
Standard Terms and Conditions

1 Interpretation

1.1 Definitions

Agreement: this agreement in writing between the Customer and the Supplier for the supply of the Services.

Business Day: a day other than a Saturday, Sunday or public holiday in England or Scotland, when banks in London and Edinburgh are open for business.

Charges: the amounts payable by the Customer for the Services of the Supplier as agreed in writing to apply to this Contract under the Suppliers Card applicable at the date on which the Contract is entered into. The amounts stated in the Suppliers Rate Card will increase on the First day of January in each Calendar year by an amount not greater than RPI plus one per cent, where the applicable RPI is the RPI for the year preceding the year of the increased rates. .

Contract: the terms and conditions contained within this document and any amendment thereto agreed in writing by the Customer and Supplier.

Control: as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be construed accordingly.

Customer Materials: all materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Supplier.

Deliverables: all documents, products and materials developed by the Supplier as part of or in relation to the Services, including without limitation computer programs, data, reports and specifications (including drafts) and the Key Deliverables set out in the Contract .

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including knowhow and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Services: the work performed by the Supplier, including without limitation any Deliverables pursuant to this Contract.

Services Start Date: the day on which the Supplier starts provision of the Services

Supplier IPRs: all Intellectual Property Rights in the Deliverables but excluding Customer Materials and rights as background intellectual property rights used by the Supplier.

1.2 Interpretation:

(a) A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time. A reference to a statute or statutory provision includes any subordinate legislation made from time to time under that statute or statutory provision.

(b) Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

(c) A reference to writing or written includes email and digitally transmitted messages, but not facsimile transmissions.

2 Commencement and term

The Contract shall commence on the date on the Services Start Date and shall continue, unless terminated earlier in accordance with its terms, until either Party gives to the other not less than 30 calendar days written notice in writing of termination of the this Contract.

3 Supply of services

3.1 The Supplier shall supply the Services to the Customer as requested by the customer in writing, if the Customer requests additional Services or a variation to the Services, the Supplier will send a written confirmation to the Customer of the requirement and unless disputed by the Customer the written confirmation will bind both Parties. Where in the absence of written confirmation the Supplier performs additional or varied services, the performance of those additional or varied services shall be sufficient evidence of the Customers acceptance of the requirement for those additional or varied Services to be provided by the Supplier.

3.2 In supplying the Services, the Supplier shall:

(a) perform the Services with reasonable care and skill as expected from a Supplier experienced in provision of the Services Contracted for;

(b) perform the Services in accordance with the Contract ;

(c) use industry best practice in the care of all Customer Materials in its possession and make them available for collection by the Customer on reasonable notice and request,

(d) the Supplier may destroy the Customer Materials if the Customer fails to collect the Customer Materials from the Supplier no later than 6 months after the date of termination of the Contract.

4 Customer's obligations

4.1 The Customer shall:

- (a) co-operate with the Supplier in all matters relating to the Services;
- (b) provide, for the Supplier, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's premises, office accommodation, data and other facilities reasonably required by the Supplier;
- (c) provide, in a timely manner, such information and personnel as the Supplier may reasonably request;
- (d) ensure so far as reasonably practicable that information provided by the Customer is accurate and complete in all material respects.

4.2 If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, the Supplier shall:

- (a) not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay;
- (b) be entitled to payment of the Charges despite any such prevention or delay; and
- (c) be entitled to recover any reasonably and properly additional costs, charges or losses the Supplier sustains or incurs that arise directly or indirectly from such prevention or delay.

5 Intellectual property

5.1 The Supplier and its licensors shall retain ownership of all Supplier Intellectual Property Rights.

5.2 The Customer and its licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials.

5.3 The Customer grants the Supplier a fully paid-up, worldwide, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the term of the Contract for the purpose of providing the Services to the Customer in accordance with the Contract.

6 Charges and Payment

6.1 In consideration for the provision of the Services, the Customer shall pay the Supplier the Charges in accordance with this clause.

6.2 All amounts payable by the Customer exclude amounts in respect of value added tax (VAT), sales tax and any other taxes which the Supplier is required by law to impose upon the Customer and

which the Customer shall be liable to pay to the Supplier at the prevailing rate (if applicable), subject to receipt of a valid invoice.

