

TERMS AND CONDITIONS

1. General

Unless expressly agreed in writing to the contrary, the following Terms and Conditions will apply to the Memorandum of Agreement (together in these Terms and Conditions called "the Agreement") and the Services and any additional work carried out pursuant to clause 2.2 below and shall prevail notwithstanding any printed or other conditions which may appear in any proposal, purchase order or letter of acceptance from the Client. Save for those people listed in clause 8.8 no term of the Agreement may be enforced by any person solely by virtue of Section 1 of the Contracts (Rights of Third Parties) Act 1999.
2. Fees
 - 2.1 The Fees stated in the Agreement are for the Services as specified therein.
 - 2.2 The Company may, at its discretion and subject always to the Agreement, carry out additional work for the Client, or variations or amendments to the Services requested by the Client, provided that details of the additional services, together with the applicable fees, are set out in a separate variation order, and signed by a duly authorised representative of each party.
 - 2.3 All sums payable under the Agreement unless otherwise stated are exclusive of Value Added Tax and any overseas with holding taxes, service taxes and levies which, where applicable, the Client shall pay in addition.
3. Validity of offer and duration of contract
 - 3.1 The terms contained in the Agreement remain open for a period of thirty days from the date of despatch of the Agreement and may be accepted within this period by the Client's completing and returning the Agreement to the Company.
 - 3.2 Without prejudice to any accrued rights and obligations of the parties hereunder including their continuing duties under clause 6.4 the Agreement shall commence on the date when a copy of the Agreement, duly signed by the Client, is received by the Company and shall, unless earlier terminated in accordance with clause 9 below continue until the Services (and any amendments, variations or additions to the same) are completed.
4. Payment
 - 4.1 The Company shall be entitled to raise invoices for work done each calendar month or, subject to clause 4.2 below, if milestones for the Services are set out in the Agreement, on completion of each milestone.
 - 4.2 If completion of any milestone is prevented or delayed in whole or part by the Client, the Company will be entitled to raise an invoice for the work it has carried out on the expected date of completion of the said milestone.
 - 4.3 Payment shall be made within 30 days of the date of despatch shown on the Company's invoices.
 - 4.4 If the Client fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company will be entitled to:
 - 4.4.1 cancel the Agreement and/or suspend any further work for the Client; and / or
 - 4.4.2 charge the Client interest (both before and after any judgement) on the amount unpaid at the rate of 3% per annum above the base rate of Lloyds TSB Bank plc current from time to time.
 - 4.5 Unless otherwise stated in the Agreement payment shall be made in pounds sterling.
5. Cancellation and Deferment of the Contract
 - 5.1 The Client shall not after acceptance be entitled to cancel the Agreement or any part of the Services (including any variations or amendments to the same) except with the Company's agreement in writing and on condition that the Client will indemnify the Company in full against all loss (including loss of profits) costs damages and expenses incurred by the Company as a result of cancellation.
 - 5.2 If a deferment is for a period longer than 30 days, the Company shall be entitled at its discretion to increase the Fees payable under the Agreement or to cancel the Agreement. If the Company exercises its discretion to cancel the Agreement the Client shall indemnify the Company in full against all loss (including loss of profits) costs damages and expenses incurred by the Company as a result of cancellation.
6. Confidentiality
 - 6.1 For the purpose of this clause 6 "Confidential Information" shall mean all trade secrets and confidential or proprietary information including but not limited to data, instructions, information concerning products, customers, business accounts, financial or contractual arrangements or other dealings, transactions or affairs of either party, whether or not the same are specifically identified as being confidential to that party.
 - 6.2 Each party hereby acknowledges and agrees that it shall:
 - 6.2.1 keep in strict confidence and in safe custody any Confidential Information belonging to the other party;
 - 6.2.2 not use, copy or reproduce any Confidential Information of the other party except to the extent strictly necessary to enable it to perform its obligations under the Agreement;
 - 6.2.3 not disclose any Confidential Information of the other party without prior written agreement from that party to any third party except to those of its employees who have a need to know the Confidential Information to perform that party's obligations under the Agreement.
 - 6.3 Clause 6.2 shall not apply to any information which:
 - 6.3.1 either party is required by law to disclose; or
 - 6.3.2 is in the public domain other than as a result of a breach by the party disclosing the Confidential Information of any of its obligations under the Agreement.
 - 6.4 The obligations of confidentiality in this clause 6 shall continue without limit in point of time and shall survive the termination of the Agreement.
7. Intellectual Property Rights
 - 7.1 Any know-how developed by the Company prior to or during the course of the Agreement, including but not limited to any discovery, invention, techniques, plans, designs, trademarks, standards, systems methods, procedures or processes ("the Know-How") shall belong to and remain vested in the Company and the Company shall be entitled to use the Know-How in performing services for any other clients in the future. Where any Know-How forms part of the material produced by the Company for the Client, the Company hereby grants to the Client a perpetual, non-exclusive, non-transferable licence to use the same for its own business purposes.
 - 7.2 The Client shall not be entitled to sub-licence any of the rights granted to it in this clause 7.
8. Warranties and limitation of liability
 - 8.1 Whilst the Company makes every effort to complete the work within any time that is quoted or requested it is not always possible, given the innovative nature of many of the Company's services, to foresee what period of time will be required to complete the work, and the Company does not undertake that the work will be executed within the quoted or requested time.

