

TERMS AND CONDITIONS

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in these terms and conditions (**Conditions**).

Contract: any contract between the Supplier and the Customer for the sale and purchase of Services incorporating these terms and conditions.

Customer: the person, firm or company who purchases Services from the Supplier.

Customer's Manager: the Customer's manager for the Services, appointed in accordance with condition 6.1.

Deliverables: all Documents, products and materials developed by the Supplier for the Customer in relation to the Contract in any form, including computer programs, data, reports and specifications.

Document: includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

In-put Material: all Documents, information and materials provided by the Customer relating to the Services including, computer programs, data, reports and specifications.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Pre-existing Materials: all Documents, information and materials provided by the Supplier relating to the Services which existed prior to the commencement of the Contract including computer programs, data, reports and specifications.

Services: the services to be provided by the Supplier under the Contract as set out in the Specification Schedule, together with any other services which the Supplier provides or agrees to provide to the Customer.

Specification Schedule: the specification schedule attached to these terms and conditions setting out the specific details of the Services.

Supplier: The Words Workshop Limited.

VAT: value added tax chargeable under English law for the time being and any similar additional tax.

- 1.2 Condition, schedule and paragraph headings shall not affect the interpretation of these conditions.

- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

- 1.4 The Specification Schedule forms part of the Contract and shall have effect as if set out in full in the body of these Conditions.

- 1.5 Words in the singular shall include the plural and vice versa.

2. APPLICATION OF CONDITIONS

- 2.1 These Conditions shall:

- apply to and be incorporated into the Contract; and
- prevail over any inconsistent terms or conditions contained, or referred to, in the Customer's purchase order, confirmation of order, acceptance of a quotation or specification, or implied by law, trade custom, practice or course of dealing.

- 2.2 The Customer's purchase order, or the Customer's acceptance of a quotation for Services by the Supplier, constitutes an offer by the Customer to purchase the Services specified in it on these Conditions. No offer placed by the Customer shall be accepted by the Supplier other than:

- by a written acknowledgement issued and executed by the Supplier; or
- (if earlier) by the Supplier starting to provide the Services, when a contract for the supply and purchase of those Services on these Conditions will be established. The Customer's standard terms and conditions (if any) attached to, enclosed with or referred to in any purchase order or other Document shall not govern the Contract.

3. COMMENCEMENT AND DURATION

- 3.1 The Services shall be provided by the Supplier from the date stated in the Specification Schedule and shall continue to be supplied until completed in accordance with the Specification Schedule unless the Contract is terminated in accordance with condition 12.

4. SPECIFICATION SCHEDULE

- 4.1 The Specification Schedule shall be agreed in the following manner:

- the Customer shall provide the Supplier with a request for the Specification Schedule, setting out the requirements and specifications of the services which it is requesting from the Supplier, including a description of what work is to be done, dates by which it is requested to be started and finished, Deliverables, In-put Materials and such other information as the Supplier may request to allow the Supplier to prepare the draft Specification Schedule;
- the Supplier shall, as soon as reasonably practicable, provide the Customer with the draft Specification Schedule; and
- the Supplier and the Customer shall discuss and agree the draft Specification Schedule and when it has been agreed, they shall both sign a copy of it and it shall become subject to these Conditions.

- 4.2 Once the Specification Schedule has been agreed and signed in accordance with condition 4.1(c), no amendment shall be made to it except with the prior written approval of both parties.

5. SUPPLIER'S OBLIGATIONS

- 5.1 The Supplier shall use reasonable endeavours to provide the Services, and to deliver the Deliverables to the Customer, in accordance in all material respects with the Specification Schedule.

- 5.2 The Supplier shall use reasonable endeavours to meet any performance dates specified in the Specification Schedule, but any such dates shall be estimates only and time shall not be of the essence of the Contract.

6. CUSTOMER'S OBLIGATIONS

- 6.1 The Customer shall:

- co-operate with the Supplier in all matters relating to the Services and appoint the Customer's Manager in relation to the Services who shall have the authority contractually to bind the Customer on matters relating to the Services; and
- provide, in a timely manner, such In-put Material and other information as the Supplier may request and ensure that it is accurate in all material respects.

- 6.2 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, sub-contractors or employees, the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.

- 6.3 The Customer shall be liable to pay to the Supplier, on demand, all reasonable costs, charges or losses sustained or incurred by the Supplier (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract and, for the avoidance of doubt, this shall include any liability incurred by the Supplier resulting from the or related to the In-put Material provided by the Customer.

- 6.4 The Customer shall not, without the prior written consent of the Supplier, at any time from the date of the Contract to the expiry of six months after the last date of supply of the Services solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of the Supplier in the provision of the Services.

7. CHARGES AND PAYMENT

- 7.1 Where the Services are provided on a time and materials basis:

- the charges payable for the Services shall be calculated in accordance with the Supplier's standard hourly fee rates, as amended from time to time by the Supplier giving not less than one month's written notice to the Customer;
- all charges quoted to the Customer shall be exclusive of VAT which the Supplier shall add to its invoices at the appropriate rate;
- the Supplier shall invoice the Customer monthly in advance or arrears at the Supplier's sole discretion for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this condition 7.1.

- 7.2 Where the Services are provided for a fixed price, the total price for the Services shall be the amount set out in the Specification Schedule. The total price shall be paid to the Supplier (without deduction or set-off) in instalments, as set out in the Specification Schedule.

