



G-Cloud 14

Terms and Conditions

of Sale

Purpose of this document

This document provides our standard terms and conditions of sale.

PLEASE NOTE: should any provision conflict with the G-CLOUD 14 framework agreement or call-off contract, the G-CLOUD 14 conditions shall prevail.

If you have any question regarding these terms and conditions, please contact us.

Definitions

1a – **The Supplier:** Critical P3M Ltd., its employees and any person acting as its agents, sub-contractors, consultants in relation to the Services;

1b- **The Customer:** the organisation receiving the Services, and paying the Service charges.

2 - **Services:** services documented in the Statement of Work document which the Supplier provides or agrees to provide to the Customer together with any other services which the Supplier provides or agrees to provide to the Customer through the change control procedure;

3 – **Confidential Information:** in relation to either party, any information (whether or not stated to be confidential or marked as such) which that party discloses to the other, or which the other party obtains from any information disclosed to it by that party, either orally or in writing or by any other means, under or in connection with this Agreement;

4 – **Deliverables:** all documents, items, plans, products, goods and materials supplied by the Supplier, including any methodologies, ideas, designs, computer programs, data, disks, tapes, and reports, in whatever form, which are developed, created, written, prepared, devised or discovered by the Supplier or its agents, sub-contractors, consultants and employees in relation to the Services;

5 – **Equipment:** any equipment, systems, tools, cabling, items, materials or facilities requested or used directly or indirectly in the supply of the Services, by the Supplier;

6 - **Intellectual Property Rights:** any invention, patent, utility model right, copyright and related right, registered design, unregistered design right, trade mark, trade name, internet domain name, design right, design, service mark, database rights, topography rights, rights in get-up, rights in goodwill or to sue for passing off and any other rights of a similar nature or other industrial or intellectual property rights owned or used by the Supplier in any part of the world whether or not any of the same is registered (or capable of registration), including applications and the right to apply for and be granted, extensions or renewals of, and rights to claim priority from, such rights and all equivalent or similar rights or protections which subsist now or will subsist in the future;

7 - **Service Charges:** the charges for the Services,

8 – **Specification:** the description for the Services as documented in the Statement of Work.

Service Provision

9 - The Supplier shall provide the Services (including any Deliverables) at the Premises in accordance with the Specification in all material respects. Time is of the essence for any dates for delivery of the Services under this Agreement, unless specifically stated otherwise in any schedule.

10. The Supplier shall perform the Services with reasonable care and skill, in accordance with:

- a. generally recognised commercial practices and standards in the applicable industry; and
- b. all laws and regulations applicable to the Services, including all laws and regulations related to (i) anti-bribery and corruption, and (ii) data protection.

11. The Supplier shall use reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirements that apply at the Premises and that have been communicated to the Supplier.

Customer Obligations

12. The Customer must:

- a. co-operate with the Supplier in all matters relating to the Services;
- b. provide, in a timely manner, any Equipment, materials and any information as the Supplier may reasonably require; in the case of Equipment, the Customer shall ensure that it is in good working order and suitable for the purposes for which it is used, and in the case of information, the Customer shall ensure that it is accurate in all material respects;
- c. obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services before the date on which the Services are to start;
- d. provide to the Supplier, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Premises and other facilities as reasonably required by the Supplier;
- e. inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at the Premises.

Defective Services

13. The Supplier shall promptly notify the Customer of:

- a. any delays or problems from time to time in the provision of the Services of which the Supplier becomes aware;
- b. any circumstances from time to time which may prevent the Supplier from providing the Services together with (where practicable) recommendations as to how such circumstances can be avoided; and

c. any complaint (whether written or not) or other matter which comes to its attention and which it reasonably believes may give rise to any loss by or claim against the Customer or which may result in any adverse publicity for the Customer.

14. The Customer shall, without limiting any right or remedy of the Customer, promptly report to the Supplier any defects in the Supplier's performance of the Services as soon as reasonably practicable after any such defect comes to the attention of the Customer.

15. Where any defect in the provision of the Services is reported to the Supplier by the Customer or otherwise comes to the attention of the Supplier, the Supplier shall, without limiting any other right or remedy of the Customer, use its reasonable endeavours to provide such further services as are necessary in order to rectify the default as soon as is reasonably practicable.

Consideration – Charges

16. In consideration of the provision of the Services by the Supplier, the Customer shall pay the Service Charges as set out in the Statement of Work or its appendices which specifies whether the charges are on a time and materials basis, a fixed price basis or a combination of both. Time is of the essence for the payment of the Service Charges.

17. Where Services are provided on a time and materials basis:

a. the charges payable for the Services shall be calculated in accordance with the Supplier's daily fee rates for each individual person and are calculated on the basis of an eight-hour day, worked between 9 am and 5 pm on Working Days and otherwise by arrangement between the parties;

b. the Supplier will invoice the Customer monthly in arrears for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, accompanied by any relevant receipts for any Equipment, materials and expenses as incurred in accordance with the clause below.

18. Where Services are provided for a fixed price, the total price for the Services is set out in the Statement of Work or its appendices. Upon completion of the Services or when an agreed instalment is due, the Supplier shall invoice the Customer for the charges that are then payable.

19. If applicable, expenses incurred by the Supplier may be charged back to the Customer in line with a previously agreed procedure.

20. The Customer shall pay each invoice submitted to it by the Supplier, in full and in cleared funds, within the agreed term. Default term is 30 days.

21. Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier on the Due Date:

a. the Customer shall pay interest on the overdue amount at the rate of 5% per annum above the Bank of England base rate at the relevant time. Such interest will accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The

Supplier may choose to charge statutory interest due. The Customer shall pay the interest together with the overdue amount; and

b. the Supplier may suspend all Services until payment has been made in full.

22. All sums payable to the Supplier under this Agreement shall become due immediately on its termination, despite any other provision.

23. The Supplier and the Customer shall pay all amounts due under this Agreement in full without any deduction except as required by law and neither party shall be entitled to assert any credit, set-off or counterclaim against the other in order to justify withholding payment of any amount due, in whole or in part.

Liability and Insurance

24. If the Supplier's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Customer, its agents, sub-contractors, consultants or employees, the Supplier shall 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.

25. Nothing in this Agreement limits or excludes either party's liability for:

- a. death or personal injury caused by its negligence;
- b. fraud or fraudulent misrepresentation; or
- 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.

26. Subject to the above clause, neither party shall have any liability to the other party, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the provision of the Services for:

- a. loss of profits;
- b. loss of sales or business;
- c. loss of agreements or contracts;
- d. loss of anticipated savings;
- e. loss of or damage to goodwill;
- f. loss of use or corruption of software, data or information;
- g. any indirect or consequential loss.

27. Subject to the two proceeding clauses, the total liability of either party for any other loss of the other party in respect of any one event or series of connected events shall not exceed 100% of the total amount paid and payable for the provision of the Services.

28. The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this Agreement.

29. During this Agreement, the Supplier and the Customer shall each maintain in force with a reputable insurance company, insurance sufficient to indemnify risks for which they may be responsible, including for their respective sub-contractors, agents and employees, in connection with the Services and shall, on either parties' request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium.

Confidentiality

30. Each party will only use Confidential Information to perform its obligations under the Agreement and will not cause or allow the information to be disclosed except:

- a. where required by law, court order or any governmental or regulatory body;
- b. to any of its employees, officers, sub-contractors, representatives or advisers who need to know the information in order to discharge its obligations under the Agreement and agree only to use the information for that purpose and not to cause or allow disclosure of that information;
- c. where the information has become generally available to the public (other than as a result of disclosure in breach of the Agreement by the party or any of its employees, officers, sub-contractors, representatives or advisers);
- d. where the information was available or known to it on a non-confidential basis before being disclosed under the Agreement.

Intellectual Property

31. Subject to the clause below, the Supplier reserves all Intellectual Property Rights (if any) which may subsist in any Deliverables, or in connection with, the provision of the Services. The Supplier reserves the right to take such action as may be appropriate to restrain or prevent the infringement of such Intellectual Property Rights.

32. 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.

33. If this Agreement is terminated, this licence will automatically terminate.

Data Protection

34. Each party undertakes that in the performance of this Agreement it will comply with the General Data Protection Regulation (GDPR), and in particular the Data Protection Principles set out in the GDPR, and comply and facilitate the exercise of any data subject rights contained in the GDPR.

Anti-Bribery

35. The Supplier and its agents, sub-contractors, consultants or employees shall:

- a. comply with all applicable laws, regulations, statutes, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Bribery Laws);
- b. not commit an offence under sections 1, 2 or 6 of the Bribery Act 2010;
- c. shall have, maintain, and enforce throughout the term of this Agreement its own policies and procedures, to ensure compliance with the Bribery Laws and the Bribery Policies; and
- d. promptly report to the Customer any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this Agreement.

Non-solicitation

36. The Customer shall not, without the prior written consent of the Supplier, at any time before the expiry of 6 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, consultant or sub-contractor of the Supplier in the provision of the Services.

Circumstances beyond the control of either party

37. Neither party shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that party.

38. Such causes include, but are not limited to: power failure, Internet Service Provider failure, acts of God, epidemic, pandemic, civil unrest, fire, flood, droughts, storms, earthquakes, collapse of buildings, explosion or accident, acts of terrorism, acts of war, governmental action, any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or any other event that is beyond the control of the party in question.

39. The party affected by a circumstance beyond its control shall use all reasonable endeavours to mitigate the effect of the force majeure upon the performance of its obligations.

40. The corresponding obligations of the other party will be suspended to the same extent as those of the party affected by a force majeure event.

41. If the delay continues for a period of 90 days, either party may terminate or cancel the provision of the Services.

Termination

42. Unless otherwise agreed in the Statement of works, either party may terminate the service provision by giving the other party 30 days' prior written notice.

43. A party may terminate the service provision immediately by giving written notice to the other party if that other party:

- a. does not pay any sum due to it within 30 days of the due date for payment;
- b. commits a material breach which, if capable of remedy, it fails to remedy within 30 days after being given written notice specifying full particulars of the breach and requiring it to be remedied);
- c. persistently breaches any term and conditions contained herein;
- d. is dissolved, ceases to conduct substantially all of its business or becomes unable to pay its debts as they fall due;
- e. is a company over any of whose assets or property a receiver is appointed;
- f. makes any voluntary arrangement with its creditors or (if a company) becomes subject to an administration order (within the meaning of the Insolvency Act 1986);
- g. (if an individual or firm) has a bankruptcy order made against it or (if a company) goes into liquidation;
- h. undergoes a change of control (within the meaning of section 1124 of the Corporation Tax Act 2010); or
- i. (if an individual) dies or as a result of illness or incapacity becomes incapable of managing his or her own affairs.

44. On termination or expiry of this Service Provision:

- 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;
- b. the Customer shall, within a reasonable time, return all of the Supplier's Equipment and any relevant Deliverables remaining the property of the Supplier. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping.

51. Termination of the Service Provision shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.