

# *Terms & Conditions*

# Terms and Conditions

## 1. Definitions

1.1 In these Terms and Conditions the following words and expressions shall have the following meanings:-

“the Agreement” : means the agreement (of which these Terms and Conditions form part) between the Company and the Customer for the provision of the Services.

“the Company” : means the company named as such overleaf.

“the Customer” : means the customer named as such overleaf.

“Charges” : means the charges specified overleaf payable by the Customer for the provision of the Services.

“Normal Working Hours” : means between the hours of 9.00 am and 5.30 p.m. on a Working Day.

“Working Day” : means Monday to Friday inclusive but excluding English bank holidays and statutory holidays.

“Representative” : means an employee of the Company or any other person working under the direction of the Company.

“Services” : means the services detailed overleaf.

1.2 A reference to a statutory provision shall be construed as including a reference to that provision as amended, consolidated or re-enacted (whether before or after the date of the Agreement).

## 2. Application of Terms

2.1 The signature of this Order Acknowledgement by the Company constitutes the acceptance of the offer made by the Customer to the Company and the Customer agrees that these Terms and Conditions are the only terms and conditions which regulate the Agreement.

2.2 These Terms and Conditions shall override all other terms and conditions inconsistent with it whether express, implied or otherwise, including but not limited to terms, conditions or stipulations contained in any order of the Customer or otherwise stipulated by the Customer and which are at variance with or additional to these Terms and Conditions.

2.3 Any attempt by the Customer to vary or amend these Terms and Conditions will not be binding on the Company unless the Company has agreed in writing to the variation or amendment.

## 3. Services

3.1 The Company shall provide the Customer with the Services for the Charges and subject to these Terms and Conditions.

3.2 The Company shall provide appropriately experienced staff and for the number of days (if specified) detailed overleaf provided always that the Company reserves the right to determine the allocation of its personnel in providing the Services.

#### **4. Customer's Obligations**

4.1 The Customer shall at no cost to the Company:-

4.1.1 (where any Services are to be provided at the customer premises) promptly provide all necessary communication and computer processing facilities and up to date computer equipment in safe working order and other appropriate media, and such information regarding the activities and methods of the Customer as may reasonably be required by the Company for the purpose of providing the Services;

4.1.2 where required as part of the Services, provide the Company with such paper, disks, plates or other media ("the Materials") as may be agreed with the Company Provided That the Company shall be entitled to reject the Materials if, in the reasonable opinion of the Company, they are of a sub-standard quality. The supply of Materials will be in sufficient quantities to cover spoilage at industry standard levels.

4.1.3 promptly furnish the Representatives with such information and documents as they may reasonably request subject to such confidentiality obligations as the Customer may reasonably impose.

4.2 The Customer shall be responsible for approving any proofs of work prepared as part of the Services. Once approved by the Customer, the Company shall not be liable for any errors in the final work and any alterations or additions required by the Customer after approval of the proof shall be subject to additional charges.

4.3 The Customer acknowledges and accepts that estimates of quantities of goods to be delivered are subject to tolerances of 5% for works in a single colour and 10% for other works, which will be charged or deducted as appropriate.

#### **5. Intellectual Property**

5.1 The Customer acknowledges that any and all of the trademarks, trade names, copyright, patents and registered designs and any other intellectual property rights used or embodied in or in connection with the delivery and performance of the Services and any software are the sole property of the Company or such other person as may be identified. The Customer shall not at any time question or dispute the ownership by the Company or such other person of any such right.

5.2 The Company will indemnify the Customer against all losses sustained or incurred by the Customer in connection with any infringement or alleged infringement of the rights of third parties arising from the provision of the Services provided that:

5.2.1 the Customer shall not have done permitted or suffered to be done anything which may have been or become an infringement of the rights of any third party;

5.2.2 the Customer is not in material breach of this Agreement;

5.2.3 the Customer has notified the Company of any alleged infringement within 3 working days of first knowing or being aware of such allegation;

5.2.4 the Customer has made no admission of liability without the prior written consent of the Company; and

5.2.5 the Customer has permitted the Company (at the Company's expense) to conduct any litigation and negotiations for settlement of the claim.

5.3 If the Customer fails to comply with the conditions in clause 5.2 the Customer shall indemnify the Company from and against all losses sustained or incurred by the Company which might have been avoided but for such failure.

