

Terms and conditions

1. Definitions

- a) "the Company" or "3C" means 3C Consultants Limited and any subsidiary thereof.
- b) "the Client" means the person to whom the Company is providing the Services under the Contract.
- c) "the Contract" means the agreement between the Company and the Client for the provision of the Services including these Terms and Conditions of Contract and the Terms of Engagement.
- d) "the Services" means the services and goods to be provided by the Company under the Contract.
- e) "the Assignment" means the assignment referred to in the Terms of Engagement.
- f) "the Terms of Reference" means the terms of reference referred to in the Terms of Engagement.
- g) "the Terms of Engagement" means the written terms of agreement between the Client and 3C, which incorporate these terms.
- h) "these Terms" means these Terms and Conditions of Contract.

2. 3C Terms

- a) These Terms are referred to as the "3C" terms and shall apply to the provision of services and goods under contracts into which they are expressly incorporated.
- b) Once incorporated, these Terms shall apply to the exclusion of all other terms and conditions including any terms that a Client may purport to apply under any confirmation of instruction or similar document. The "3C" terms shall continue to apply to all services and goods provided by 3C to the Client under any contract hereafter until expressly excluded in writing by the Company.

3. Proposals and Offers

- a) Unless previously withdrawn, the Company's proposal or other document is open for acceptance thirty days only after its date. The acceptance of the Company's proposal or offer must be accompanied by sufficient information to enable the Company to proceed forthwith with the provision of the Services upon the Company confirming acceptance by its acknowledgement of the assignment. All proposals and offers are subject to confirmation at the time of the acknowledgement of the Assignment to the Client and no Contract shall exist until such confirmation has been given.



- b) The Contract only includes such Services as are described therein. Any variation or extension of the Services not included in the Contract will be the subject of a separate proposal or offer on the terms of these conditions and shall not be included within the Contract until accepted by the Client and confirmed by the Company by its acknowledgement of the varied or extended Assignment.

4. Assignment and Terms of Reference

- a) 3C agrees to carry out the Contract in accordance with the Terms of Reference.
- b) The Client agrees to cooperate with 3C in the performance of the Services and to give such support, facilities and information as may be reasonably required.
- c) Any variation or extension of the Terms of Reference will be subject to the 3C terms. 3C may make an additional charge for all such variations and extensions based on the pricing structure in the original Terms of Reference.

5. Charges and Payments

- a) The Client agrees to pay the charges and expenses in accordance with the provisions of the Terms of Engagement.
- b) All sums invoiced by 3C are payable within 30 days of the invoice. Without prejudice to any other rights under the Contract, 3C may charge interest on all sums which are not paid within 30 days from date of invoice from the date of invoice to payment date at the greater of the rate prescribed from time to time pursuant to the Late Payment of Commercial Debts (Interest) Act 1998 or charge the Customer interest (both before and after judgement) on the amount paid at the rate of 5% per annum above Barclays plc base rates from time to time until payment in full is made such interest being calculated on a daily basis.
- c) Where work extends for more than 12 months, 3C may increase the day rate (if applicable) on the anniversary by the rate of the Retail Price Index as at 31 December of the previous year.
- d) During any period in which any payment from the Client remain unpaid for more than 30 days from the date of invoice, 3C may by notice to the Client immediately suspend all Services.
- e) Expenses incurred by 3C and recoverable from the Client under the Terms of Reference (including without limitation travel, accommodation and subsistence) shall be charged at cost plus VAT payable by the Client.
- f) Whenever a sum of money is owed by 3C to the Client under this or any other contract, 3C may credit that sum towards any invoice raised under the Contract.
- g) Where 3C has undertaken a recruitment assignment in circumstances where the Client has absolute discretion as to whether or not to appoint the person or persons sourced by 3C, under no circumstances shall charges or expenses be repayable by 3C to the Client.



6. Calculation of Chargeable Time

Where a daily rate is charged, the calculation of consultants' time may include:

- a) preparation prior to visiting a Client;
- b) travelling to and from the Client's premises, or other places visited in connection with the Assignment;
- c) time spent with the Client (or with third parties on the Client's behalf or at their request), at the Client's premises or elsewhere in connection with the Assignment;
- d) research, drafting, writing, review, etc., including internal planning, checking and review by the consultant(s) directly working on the Assignment and their project manager or a director (if different);
- e) presentation of the results of the Assignment.

7. Late cancellation

Where the Client cancels or postpones an appointment for the provision of services within 48 hours of the appointment, a cancellation fee equivalent to the full charge for the services may be charged.

8. Confidentiality

- a) Each party undertakes to the other not at any time to divulge or allow to be divulged to any person any confidential information related to the business or affairs of the other party other than in accordance with the Contract except where the disclosing party can prove that the confidential information was:
 - a.1. Already known to it prior to receipt of the other party;
 - a.2. Disclosed by it as required by law;
 - a.3. Already in the public domain other than as a result of breach of the provisions of this clause.
- b) Any party who instructs a sub-contractor or agent to perform any part of the Contract must seek the consent of the other party before disclosing confidential information to such sub-contractor or agent and require such sub-contractor or agent to sign an appropriate confidentiality undertaking in similar terms to this clause.

