

## STANDARD TERMS OF BUSINESS

### Scope of this Agreement

1. This Agreement shall govern any Engagement for the supply of services (including the provision of facilities and advice) by Company85 Ltd ("Company85") to any person, firm or company ("Client") except to the extent that they conflict with any accompanying proposal, letter or contract from Company85.

### The Engagement

2. The Client shall commission Company85 to perform the Engagement as described in Company85's proposal. The proposal shall cover the objectives and scope of the Engagement, the expected outcome of the Engagement, its duration, the Company85 staff that may undertake the Engagement, fees to be incurred by the Client and any other information relevant to the Engagement.

3. During the course of the Engagement, Company85 shall provide the Client with regular written reports on the progress made in fulfilling the objectives of the Engagement.

4. During the course of the Engagement, Company85 reserves the right to change the staff assigned to Engagement, in consultation with the client, to ensure successful fulfil the objectives of the Engagement.

5. Company85 shall appoint one of its staff to take responsibility for the co-ordination, day-to-day management and quality of the deliverables of the Engagement.

### Client Obligations

6. To enable Company85 to fulfil the objectives of the Engagement, the Client shall:

- a. Co-operate fully with Company85 in the performance of the Engagement;
- b. Supply information regarding its business and operations relevant to Company85 fulfilling the objectives of the Engagement. Information so provided should be accurate and complete;
- c. Make available to Company85 such office and other facilities as are necessary for the proper performance of the Engagement; and
- d. Work with and inform, in advance, relevant 3<sup>rd</sup> party product and service providers of the Client to co-operate with Company85 in the completion of the Engagement.

### Fee Estimates, Quotations and Other Commitments

7. Unless otherwise agreed, the fees quoted in Company85's proposals will be based upon an estimate of the effort and the experience of Company85 consultants considered necessary to achieve the objectives of the Engagement. In practice, should the Engagement require more effort or more experienced staff than specified in the proposal, Company85 will notify the Client before incurring fees greater than agreed with the Client. Alternatively, should the Engagement requires less effort or less experienced staff than originally estimated in the proposal, the fees to be incurred by the Client will be proportionally lower.

8. All fees are based on a working day of 8 hours worked between the hours of 09:00 and 17:00 and will not exceed those detailed in the Skills For the Information Age Definitions & Rate Card.

9. Estimates or quotations for fees are valid for 30 days from the date of the related quotation or proposal. All other obligations expressly stated or implied in a quotation or proposal are also only valid for 30 days from the date of the related quotation or proposal.

### Charges

10. In addition to fees, Company85 will charge:

- a. For goods, services and facilities acquired specifically for the Engagement. The charge for such goods, services and facilities will be agreed before the charges are incurred;
- b. For reasonable travelling and subsistence expenses incurred by Company85 staff in the performance of the Engagement. Such expenses will be charged to the Client at cost; and

c. Value Added Tax, and other taxes, where applicable.

### **Payment Terms**

11. Unless otherwise agreed, all charges associated with the Engagement will be invoiced monthly in arrears. Invoices shall be paid within 30 days of issue in the currency in which the fees were cited in the proposal. In the event of an invoice being unpaid for more than 7 days after the due date, Company85 reserves the right to charge interest on a daily basis on overdue amounts at a rate of 3% above the Bank of England base rate.

### **Confidentiality**

12. During the course of the Engagement, Company85 and the Client may exchange information which is of a secret or confidential nature and which is neither already known to the recipient nor in the public domain either at the time of disclosure or subsequently through no fault of the recipient. The recipient shall use its best endeavours to keep such information confidential and to that end shall not, without the specific prior written consent of the other, permit that information to be:

- a. Disclosed except to those who may need to have such information in connection with the Engagement;
- b. Copied;
- c. Commercially exploited in any way; or
- d. Passed outside the receiving party's control.

13. To protect the Client's confidentiality, Company85 shall not give third parties (including other Company85 clients) access to Company85's work areas where work on the Engagement is being undertaken. Similarly, the Client shall not have access to Company85's work areas except by special arrangement.

14. Except with Company85's express prior written consent, the Client shall not publish, or make public, any reports which Company85 may deliver to them during the course of the Engagement nor make known to third parties the contents thereof.