5.4 The Company may defend or make settlement of any claims as referred to in clause 5.2 at its own discretion and the Customer shall give such assistance as the Company may reasonably require to defend or settle any such claims.

5.5 In the event that any such infringement occurs or may occur the Company may at its sole option and expense take such steps as it sees fit to prevent or bring to an end such infringement.

5.6 The copyright and all other intellectual property rights in any software, documentation, data, processes, photographs, images or other intellectual property (a "Deliverable") created by the Company in the performance or as a result of the Services shall vest in the Company. On payment in full of the Charges invoiced in respect of the Services which led to the creation of a Deliverable, the Customer shall have a non-exclusive licence to use that Deliverable for the purposes of its business, subject to any restrictions that the Company may impose. Such licence will not include the right to grant sub-licences expressly or impliedly.

## **6. Confidentiality**

6.1 Any documentation or other information, ideas, concepts, methods and processes, data, drawings, specifications, software listings, source or object codes and any associated computer produced output which the Company may supply to the Customer relating to or in connection with the Services are proprietary and confidential to the Company. The Customer hereby agrees that it shall use the same solely in accordance with the purposes of the Agreement and the provisions of these Terms and Conditions and that it shall not at any time during or after completion or expiry of the Agreement disclose them, whether directly or indirectly, to any third party.

6.2 Each party shall treat as confidential all information, data, software, documentation, ideas, concepts, method and processes and other material of the other party disclosed by or received from the other party and shall not without the other party's prior written consent disclose any of them to any third party.

6.3 The restrictions in clauses 6.1 and 6.2 shall not apply to:

6.3.1 items which were already in the possession of the party concerned before disclosure (except as a result of a breach of the Agreement);

6.3.2 items obtained from another source which is free to disclose the same; or

6.3.3 items which are in the public domain (except as a result of a breach of the Agreement).

6.4 The Company shall be entitled to make reference in its advertising or publicity material to the fact that the Customer is a customer of the Company.

## **7. Warranty**

7.1 The Company warrants that the Services will be provided with reasonable care and skill by appropriately skilled persons.

7.2 If it breaches the warranty given in clause 7.1 the Company shall at its option:

7.2.1 repeat performance of that part of the Services found not to conform to the warranty; or

7.2.2 refund the relevant proportion of the Charges paid by the Customer attributable to the part of the Services found not to conform to the warranty.

7.3 The liability of the Company in relation to all breaches of the warranty given in clause 7.1 shall not in aggregate exceed:

7.3.1 125% (one hundred and twenty five percent) of the Charges; or

7.3.2 £10,000 (ten thousand pounds) if less than the sum referred to in clause 7.3.1, or if the amount of the Charges cannot be clearly ascertained.

7.4 The warranty in clause 7.1 are conditional upon:

7.4.1 the Customer giving written notice to the Company in accordance with clause 15 of any alleged breach of any warranty within 30 days of the date when the Customer discovers or ought to have discovered the alleged breach;

7.4.2 the Customer affording the Company reasonable opportunity to investigate the failure in the provision of the Services; and

7.4.3 the Customer not having committed any breach of its obligations under this Agreement which has led or contributed to the breach of warranty concerned.

7.5 As between the parties any statement, condition or warranty, express or implied, statutory or otherwise, as to the Services (other than as provided for in clause 7.1) is, in so far as the law allows, excluded.

## **8. Liability and Indemnity**

8.1 Nothing in the Agreement excludes or limits the liability of either party for death or personal injury caused by that party's negligence or for fraudulent misrepresentation.

8.2 The liability of the Company in respect of physical damage caused to the Customer's property as a result of the Company's negligence shall not exceed £1,000,000.00 in respect of any one event or series of events.

8.3 Other than as specified in clauses 5.2, 7.2, 7.3, 8.1 and 8.2 the Company shall not be liable to the Customer for any direct loss or damage howsoever arising which may be suffered by the Customer in respect of any breach of this Agreement or any representation or tortious act or omission (including negligence and breach of statutory duty) arising under or in connection with the Agreement.

8.4 The Company expressly excludes liability for consequential loss or damage of any kind including, but not limited to, loss of profits, loss of business revenue, loss of goodwill and loss of data howsoever arising which may be suffered by the Customer in respect of any breach of this Agreement or any representation or tortious act or omission (including negligence and breach of statutory duty) arising under or in connection with the Agreement.