- 8.2 The Company warrants that it will perform the Services with reasonable skill and care.
- 8.3 The Company will be under no liability under the above warranty in the following circumstances:
- 8.3.1 any failure by the Client to follow the Company's instructions or recommendations;
- 8.3.2 if the Client gives inaccurate, misleading or incomplete data, information, or instructions to the Company;
- 8.3.3 if any invoice is not paid by the due date for payment.
- 8.4 All other warranties, whether express or implied by statute, contract or otherwise, are hereby expressly excluded to the fullest extent permitted by law.
- 8.5 Except in respect of death or personal injury for which no limit will apply the Company's total liability hereunder, whether in contract, tort or howsoever arising, will be limited to six times the Fees payable by the Client for the Services excluding VAT or £1million whichever is the lesser amount. For the avoidance of doubt the Fees payable will include Fees payable in respect of any variation order.
- 8.6 The Company shall not be liable to the Client (or through it third parties) for loss of profits or contracts or other indirect or consequential losses whether arising from negligence, breach of contract or howsoever. For the avoidance of doubt each limitation of liability contained within this clause 8.6 shall be construed as a separate limitation of liability.
- 8.7 In the case where the Client is not the sole person for whose benefit or ultimate benefit the Services are to be performed, the Client warrants that it is authorised by all such persons to accept, in consideration of the Company entering into the Agreement with the Client, the limitations and exclusions of liability contained herein on behalf of and so as to bind all such persons.
- 8.8 The benefit of the restrictions and exclusions in this clause 8 shall extend to all the directors and employees agents consultants and sub-contractors engaged by the Company and any member or members of the HR Wallingford Group of companies concerned with the performance of the work under the Agreement, who shall each be entitled to every defence, exemption or limitation of liability to which the Company is entitled hereunder. For this purpose only, the Company contracts as agent for and on behalf of all such directors and employees agents consultants group members and sub-contractors as well as on its own behalf. The permission of the persons entitled to the benefit of this clause shall not be required to any variation to the Agreement.
9. Termination
- 9.1 The Agreement may be terminated immediately by either party by written notice to the other if:
- 9.1.1 the other party commits any repudiatory or continuing breach of any of the terms of the Agreement and in the case of a breach which is capable of remedy, fails to remedy the same within 30 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied;
- 9.1.2 an encumbrancer takes possession or a receiver is appointed over any of the property or assets of the other party;
- 9.1.3 the other party makes a voluntary arrangement with its creditors or becomes subject to an administration order;
- 9.1.4 the other party goes into liquidation (except for the purposes of an amalgamation, reconstruction or other reorganisation and in such manner that the company resulting from the reorganisation effectively agrees to be bound by or to assume the obligations imposed on that other party under this contract); or
- 9.1.5 the other party ceases, or threatens to cease, to carry on business.
- 9.2 On termination of the Agreement, the Client shall immediately pay all sums due to the Company.
- 9.3 Termination of the Agreement shall be without prejudice to any accrued rights or obligations of either party.
10. Governing Law and Jurisdiction
- The terms of the Agreement shall be governed by English Law and the parties hereby agree that the Courts of England shall have non-exclusive jurisdiction to decide any dispute concerning the Agreement or the subject matter hereof.
11. Settlement of Disputes
- Any dispute or difference arising out of the Agreement shall be referred to the arbitration (which shall encompass processes of mediation and conciliation) of a person to be agreed upon between the Client and the Company or, failing agreement, such person to be nominated by the President of the Chartered Institute of Arbitrators.
12. Miscellaneous
- 12.1 The Company shall not be responsible for any delays in performing, or for any failure to perform, any of its obligations hereunder if the delay or failure was due to any cause beyond the Company's reasonable control.
- 12.2 The Company shall be entitled to sub contract any of its duties and responsibilities arising under the Agreement.
- 12.3 No waiver by the Company of any breach of the Agreement by the Client shall constitute or imply a waiver of any subsequent breach of the same or any other provisions.
- 12.4 If any provision of the Agreement is declared by any judicial or any other competent authority to be void, voidable, illegal or otherwise unenforceable or a written notice to that effect is received by either party from any Counsel (jointly instructed by the Company and the Client) specialising in the point at issue then that provision shall be amended limited or eliminated to the minimum extent necessary whilst preserving the overall commercial intent of the Agreement. The Agreement shall otherwise remain in full force and effect and enforceable.
- 12.5 Each party acknowledges this contract contains the whole agreement between the parties and that the Client has not relied upon any oral or written representations made to it by the Company or its employees or agents.
- 12.6 The Agreement supersedes any prior agreement between the parties whether written or oral .
- 12.7 Any notice or other information required or permitted to be given by either party under the Agreement shall be deemed to have been validly given if served personally upon that party or is sent by first class pre-paid post to the last known address of that party. If sent by first class pre-paid post the notice shall be deemed unless the contrary is shown to have been received 2 working days after the date of posting. If any such notice or other information is given by means of facsimile, telex or other immediate form of communication, then notice shall be deemed to have been received on the same day, provided it is sent within normal working hours.
13. Other Information
- 13.1 The company's VAT number is GB 570 039 752
- 13.2 Any complaints to be sent to the Managing Director at HR Wallingford Ltd, Howbery Park, Wallingford, OX10 8BA, UK, +44 (0)1491 835 381
- 13.3 The Company holds appropriate Professional Insurance to cover its potential liabilities.