, costs, losses and claims including but not limited to attorney's fees against Innovators or its associates that may arise directly or indirectly from any service provided or agreed to be provided or any product or service sold by the Client or its third parties. The Client agrees this indemnification extends to all aspects of the project, including but not limited to tangible prototypes, product designs, product images, scanned product data, schematics, PCB layouts and software code. This obligation shall apply, without limitation, to claims of the Client and any employee, invitee, or agent of the Client, of any lessee or purchaser of the Clients goods or services and of any third party.

The Client also agrees to defend, indemnify and hold harmless Innovators, its directors, officers, employees, and agents against any and all liabilities arising out of injury to person or property caused by any service provided or agreed to be provided or any product or service sold by the Client or third parties, including but not limited to, infringement of copyright, infringement of proprietary rights, misinformation, delivery of defective products or services which is harmful to any person, business, company or organisation.

8.0 Service Terms

Innovators endeavours to provide project completion within given delivery timescales to the best of its ability. However, the Client agrees that Innovators is not liable for any claims, losses, costs incurred or compensation due to any failure to carry out services within a given delivery timescale. If a penalty clause or schedule is agreed by all parties in advance, then this overrides any such freedom from liability insofar as the total amount of the pre-agreed penalties.

The Client agrees Innovators is not liable for absence of service as a result of illness. Innovators has third party associates who may be able to take on work should there be the need to, so Innovators will make all reasonable efforts to mitigate the effects of any such illness and militate against consequent project delays.

The Client agrees Innovators is not liable for any failure to carry out services for reasons beyond it's control including but not limited to acts of God, telecommunication failures, software failure, hardware failure, third party interference, Government, emergency or any social disturbance such as industrial dispute, riot, terrorism and war or any act or omission of any third party services.

Innovators is not liable for any consequences or financial losses such as, but not limited to, loss of business, profit, revenue, contract, data or potential savings, relating to services provided.

On handover of files from Innovators to the Client, the Client shall assume entire responsibility in ensuring that all design outcomes are reviewed and validated before use.

Whilst every effort is made to make sure files are error free, Innovators cannot fully guarantee that design files will be free from errors. If after handover of files errors are found in the designs and files that Innovators has created then Innovators will correct these errors for the Client without charge and in the shortest possible order.

Should the Client go into compulsory or voluntary liquidation or be deemed unable to pay its project related debts in the normal course of business, Innovators reserves the right to cancel forthwith any projects and invoice the Client or its Receivers for any work completed.

In the event of non payment of any or all invoices relating to a project, Innovators will retain all rights to the Intellectual Property it has created and full ownership of all rights in relation to the design outcomes it has achieved.

Innovators shall have no liability to the Client or any third parties for any damages, including but not limited to, claims, losses, lost profits, lost savings, or other incidental, consequential, or special damages arising out of the product designed, even if Innovators has been advised of the possibility of such damages in advance.

9.0 Non Disclosure and Privacy

Innovators and any third party associates agree that, except if directed by the Client, it will not at any time during or after the term of this agreement disclose any confidential information. Likewise, the Client agrees that it will not convey any confidential information about Innovators to another party.

This applies notwithstanding any Non Disclosure Agreement or Confidentiality Agreement that exists between Innovators and the Client.

Innovators and any third party associates shall use information provided by the Client in relation to this agreement in accordance with the Privacy Act 1993 (New Zealand) and also for the following purposes 1) to identify the Client in communications with them 2) to contact the Client from time to time to offer them services or products which may be of interest to or benefit the Client.

10.0 Interpretation

Innovators reserves the right to terminate a project with the Client at any time without prior notification if it finds the Client in breach of these terms and conditions. Innovators shall be the sole arbiter in deciding what constitutes a breach. No refunds are given or indemnity accepted in such a situation.

This agreement shall be governed by the laws of New Zealand which shall claim venue and jurisdiction for any legal motion or claim arising from this agreement. This agreement is void where prohibited by law.

Where one or more terms of this contract are held to be void or unenforceable for whatever reason, any other terms of the contract not so held will remain valid and enforceable at law.

Any and all matters pursuant to this agreement are governed by New Zealand Law and are under exclusive jurisdiction of the New Zealand Courts.

Innovators reserves the right to alter these Terms and Conditions at any time without prior notice, the latest terms and conditions can be found at the Innovators web site at <http://www.Innovators.co.nz> under Terms & Conditions with a date of its last update.

By accepting a quotation or making a payment of invoice to use the services supplied, the Client acknowledges to have read, understand, and accept the Terms and Conditions of this Agreement, and agrees to be legally bound by these Terms and Conditions.