8.5 If notwithstanding the provisions of clauses 8.3 and 8.4 the Company is found liable for any loss or damage suffered by the Customer for which it would not otherwise have been held liable, the aggregate liability of the Company (other than the liability referred to in clauses 8.1 and 8.2) in respect of all losses, damages, costs, claims or expenses suffered by the Customer and arising out of or in connection with:-

8.5.1 any and all breaches of the terms of the Agreement (including claims arising in respect of a breach of warranty); and

8.5.2 any and all torts or breaches of statutory duty committed by the Company (or by any officer, employee, sub-contractor or agent of the Company) in connection with the performance or purported performance of its obligations under the Agreement;

shall be limited to :

8.5.3 125% (one hundred and twenty five percent) of the Charges; or

8.5.4 £10,000 (ten thousand pounds) if less than the sum referred to in clause 8.5.3, or if the amount of the Charges cannot be clearly ascertained.

8.6 The parties have entered into the Agreement in the knowledge that the liability of the Company is to be limited in accordance with these terms and conditions and the charges have been agreed accordingly The Customer acknowledges that a higher price would be payable but for such limitations.

Cover Type	Insurer	Policy Number	Expiry Date	Limit	Excess
Public Liability	Hiscox	1331577	12/01/2014	£1m	£250
Products Liability	Hiscox	1331577	12/01/2014	£1m	£250
Employers Liability	Hiscox	1331577	12/01/2014	£10m	Nil
Professional Liability	Hiscox	1331577	12/01/2014	£250,000	£500
Contractors All Risks	N/A				

## 9. Force Majeure

Neither party shall be liable for any delay in performing any of its obligations under this Agreement if such delay is caused by circumstances beyond its reasonable control and such party shall be entitled to such extension of time (not exceeding three months) as is reasonable in such circumstances. If either party is unable to perform its obligations because of such circumstances for a consecutive period of more than three months the other party may terminate this Agreement by notice in writing and the provisions of clauses 11.3, 11.4 and 11.5 shall apply.

## 10. Charges

10.1 The Customer shall pay the Company the Charges for the Services in accordance with this clause.

10.2 Any disbursements incurred by the Company in the provision of the Services shall be separately charged and shall be due and payable within 7 days of the date of the Company's invoice.

10.3 No Services shall be performed outside Normal Working Hours unless agreed in writing in advance with the Company. The Charges for such Services will be separately agreed but otherwise the terms hereof shall apply to such Services.

10.4 The Company's reasonable travelling, subsistence and (where agreed) accommodation expenses incurred in providing the Services to the Customer will be charged separately and shall be due and payable within 7 days of the date of the Company's invoice.

10.5 The Company reserves the right to require the Customer to pay sums on account of Charges incurred or to be incurred, and reserves the right to withhold or suspend the Services until such sums have been received.

10.6 The Company shall be entitled to make additional charges in respect of costs, charges or expenses incurred by the Company as a result of (i) the Customer not supplying clear and legible copy or instructions; (ii) corrections or other work not specified as part of the Services; (iii) courier fees or fees for expedited delivery or unusual packaging or mailing.

10.7 All Charges are due and payable no later than 7 days from the date of invoice. Any indication of the number of days required for a particular task is an estimate only and the Services shall be charged for on the basis of the number of days' effort actually expended. No sum shall be regarded as paid until the date of actual receipt of cleared funds by the Company or its bankers.

10.8 The Charges is exclusive of and net of any taxes, duties or such other additional sums including but without prejudice to the foregoing generality, Value Added Tax, excise tax, (tax on sales, property or use) withholding tax, import or other duties and whether levied in respect of the Agreement, the Services or otherwise.

10.9 Any dispute or query relating to any invoice must be made by the Customer to the Company in writing within 7 days of the date of such invoice, otherwise the invoice will be treated as being accepted by the Customer.

10.10 If any charge is not paid by the Customer by the due date the Company reserves the right to charge on the outstanding charge until payment at the rate of 5% over the current base rate of HSBC Bank PLC.

## **11. Commencement and Termination**

11.1 The Agreement shall be deemed to commence on the date shown overleaf and shall continue for the period shown overleaf (if any) or until the Services are completed.

