

# EXO Louvre Systems Terms and Conditions of Sale

## 1. Definitions

1.1 "Manson" means Manson Engineering Limited, its successors and assigns or any person acting on behalf of and with the authority of Manson Engineering Limited.

1.2 "Client" means the person/s buying the Goods as specified in any invoice, document, or order, and if there is more than one Client is a reference to each Client jointly and severally.

1.3 "Goods" means all Goods or Services supplied by Manson to the Client at the Client's request from time to time (where the context so permits the terms "Goods" or "Services" shall be interchangeable for the other).

1.4 "Price" means the Price payable for the Goods as agreed between Manson and the Client in accordance with clause 3 below.

## 2. Acceptance

2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.

2.2 These terms and conditions may only be amended with the consent of both parties in writing and shall prevail to the extent of any inconsistency with any other documents or agreements between the Client and Manson.

## 3. Price and Payment

3.1 At Manson's sole discretion, the Price shall be either:

(a) As indicated on any invoice provided by Manson to the Client; or

(b) Manson quoted price (subject to clause 3.2) which will be valid for the period stated in the quotation or otherwise for the period of thirty (30) days.

3.2 Manson reserves the right to change the Price:

(a) If a variation of the Goods which are to be supplied is requested; or

(b) If a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or

(c) Where additional Services are required due to the discovery of previously hidden or unidentified issues/difficulties

(d) In the event of increases to Manson in the cost of labour or Goods which are beyond Manson's control.

3.3 A deposit of 20% is required by Manson to secure each order.

3.4 Should the Client choose to cancel the order at any time the Client will be liable to pay Manson for the costs incurred to date. This amount will be deducted from the deposit that has been paid and any shortfall will become immediately due and payable;

3.5 The final balance will be payable by the Client on the date/s determined by Manson, which may be:

(a) On completion of the Services; or

(b) By way of progress payments in accordance with Manson's specified progress payment schedule

of a 20% deposit payable upon order and the balance payable prior to installation

(c) The date specified on any invoice or other form as being the date for payment; or

(d) The date which is seven (7) days following the date of any invoice given to the Client by Manson.

3.6 Payment of the invoice may be made by cash, electronic/on-line banking, or by any other method as agreed to between the Client and Manson.

3.7 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Manson nor to withhold payment of any invoice because part of that invoice is in dispute.

3.8 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to Manson an amount equal to any GST Manson must pay for any supply by Manson under this or any other agreement for the date of the Goods. The Client must pay GST, without deduction or set off any other amounts, at the same time on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price.

## 4. Delivery and Risk

4.1 The installation date will be put back and the completion date extended by whatever time is reasonable in the event that Manson claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond Manson's control, including but not limited to any failure by the Client to:

(a) Make a selection; or pay for the Goods.

(b) Have the site ready for the Services; or

(c) Notify Manson that the site is ready.

4.2 Any time or date given by Manson to the Client is an estimate only. The Client must still accept delivery of the Goods even if late and Manson will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.

4.3 If the Client requests Manson to leave Goods outside Manson's premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Client's sole risk.

## 5. Accuracy of Measurements

5.1 Manson shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, Manson accepts no responsibility for any loss, damages or costs however resulting from these inaccurate plans, specifications or other information.

5.2 In the event the Client gives information relating to measurements and quantities of Goods required in completing the Services, it is the Client's responsibility to verify the accuracy of the measurements and quantities, before the Client or Manson places an order based on these measurements and quantities. Manson accepts no responsibility for loss, damages or costs however resulting from the Client's failure to comply with this clause.

## 6. Access

6.1 The Client shall ensure that Manson has clear and free access to the site at all times to enable the delivery and installation (if applicable) of the Goods. Manson shall not be liable for any loss or damages to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Manson.

## 7. Ownership

7.1 Manson and the Client agree that ownership of the Goods shall not pass until:

a) the Client has paid Manson all amounts owing to Manson; and

b) the Client has met all its other obligations to Manson.

7.2 It is further agreed that:

(a) until ownership of the Goods passes to the Client in accordance with Clause 7.1 that the Client is only a bailee of the Goods and must return the Goods to Manson on request.

(b) the Client holds the benefit of the Client's insurance of the Goods on trust for Manson and must pay to Manson the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.