- 7.3 Any fixed price and daily rate contained in the Specification Schedule excludes:

- the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services, the cost of any materials and the cost of services reasonably and properly provided by third parties and required by the Supplier for the supply of the Services. Such expenses, materials and third party services shall be invoiced by the Supplier [at cost]; and
- VAT, which the Supplier shall add to its invoices at the appropriate rate.

- 7.4 The Customer shall pay each invoice submitted to it by the Supplier, in full and in cleared funds, within 30 days of receipt.

- 7.5 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier on the due date, the Supplier may:

- charge interest on such sum from the due date for payment at the annual rate of 2% above the base lending rate from time to time of Lloyds TSB Bank Plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and the Supplier may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and
- suspend all Services until payment has been made in full.

- 7.6 Time for payment shall be of the essence of the Contract.

- 7.7 All sums payable to the Supplier under the Contract shall become due immediately on its termination, despite any other provision. This condition 7.7 is without prejudice to any right to claim for interest under the law, or any such right under the Contract.

- 7.8 The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer.

8. INTELLECTUAL PROPERTY RIGHTS

8.1 As between the Customer and the Supplier, all Intellectual Property Rights and all other rights in the Deliverables and the Pre-existing Materials shall be owned by the Supplier. The Supplier licenses all such rights to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services.

9. CONFIDENTIALITY AND THE SUPPLIER'S PROPERTY

9.1 The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by the Supplier, its employees, agents or sub-contractors and any other confidential information concerning the Supplier's business or its products which the Customer may obtain. The Customer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Customer's obligations to the Supplier, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Customer.

9.2 All materials, equipment and tools, drawings, specifications and data supplied by the Supplier to the Customer including Pre-existing Materials shall, at all times, be and remain the exclusive property of the Supplier, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Supplier, and shall not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation.

10. LIMITATION OF LIABILITY - THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF THIS CONDITION

10.1 This condition 10 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

- (a) any breach of the Contract;
- (b) any use made by the Customer of the Services, the Deliverables or any part of them; and
- (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

10.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

10.3 Nothing in these Conditions limits or excludes the liability of the Supplier:

- (a) for death or personal injury resulting from negligence; or
- (b) for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by the Supplier; or
- (c) for any liability incurred by the Customer as a result of any breach by the Supplier of the condition as to title or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Services Act 1982.

10.4 Subject to condition 10.2 and condition 10.3

- (a) the Supplier shall not be liable for:
 - (i) loss of profits; or
 - (ii) loss of business; or
 - (iii) depletion of goodwill and/or similar losses; or
 - (iv) loss of anticipated savings; or
 - (v) loss of goods; or
 - (vi) loss of contract; or
 - (vii) loss of use; or
 - (viii) loss of corruption of data or information; or
 - (ix) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- (b) the Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Contract shall be limited to the price paid for the Services.

11. DATA PROTECTION

The Customer acknowledges and agrees that details of the Customer's name, address and payment record may be submitted to a credit reference agency, and personal data will be processed by and on behalf of the Supplier in connection with the Services.

12. TERMINATION

12.1 Subject to condition 12.3, the Contract shall terminate automatically on completion of the Services in accordance with the Specification Schedule.

12.2 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Contract without liability to the other on giving the other not less than one month's written notice to the other if:

- (a) the other party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
- (b) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the other party; or
- (c) an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or

- (d) a receiver is appointed of any of the other party's assets or undertaking, or circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or
- (e) the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or
- (f) the other party ceases, or threatens to cease, to trade.

12.3 On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Supplier all of 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; and
- (b) the accrued rights of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

13. FORCE MAJEURE

The Supplier shall have no liability to the Customer under the Contract if it is prevented from or delayed in performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

14. WAIVER

14.1 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

14.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

15. SEVERANCE

15.1 If any provision (or part of a provision) of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force.

15.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, that provision will apply with whatever modification is necessary to make it valid, enforceable and legal.

15.3 The parties agree, in the circumstances referred to in condition 15.1, to attempt to substitute for any invalid, unenforceable or illegal provision a valid, enforceable and legal provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision.

16. STATUS OF PRE-CONTRACTUAL STATEMENTS

Each of the parties acknowledges and agrees that, in entering into the Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to these terms and conditions or not) relating to the subject matter of the Contract, other than as expressly set out in the Contract.

17. ASSIGNMENT

17.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

17.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

18. RIGHTS OF THIRD PARTIES

The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else.

19. NOTICES

Notice given under the Contract shall be in writing, sent for the attention of the person, and to the address or fax number, given in the Contract (or such other address, fax number or person as the relevant party may notify to the other party) and shall be delivered personally, sent by fax or sent by pre-paid, first-class post or recorded delivery. A notice is deemed to have been received, if delivered personally, at the time of delivery, in the case of fax, at the time of transmission, in the case of pre-paid first class post or recorded delivery, 48 hours from the date of posting and, if deemed receipt under this condition 19 is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is a business day), at 9.00 am on the first business day following delivery. To prove service, it is sufficient to prove that the notice was transmitted by fax, to the fax number of the party or, in the case of post, that the envelope containing the notice was properly addressed and posted.

20. GOVERNING LAW AND JURISDICTION

20.1 The Contract and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the law of England and Wales.

20.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter.

This agreement has been entered into on the date stated at the beginning of it.

SPECIFICATION SCHEDULE