

Julian Oes Consulting - Terms and Conditions

1. Introduction

By engaging the consulting services ("Services") provided by Julian Oes, Auckland, New Zealand ("Consultant"), the client ("Client") agrees to the following Terms of Service. These terms are binding upon use of any of the Consultant's Services.

2. Scope of Service

Incremental Approach: The Consultant will provide the Services as agreed upon through ongoing communications with the Client. The scope of work may evolve incrementally as the project progresses, reflecting the needs and priorities of the Client. Formal documentation of the scope is not required unless specifically requested by either party. The Client acknowledges that this flexible, incremental approach is intended to avoid significant surprises and to adjust the project direction as needed.

Impact of Changes: The Client also acknowledges that, while this approach allows for adaptability, any major changes in the scope of the Services may impact timelines and fees, and will be discussed and agreed upon as necessary. The Consultant will perform the Services with the level of skill, care, and diligence reasonably expected of a professional in the software development industry.

3. Fees and Payment

Fee Structure: The fees will be calculated based on the hourly rate of 250 USD/h for proprietary work, or 175 USD/h for open-source work, or a mix thereof. Proprietary work refers to source code which is kept confidential and is delivered to the Client, while open-source work is contributed to a public repository and communicated with upstream projects.

Expenses: The Client agrees to reimburse the Consultant for any pre-agreed expenses incurred in connection with the provision of Services.

Invoicing and Payment Terms: The Consultant typically issues invoices at the end of each month, or as otherwise agreed, and the Client agrees to pay the Consultant's fees and pre-agreed expenses within 14 days of receiving an invoice. If payment is late, the Consultant may suspend Services and charge interest at a rate of 3% per month on overdue amounts. Disputed invoices must be raised promptly, with the undisputed portion payable within the usual timeframe.

Disputed Invoices: If the Client, acting reasonably, disputes an invoice, or part of an invoice, the Client must promptly give the reasons for withholding the disputed amount and pay any undisputed amount.

4. Consultant's Liability

Professional Standards: The Consultant will use reasonable efforts to provide the Services within the estimated timeframes and to a professional standard of care. However, the Consultant does not guarantee any specific outcomes or results, including business success or financial returns, and is not liable for any failure to meet such expectations. The Consultant's responsibility is limited to performing the Services with reasonable skill, care, and diligence as expected of a professional in the consulting industry.

Liability Limitations: The Consultant's total liability, whether in contract, tort, or otherwise, is limited to the fees paid by the Client for the specific Services giving rise to the claim. In no event will the Consultant be liable for indirect, incidental, special, consequential, or punitive damages, including but not limited to, loss of profits, business interruptions, or any other commercial damages or losses, even if advised of the possibility of such damages.

Force Majeure: The Consultant is not liable for delays or failure to perform Services due to events beyond their reasonable control, including but not limited to: natural disasters, acts of government, pandemics, epidemics, war, civil unrest, cyber attacks, telecommunications or power failures, and significant currency fluctuations. The Consultant will promptly notify the Client of such events and make reasonable efforts to resume Services. The Client may terminate the agreement if force majeure conditions persist for more than 30 days. Any liabilities excluded by this clause are in addition to the Consultant's other limitations of liability.

Claims Limitation: Any claims for damages must be brought within six months of the completion of the Services. After this period, the Consultant will have no further liability.

5. Intellectual Property

Ownership of New IP: Any intellectual property ("New Intellectual Property") created by the Consultant in the course of providing the Services shall be owned by the Client unless otherwise agreed in writing.

Pre-existing IP: The Consultant retains the right to use any pre-existing intellectual property (developed or owned prior to the engagement) in future projects, provided that its use does not disclose or compromise any confidential information of the Client.

Open Source Exclusion: If any work is agreed upon to be contributed to an open-source project, it will be licensed under the applicable open-source license, and ownership will be governed by the terms of that license. The Client acknowledges that contributions made to open-source projects will be publicly available and are not considered proprietary or confidential. The Client may choose whether such contributions are labeled as 'sponsored by the Client' or remain anonymous under the Consultant's name.

Transfer of Work Products: All factual data, reports, or other work products specifically created for the Client, and paid for by the Client, will be transferred to the Client upon payment, except for open-source contributions as mentioned above. Both parties agree to maintain the confidentiality of proprietary information disclosed during the project, unless such information is publicly available or agreed upon for open-source contributions.

6. Claims and Dispute Resolution

The Client must notify the Consultant in writing of any claims or concerns within 10 working days of becoming aware of the issue. If a claim arises, both parties agree to attempt to resolve the matter in good faith through mediation before resorting to arbitration or legal proceedings.

7. Jurisdiction and Currency

These Terms are governed by the laws of New Zealand. Any legal proceedings shall be brought in the courts of New Zealand, and both parties submit to the exclusive jurisdiction of those courts. All payments must be made in United States dollars.

8. Recovery of Costs

The Client agrees to reimburse any legal or other costs incurred by the Consultant in enforcing their rights under these Terms.

9. Termination

Termination Without Cause: Either party may terminate this agreement with 14 days' written notice. Upon termination, the Client is responsible for paying all fees for work completed up to the termination date.

Termination For Cause: Either party may terminate immediately for cause if the other party commits a material breach and fails to remedy it within 10 business days after receiving written notice.

Effect of Termination: Upon termination, any licenses granted for intellectual property will remain in effect, provided all outstanding fees are paid. Open-source work contributed during the engagement will remain governed by the applicable open-source licenses.

10. Regulatory Compliance

The Consultant cannot provide Services or accept payment where prohibited by export restrictions, sanctions, or other regulatory requirements. The Client warrants that engaging the Consultant's Services does not violate any applicable laws or regulations. If such restrictions are discovered during the engagement, the Consultant may immediately terminate the Services, and the Client shall pay for work completed up to termination.