9. Delegation

- a) 3C undertakes to consult with the Client before delegating any of 3C's obligations hereunder.
- b) 3C shall have discretion as to which of its employees or associates are assigned to perform the Services but shall consult with the Client concerning any significant changes.

10. Intellectual Property

3C undertakes not to knowingly cause or permit anything, which may damage or endanger the intellectual property of the Client or the Client's title to it or assist or allow others to do so.



11. Liability and Insurance

- a) 3C shall not be liable to the Client for loss or damage to the Client's property unless due to the negligence or other failure of 3C to perform its obligations under the Contract or the general law.
- b) 3C shall have no liability to the Client for any indirect, special or consequential loss to the Client arising out of or in connection with the provision of any goods or services pursuant to the Contract (except in respect of death or personal injury resulting from negligence) and the total liability of 3C for any other loss of the Client arising under or pursuant to the Contract (and whether as a result of a breach or non-performance of the Contract or in tort or otherwise) in respect of any one event or series of connected events shall not exceed the indemnity cover (if any) arranged pursuant to the Terms of Engagement or if no such cover has been agreed between the Client and 3C the charges actually paid by the Client in respect of the Services.

12. Termination for Breach

- a) 3C may by giving written notice to the Client terminate the Contract with immediate effect in the event of:
 - a.1. Failure by the Client to make punctual payment of all sums due to 3C ;
 - a.2. The Client committing a breach of its obligations under the Contract which is capable of rectification, and failing to rectify the breach within 30 days of being notified of it by 3C ;
- b) The doing or permitting of any act by the Client which prejudices or puts into jeopardy any intellectual property rights of 3C ;
- c) The Client being in serious or persistent breach of its obligations under the Contract.
- d) The Client may by giving written notice to 3C terminate the Contract with immediate effect if 3C has committed a breach of its obligations under the Contract and (if such breach is capable of rectification) has failed to rectify the breach within 30 days of being notified by the Client of the breach and the manner in which it should be remedied.
- e) Either party can, by giving four weeks written notice to the other terminate the Contract if in its opinion the working relationship has irretrievably broken down.

13. Termination and Consequences

In the event of the Contract being terminated and without prejudice to any other remedy available to 3C the Client shall immediately pay to 3C any sums due under or pursuant to the Contract.

14. Recruitment of 3C 's Staff

- a) The Client (including for this purpose any subsidiary or associated company) undertakes that it will not, nor will it encourage or assist any other person directly or indirectly to recruit as an employee or engage as an independent contractor any person employed or



so engaged by 3C in connection with the Services for a period of six months after such person last provided services to the Client unless agreed in writing in advance by 3C.

- b) In the event that the Client is in breach of the undertaking in sub-clause 13.a, the Client and 3C agree that the Client will pay liquidated damages of a sum equal to 33% of the annual remuneration or payment and any other benefits payable to the relevant individual by 3C at the rate payable during the week immediately prior to such individual ceasing to provide services to 3C.

15. Consultant's Outputs, Materials and Information

- a) All intellectual property rights including copyright which are capable of existing in any documents, computer software or information or (without limit) other materials created or provided pursuant to the Contract by 3C shall be and remain 3C's property.
- b) The Client undertakes to keep all materials, documents and information provided to it by 3C confidential to itself and its employees and not to distribute any product of the Services to any third party without 3C's prior written consent.
- c) Any materials produced or supplied to the Client by 3C in which intellectual property rights are capable of subsisting shall be licensed to the Client for internal use only in connection with the purposes of the Terms of Reference and such licence shall forthwith terminate on termination of the Contract for whatever reason (including the Company's breach).
- d) The Client and 3C undertake with each other that they shall not during the course of the Contract knowingly infringe the intellectual property rights of any third party.

16. 3C's References to Client

Subject to clause 7 (Confidentiality) 3C shall be entitled to refer to its provision of Services to the Client for any purpose in connection with 3C's business provided that prior to any published reference to the Client 3C shall give the Client an opportunity to object to such reference and in the event of objection upon reasonable grounds shall not refer to the Client as proposed.

17. Force Majeure

- a) Neither party shall be considered in breach of the Contract, nor under any liability whatsoever to the other, for non-performance, part performance, prospective performance or delay in the performance of any services or goods supplied or to be supplied which is directly or indirectly caused by a result of any event of Force Majeure. For the purpose of 3C terms Force Majeure shall mean any circumstance beyond the reasonable control of the party affected thereby including national emergency war prohibitive Government regulation or any cause beyond the reasonable control of the party seeking to rely upon the event of Force Majeure.
- b) If the event of Force Majeure continues for a period in excess of 30 consecutive days either party shall have the right to terminate the Contract. In the event of such termination 3C shall be entitled to be paid for all work performed prior to the date of



termination and for any unavoidable commitments entered into it prior to the date of termination.

