

Standard Terms and Conditions

Last reviewed: 9 March 2020

This document outlines the standard terms and conditions of Advanced ERP Limited (**AERP**). Soliciting products and/or services from **AERP** implies acceptance of these terms and conditions.

1 In Plain English

- 1.1 We will do our best to provide a high-quality, professional and confidential service at competitive rates.
- 1.2 We ask that you reciprocate by treating us fairly and paying us promptly.

2 Definitions

- 2.1 The term "AERP" and any first-person pronouns refer to Advanced ERP Limited and/or its agents and/or representatives.
- 2.2 The term "Customer" and any second-person pronouns refer to an approved Customer and/or their agents and/or representatives.
- 2.3 The term "Vendor" refers to the original manufacturer of a software or hardware product (e.g. your ERP system).
- 2.4 The term "Third Party" and any derivatives or third-person pronouns refer to any other entity, organisation or individual.

3 Jurisdiction

- 3.1 These terms and conditions are governed by and will be construed in accordance with the laws of New Zealand and you submit to the exclusive jurisdiction of the Courts of New Zealand.
- 3.2 If we provide services to you on systems based outside of New Zealand, you are responsible for ensuring any work we do is in compliance with any applicable laws of that jurisdiction and advising us of required changes as soon as possible.

4 General

- 4.1 We will not provide any products or services unless in possession of an approved "Customer Application Form".
- 4.2 Submission of a completed, signed customer application form implies your acceptance of these terms and conditions.
- 4.3 These terms and conditions are subject to change without notice.
- 4.4 Current terms will be made available on request and will be available on our web site.
- 4.5 Our terms are not negotiable except as part of a support agreement.
- 4.6 Our current price schedule will be made available to current and qualified potential customers on request.
- 4.7 Prices exclude any taxes, including GST.
- 4.8 Prices are subject to change without notice and are commonly increased annually to allow for inflation.

5 Services Provided by Advanced ERP

- 5.1 We will not provide any services unless requested to do so by a person identified on your approved customer application form.
- 5.2 All services are provided at your risk, including (but not limited to) database maintenance, software installation and software maintenance. Software maintenance is performed in good faith that software is correct, but we cannot guarantee the quality and performance of software. At your request and cost, we will perform appropriate test installations and maintenance on suitable systems provided by you, to allow for your own testing.
- 5.3 Any service and consulting times detailed in any communication are *estimates* only and are based on information available to us at the time of preparation. Actual times may vary significantly from estimated times due to unforeseen circumstances and/or matters beyond our control; for example:
 - a) Customer systems not performing as expected due to inadequate or poorly configured hardware, software or infrastructure, including Internet connectivity.
 - b) Systems not being available at the agreed time.
 - c) Unsupported or unauthorised changes made to the system by the customer or a third party.
- 5.4 All invoices will be based on actual time spent unless explicitly stated otherwise in a formal written proposal. Where a proposal provides a fixed price, any work requested that is beyond the scope of the proposal will be performed at standard hourly rates.
- 5.5 Any work remedial side effects of unauthorised work performed by a third party will be charged at standard "NO plan" rates with no discount applicable.

6 Intellectual Property

- 6.1 We retain ownership of any and all intellectual property produced by us for your use. This includes any software, document, document template, artwork, chart, database, spreadsheet, report design or other creative work.
- 6.2 Minor works such as document formats, report designs and 'user interface macros' are licensed in perpetuity for any use and will attract a one-off consulting or development fee and attract charges for later modifications.
- 6.3 Other works are licensed on a case-by-case basis and may attract per-system and/or per-user license fees that will be payable annually.
- 6.4 We reserve the right to reuse intellectual property produced by us, e.g. incorporating it into new works and/or licensing it to a third party.
- 6.5 In all cases, intellectual property is provided to you with a non-transferable "right to use" license. You may use it within your business but may not on-sell it, modify it, reverse engineer it or make it available to any third party for any purpose without our express permission.
- 6.6 By prior arrangement, we will make source code available to you or to an escrow service, so that it may be maintained in the event that Advanced ERP and/or its successors are no longer in business. Possession of such source code does not imply ownership of the intellectual property contained therein nor otherwise negate any other terms herein.
- 6.7 We reserve the right to revoke your license if we believe you are in breach of these conditions, in which case continued use of our *Intellectual Property* may be subject to legal action.