11.2 The Agreement may be terminated:-

11.2.1 forthwith by either party if the other commits any material breach of any term of these Terms and Conditions and which (in the case of a breach capable of being remedied) shall not have been remedied within 15 days of a written request to remedy the same;

11.2.2 forthwith by the Company if any charge is not paid by the Customer by the due date;

11.2.3 forthwith by the Company if the Customer being a body corporate shall present a petition or have a petition presented by a creditor for its winding up or shall convene a meeting to pass a Resolution for the voluntary winding up or shall enter into any liquidation (other than for the purposes of a bona fide reconstruction or amalgamation) shall call a meeting of its creditors or shall have a Receiver of all or any of its undertakings or assets appointed or shall be deemed by virtue of Section 123 of the Insolvency Act 1986 to be unable to pay its debts.

11.3 Where the Services include the publication of a periodical neither party shall be entitled to terminate the Services unless:-

- i) in the case of monthly or more frequent periodicals, a minimum of 13 weeks' notice in writing is given to the other party; and
- ii) in the case of all other periodicals, a minimum of 26 weeks' notice in writing is given to the other party.



11.4 On termination the Customer shall pay to the Company all costs and expenses including legal and other fees incurred and all arrears of fees charges or other payments arising pursuant to the Agreement or otherwise.

11.5 The completion, expiry or termination of the Agreement shall be without prejudice to the rights of the parties accrued up to the date of such completion, expiry or termination.

## **12. Non-Solicitation of Staff**

12.1 The Customer shall not without the prior written consent of the Company at any time during the continuance of or within 12 months after the date of expiry, completion or termination of this Agreement employ, utilise the services of, solicit or endeavour to entice away from or discourage from being employed by the Company any person who is or shall at any time between the date of the Agreement and the date of such expiry, completion or termination be, a Representative whose duties have included the provision of any Services during the period of twelve months prior to such employment, utilisation, solicitation or endeavour.

12.2 The Customer agrees that if it is in breach of this clause damages may not be an adequate remedy and the Company may wish to apply for an injunction or other form of interlocutory relief or to take other action. Nevertheless the Customer shall, if in breach of this clause, pay on demand to the Company (as is agreed to be a genuine pre-estimate of the loss likely to be suffered by the Company as a result) a sum representing the gross amount paid to that Representative during the last 6 months immediately prior to such employment, utilisation, solicitation or endeavour (other than travelling or subsistence) plus the costs incurred by the Company in recruiting a suitable replacement but without prejudice to the other rights and remedies of the Company pursuant to this Agreement.

## **13. Waiver**

Failure or neglect by the Company to enforce at any time any of the provisions hereof shall not be construed as, nor shall it be deemed to be, a waiver of the Company's rights hereunder nor in any way affect the validity of the whole or any part of these Terms and Conditions nor prejudice the Company's rights to take subsequent action.

## **14. Data Protection Act 1998**

The Company acknowledges that in the performance of the Services it may have access to data of the Customer including personal data as defined in the Data Protection Act 1998. The Company and the Customer each warrants to the other that it has registered under that Act in respect of

such personal data and shall continue to comply with its requirements. If either party breaches its obligations under that Act (or any successor legislation) it shall indemnify the other from and against any resulting losses.

## **15. Notices**

Any notice required or permitted under the terms of the Agreement or otherwise required shall be in writing and shall be delivered in person sent by first class mail or air mail as appropriate properly posted and fully prepaid in an envelope properly addressed or sent by fax to the Managing Director (or equivalent officer) of the party to whom the notice is being given at the address or fax number as stated in these Terms and Conditions and shall be deemed to have been given three Working Days after the same shall have been posted or 48 hours after the same shall have been sent by fax until the contrary has been proved.

## **16. Severability**

In the event that any or any part of any term, of the Agreement (whether or not forming part of these Terms and Conditions) shall be determined invalid, unlawful or unenforceable to any extent then such term, or such part thereof shall be severed from the remaining terms of the Agreement which shall continue to be valid and enforceable to the fullest extent permitted by law.

## **17. Whole Agreement**

The Company shall not be liable to the Customer for loss arising from or in connection with any representations agreements statements or undertakings made prior to the date of the Agreement other than those confirmed by a Director of the Company in writing and expressly incorporated and referred to in the Agreement and these Terms and Conditions together with any provisions listed or expressly referred to overleaf constitutes the whole agreement between the parties with respect to its subject matter.

## **18. Law and Arbitration**

18.1 The parties hereby agree that the Agreement and these Terms and Conditions shall be construed in accordance with English Law and the parties irrevocably submit to the exclusive jurisdiction of the Courts of England and Wales.

## **19. Assignment**

The Agreement may not be assigned or transferred in any way by the Customer without the Company's prior written consent.