18. Warranty

- a) Each of the parties warrants its power to enter into the Contract and that it has all necessary approvals to do so.

19. Whole Agreement

- a) Each party acknowledges that the Contract contains the whole agreement between the parties and that it is not relied upon any oral or written representations made to it by the other or its employees or agents and has made its own independent investigations into all matters relevant to it.

20. Complaints Procedure

- a) The Company has a Complaints Procedure, a copy of which is available on request.

21. Change of Address, Notices and General Provisions

- a) Each of the parties shall as part of the Contract when it is formed and if necessary, subsequently give notice to the other of its postal address, facsimile and electronic mail details and shall notify any change or addition thereto at the earliest possible opportunity but in any event within 24 hours of such change or addition.
- b) Any notice to be served on either of the parties by the other shall be sent by pre-paid recorded delivery or registered post to the postal address of the relevant party shown in the Contract or such other address substituted in writing under clause 21.1 (and if more than one address any such address) or by facsimile transmission or by electronic mail and shall be deemed to have been received by the addressee within 72 hours of posting or 24 hours if sent by facsimile transmission or by electronic mail to the correct facsimile number or electronic mail number of the addressee (with correct answer back or confirmation of receipt).
- c) References in these Terms to the parties shall include their respective heirs successors in title, permitted assigns and personal representatives.
- d) The headings in these Terms shall not affect its interpretation.
- e) Any obligation on the part of the Client, which comprises more than one person or entity, shall be a joint and several obligation.

22. Proper Law and Jurisdiction

- a) The Contract and all parts of it including these Terms shall be governed by English law including formation and interpretation and shall be deemed to have been made in England.
- b) Any proceedings arising out of or in connection with the Contract may be brought in any court of competent jurisdiction in England or Wales.



- c) The submission by the parties to such jurisdiction shall not limit the right of 3C to commence any proceedings arising out of or in connection with the Contract in any other jurisdiction it may consider appropriate.
- d) Any notice of proceedings or other notices in connection with or which would give effect to such proceedings may without prejudice to any other method of service be served upon any party in accordance with clause 21.a
- e) In the event that the Client is resident outside England, its address for service in England shall be any address provided in accordance with clause 21.a and any time limits in any proceedings shall not be extended by virtue only of the foreign residence of the Client.
- f) Failure by either party to enforce at any time or for any period any one or more of the provisions of the Contract shall not be a waiver of them of the right at any time subsequently to enforce all the provisions of the Contract.

23. Status of Consultant

- a) 3C shall be an independent contractor and not the employee of the Client.
- b) In such capacity, 3C shall bear exclusive responsibility for the payment of such National Insurance contributions that relate to its employees and for the discharge of any income tax and VAT liability arising out of remuneration for the provision of the Services.
- c) 3C shall not be subject to directions from the Client as to the manner in which it shall perform any of the Services.

24. Assignment or Sub-Contracting

- a) 3C shall be entitled to assign or sub-contract any of its rights or duties under the Contract (including the performance of the Services).

25. Set-off

- a) The Client shall not be entitled to withhold payment of any sum otherwise payable to 3C by reason of any claim, set-off or for damages in relation hereto.

26. Mediation

- a) In the event of any dispute or disagreement arising between the parties out of or in connection with the Contract (a "Dispute"), the parties' project directors (which expression includes the person in the nearest equivalent role, if there is no such project director) shall within 10 days of a written request from either party to the other, setting out brief details of the Dispute, meet and use their best endeavours to settle the Dispute by good faith negotiation.
- b) If the project directors cannot resolve the Dispute it will be referred to the chief executives of each party (which expression includes the person in the nearest equivalent role, if there is no such chief executive) who will within 14 days after the meeting of the project directors meet and use their best endeavours to settle the Dispute by good faith negotiation.



- c) If any of the project directors or chief executives are unable to attend a meeting, a substitute may attend provided he or she has at least the same or reasonably comparable managerial or directorial responsibility and is authorised to settle the Dispute.
- d) If the Dispute remains unresolved at the conclusion of the meeting of the chief executives either party may propose to the other in writing that the Dispute be referred to mediation. The mediator shall be agreed upon within seven days of the parties agreeing to mediate, failing which the mediator shall be appointed by the then Professional Standards Manager of the Institute of Management Consultancy. Unless otherwise agreed, the parties shall bear their own costs and shall share equally the costs of the mediation.

Nothing in this clause shall prevent either party seeking a preliminary injunction or other judicial relief at any time if in its judgment such action is necessary, nor shall 3C be precluded from issuing proceedings or taking any other step in relation to the non-payment