(c) the Client must not sell, dispose or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for Manson and must pay or deliver the proceeds to Manson on demand.

(d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Manson and must sell, dispose of or return the resulting product to Manson as it so directs.

(e) the Client irrevocably authorises Manson to enter any premises where Manson believes the Goods are kept and recover possession of the Goods.

(f) Manson may recover possession of any Goods in transit whether or not delivery has occurred.

(g) the Client shall not charge or grant an encumbrance over the Goods nor grant or otherwise give away any interest in the Goods while they remain the property of Manson.

(h) Manson may commence proceedings to recover the Price of Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

## 8. Client's Disclaimer

8.1 The Client hereby disclaims any right to rescind, or cancel any contract with Manson or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by Manson and the Client acknowledges that the Goods are bought relying solely upon the Client's skill and judgement.

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### 9. Defects

9.1 The Client shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify Manson of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Manson an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which Manson has agreed in writing that the Client is entitled to return, Manson's liability is limited to either (as Manson's discretion) replacing the Goods or repairing the Goods.

9.2 Goods will not be accepted for return other than in accordance with 9.1 above.

### 10. Consumer Guarantees Act 1993

10.1 If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by Manson to the Client.

### 11. Intellectual Property

11.1 Where Manson has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of Manson.

11.2 The Client warrants that all designs, specifications or instructions given to Manson will not cause Manson to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Manson against any action taken by a third party against Manson in respect of any such infringement.

11.3 The Client agrees that Manson may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Manson has created for the Client.

### 12. Default and Consequences of Default

12.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Manson's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

12.2 If the Client owes Manson any money the Client shall indemnify Manson from and against all costs and disbursements incurred by Manson in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own Client basis, Manson's collection agency costs, and bank dishonour fees).

12.3 Without prejudice to any other remedies Manson may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Manson may suspend or terminate the supply of Goods to the Client. Manson will not be liable to the Client for any loss or damage the Client suffers because Manson has exercised its rights under this clause.

12.4 Without prejudice to Manson's other remedies at law Manson shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Manson shall, whether or not due for payment, become immediately payable if:

- (a) any money payable to Manson becomes overdue, or in Manson's opinion the Client will be unable to make a payment when it falls due;
- (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

### 13. Compliance with Laws

13.1 The Client and Manson shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities ("Regulations") that may be applicable to the Services. Manson can offer recommendations regarding Regulations, however it is ultimately the Client's responsibility to ensure that any structure does not infringe Regulations.

13.2 The Client shall obtain (at the expense of the Client) all licenses, approvals, consents and permits that may be required for the Services, and that are not included in the project documents provided by Manson.

13.3 The Client agrees that the site will comply with any WorkSafe guidelines relating to building/construction sites and any other relevant safety standards or legislation.

13.4 Manson louvre roofs are designed for external applications and use. However, while they retain a good level of weathertightness, they are not designed to be completely watertight, nor to meet building enclosure regulations.

13.5 Any structures/additions/enclosures (including without limitation, joinery, walls and screens) added or attached to Manson louvre roofs will void all warranties (unless Manson have provided specific written consent for the additions/attachments).

### 14. Cancellation

14.1 Manson may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice Manson shall repay to the Client any money paid by the Client for the Goods. Manson shall not be liable for any loss or damage whatsoever arising from such cancellation.

14.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by Manson as a result of the cancellation (including, but not limited to, any loss of profits).

14.3 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will not be accepted once production has commenced.

### 15. General

15.1 The failure by Manson to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Manson's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

15.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.

15.3 Manson shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Manson of these terms and conditions (alternatively Manson's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).

15.4 Manson may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.

15.5 The Client cannot licence or assign without the written approval of Manson.

15.6 Manson may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of Manson's subcontractors without the authority of Manson.

15.7 The Client agrees that Manson may amend these terms and conditions at any time. If Manson makes a change to these terms and conditions, then that change will take effect from the date on which Manson notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for Manson to provide Goods to the Client.

15.8 Manson shall not be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, epidemic, pandemic or other event beyond the reasonable control of either party.

15.9 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.

15.10 Manson reserves the right to take photos of installed Goods to use in Manson's marketing material.