7 Third-Party Hardware, Software and Services

- 7.1 We will not proceed with the supply of any product or services listed in quotations & proposals except on receipt of a suitably prepared, signed and dated Purchase Order.
- 7.2 Software specifications are subject to change without notice according to supplier variations and other factors beyond our control. We accept no responsibility or liability for any changes in software at any time.
- 7.3 Prices listed in quotations and proposals that involve third-party hardware, software or services may be subject to change without prior notice due to foreign exchange, vendor price fluctuations or other factors beyond our control.
- 7.4 We do not warrant or otherwise guarantee the performance or accuracy of any third-party software, even if supplied or supported by us. We do not have control over the quality and performance of third-party software and will not accept the risk on behalf of a third party. Installation and/or use of any software is at your risk.
- 7.5 Any work remediating side-effects of defects or shortcomings in third-party software is chargeable. Software defects recognised by a vendor are usually corrected by the vendor for free, but such fixes usually take some time to be made available and implementing the fixes will be chargeable. In some cases, an interim remediation will be viable for the problem in question, which we can provide for a fee, but this will be independent of any fees relating to deploying a vendor fix when it becomes available.

8 Invoices and Payment

- 8.1 Unless otherwise negotiated with the relevant third party, payment for any third-party software must be made in advance.
- 8.2 Invoices for annual license fees are payable immediately, with a risk of service disruption if your license expires before the vendor has received payment and supplied new license files.
- 8.3 Invoices for any chargeable services provided by us will normally be issued within a week of the services being supplied; but may take several weeks, especially if a problem or issue takes some time to resolve. They remain payable on your normal terms.
- 8.4 Except by prior agreement, payment of service invoices is expected within 14 (fourteen) days of the date of invoice.
- 8.5 Support agreements and/or support services may be suspended or cancelled if there are overdue invoices on the account.
- 8.6 We reserve the right to charge interest of 1.5% per month on overdue invoices.
- 8.7 We reserve the right to refer unsettled debt to a suitable collection agency, with associated costs for your account.

9 Confidentiality

- 9.1 We acknowledge that confidential information pertaining to your business is likely to be disclosed to us as part of providing our services.
- 9.2 We will treat all your information as confidential and:
 - a) Will not copy it nor disclose it to anyone without your express consent;
 - b) Will not use it for any purpose other than what was intended by the disclosure;
 - c) Will notify you immediately if we become aware of or suspect that an unauthorised disclosure has occurred;
 - d) Will take all reasonable precautions to ensure that our personnel do not disclose or make unauthorised use your information;
 - e) Will destroy or return to you any documents or material containing your information on request; and
 - f) Will, if requested, have our personnel sign an appropriate confidentiality agreement.

10 Sub-contracting

- 10.1 We reserve the right to sub-contract our services where we deem it necessary to deliver an acceptable level of service.
- 10.2 Such sub-contract services will only be with suitably qualified individuals or companies.
- 10.3 Sub-contractors will be bound by these terms and considered our agents for the purposes of our relationship with you.

10.4 Specialist Sub-contracting

- a) On occasion, the services of sub-contractors may cost more than our normal rates (e.g. if we need to bring in a consultant from overseas to assist with a highly specialised project).
- b) For such occasions, specific rates will be negotiated with you before engaging the sub-contractor.

11 Advanced ERP as a Sub-Contractor

If you are sub-contracting our services to your customer:

- 11.1 All commercial terms apply to our relationship with you.
- 11.2 All other terms, including confidentiality terms, apply to both you and your customer.

12 Limitation of Liability and Indemnity

- 12.1 In no event shall we be liable to you or to any other person or entity for direct or indirect, consequential, incidental or special damages caused by or resulting from any services rendered by us or arising from the behaviour or performance of any products supplied or supported by us. This includes, for example, but is not limited to:
 - c) Loss of revenue;
 - a) Loss of profit;
 - b) Loss of anticipated savings;
 - c) Loss of business, opportunity or contract;
 - d) Loss of goodwill;
 - e) Loss of or corruption of data.
- 12.2 By soliciting products and/or services from us, you covenant with us that you shall indemnify, and must at all times keep indemnified Advanced ERP Limited, its officers, employees and agents against any loss, damage and/or expenses (including legal costs), direct or indirect, including consequential damages, resulting from any services rendered by us or arising from the behaviour or performance of any products supplied or supported by us.
- 12.3 Because AERP services are only available to businesses, the Consumer Guarantees Act 1993 (NZ) does not apply to any services we supply. Equivalent consumer protection laws in other jurisdictions will also not apply.