### **Risk**

15. Where either party provides the other with any equipment or other goods in the course of the assignment, the recipient shall operate that equipment or use such goods in strict accordance with such instructions (particularly in regard to health and safety) as the supplying party may make available.

16. Save where Company85's negligence results in personal injury or death (for which Company85 shall be liable), Company85 shall provide its services at the Client's sole risk.

### **Limitation of Liability**

17. Company85 shall aim to provide services of the highest quality and which reflect those business practices that are most appropriate to the Engagement and all forecasts and recommendations shall be made in good faith. Results and findings are accurate only to what is discovered and publically known at the time of the Engagement.

18. Company85 shall not be liable for any loss of profits, goodwill or consequential or indirect loss of any kind arising from the negligence or tort or breach of contract on its part or caused by any of its staff. For the avoidance of doubt, any guidance provided by Company85 is only intended to inform decision making by the Client and no liability will be accepted for the results from decisions taken by the Client.

19. Company85 liability shall not exceed, in any event, the value of the fees paid for the proportion of Engagement giving rise to liability as agreed between the parties through fair and equitable process.

20. Company85 shall not be liable for any damages arising due to its failure to complete the Engagement by reason of matters beyond its reasonable control.

### **21. Intellectual Property Rights**

22. Ownership in copyright material, design rights and in all registerable intellectual property which may have been developed or created by Company85 in the course of the Engagement shall vest in the Client, subject always to completion of the Engagement and full payment of fees.

23. The Client hereby grants to Company85 a non-transferable royalty-free licence to the right to use any IP created or developed by Company85 in the course of the Engagement.

24. Nothing in these conditions shall restrict Company85 from dealing with its own intellectual property not falling within the scope of the previous paragraphs in such manner as it may see fit provided that the security of the Clients secret or confidential information is not thereby prejudiced.

25. The Client shall not be entitled to any right or licence in any intellectual property in which Company85 has a proprietary interest unless the grant of that right or licence has been formalised in a deed or in a document executed on behalf of Company85 by one of its directors.

### **Termination**

26. Company85 shall have the right at any time by giving notice in writing to the Client to terminate this Agreement forthwith if:

- a. The Client commits a breach of any of the terms and conditions of this Agreement;
- b. The Client ceases or threatens to cease to carry on its business; or
- c. The financial position of Client deteriorates to such an extent that in the opinion of Company85 the capability of the Client adequately to fulfil its obligations under this Agreement has been placed in jeopardy.

### **General**

27. If any provision or part of this Agreement is determined to be illegal or unenforceable, such provision or part will be deemed not to form part of this Agreement but the remainder of the Agreement will remain in full force and effect to the fullest extent permitted by law.

28. The failure of a party to exercise or enforce any right under this Agreement shall not be deemed to be a waiver of that right nor operate to bar the exercise or enforcement of it at any time or times thereafter.

29. Neither party shall be liable for any delays or failures in performance due to circumstances beyond its reasonable control including, without limitation, acts of God, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

30. Any notice under this Agreement shall be in writing and shall be sent by first class post to the addressee at the Address of the addressee (or any alternative address previously notified by the addressee in writing to the addressor) and shall be deemed to have been received on the postal day following the day of posting.

31. Neither party shall (except with the prior written consent of the other) during the Term and for a period of twelve months thereafter solicit the services of any personnel of the other party who have been engaged in the Engagement or the management of this Agreement other than by means of a national advertising campaign open to all-comers and not specifically targeted at such staff of the other party.

### **Disputes, Resolution and Law**

32. The parties shall attempt to resolve any dispute relating to this Agreement through negotiations. If the matter is not resolved through negotiation, the parties may, at their election, attempt in good faith to resolve the dispute through a procedure as recommended to the parties by the Centre for Effective Dispute Resolution (CEDR).

33. If the matter has not been resolved within thirty (30) days of the initiation of that procedure, or if either party does not wish to participate in such a procedure, the dispute may be referred by either party to the English courts and the parties submit to their non-exclusive jurisdiction for that purpose.

34. This Agreement is governed by the laws of England.