6.3 The Supplier shall submit invoices for the Charges plus VAT if applicable to the Customer monthly in arrears. Each invoice shall include all supporting information reasonably required by the Customer.

6.4 The Customer shall pay each invoice due and submitted to it by the Supplier, within 30 days of receipt, to the bank account nominated in writing by the Supplier.

6.5 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then, without limiting the Supplier's remedies under clause 8 (Termination):

(a) the Customer shall pay interest on the overdue sum from the due date until payment. Interest under this clause will accrue each day at 8% a year above the base rate set by the Bank of England from time to time.; and

(b) the Supplier may suspend all Services until payment has been made in full; and

(c) the Customer shall not be entitled to any previously agreed discounts on new invoices after the payment due date on preceding invoices has passed without payment being made.

(d) if the Customer disputes any part of an invoice it shall notify the Supplier within five (5) working days and shall in such notice stipulate the basis for such dispute and the amount concerned. The Customer will pay the balance, not in dispute, of any invoice on or before the due date for payment. For the avoidance of doubt interest will accrue on any sums disputed by the Customer which are later paid by the Customer.

6.6 All amounts due under the Contract from the Customer to the Supplier shall be paid by in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

7 Limitation of liability

7.1 Nothing in the Terms shall limit or exclude the Supplier's liability for:

(a) death or personal injury caused by its negligence, or the negligence of its personnel, agents or subcontractors;

(b) fraud or fraudulent misrepresentation;

(c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or

(d) any other liability which cannot be limited or excluded by applicable law.

7.2 Subject to clause 7.1, the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

- (a) loss of profits;
- (b) loss of sales;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill;
- (g) any other form of economic loss; and
- (h) any indirect or consequential loss.

7.3 Subject to clause 7.1, the Supplier's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to ten per cent (10%) of the average annual Charges, calculated by reference to the Charges made and paid by the Customer to the Supplier under this Contract in the preceding twelve calendar months from when a claim imputing liability to the Supplier is made or from the date of termination whichever is the later.

7.4 The conditions implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this agreement.

8 Termination

8.1 Without affecting any other right or remedy available to it, either Party to the Contract may terminate it on notice by giving written notice to the other Party if:

- (a) the other Party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (b) the other Party takes any step or action in connection with its entering administration, receivership, liquidation, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if such action occurs in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the other Party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other Party's financial position deteriorates to such an extent that the terminating Party, acting reasonably, is of the opinion that the other Party no longer has the capability to adequately fulfil its obligations under the Contract.

8.2 On termination of the Contract for whatever reason:

- (a) the Customer shall immediately pay to the Supplier all the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;
- (b) any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect; and
- (c) termination of the Contract shall not affect any of the rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of Contract which pre-dated the date of termination.

9 General

9.1 Force majeure

Neither Party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

9.2 Assignment and other dealings

- (a) The Customer shall not novate, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all its rights and obligations under the Contract without the Supplier's prior written consent.
- (b) The Supplier may at any time novate, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all its rights under the Contract.

9.3 Confidentiality

- (a) Each Party undertakes that it shall not at any time during the Contract, and for a period of three years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other Party, except as permitted by clause 9.3(b).
- (b) Each Party may disclose the other Party's confidential information:
 - (i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the Party's obligations under the Contract. Each Party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other Party's confidential information comply with this clause; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority empowered to require the Party to make a relevant disclosure.
- (c) Neither Party shall use any other Party's confidential information for any purpose other than to perform its obligations under the Contract.

9.4 Entire agreement

(a) The Contract constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, relating to its subject matter.

(b) Each Party acknowledges that in entering into this Contract it does not rely on and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent mis-statement based on any statement in the Contract.

9.5 Variation

No variation of the Contract shall be effective unless it is in writing or acknowledged by the Customer to have been required.

9.6 Waiver

(a) A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

(b) A failure or delay by a Party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

9.7 Severance

If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

9.8 Third Party rights.

(a) This Contract does not give rise to any rights to third parties whether under statutory provisions or otherwise for any third Party to enforce or rely on any term of the Contract.

10 Governing law

10.1 The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with the Scots Law.

10.2 Jurisdiction

Each Party irrevocably agrees that the courts of Scotland shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

10.3 This Contract may be executed by the Parties in counterparts and the Parties will exchange original counterparts duly signed as soon as practicable after signing of the Contract.