

## KADEL CONSULTING LIMITED - TERMS OF BUSINESS

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 8.1 (LIMITATION OF LIABILITY).

### 1 Interpretation

THE FOLLOWING DEFINITIONS AND RULES OF INTERPRETATION APPLY IN THESE CONDITIONS.

#### 1.1 Definitions:

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Charges:** the charges payable by the Customer for the supply of the Services in accordance with clause 5 (Charges and payment).

**Commencement Date:** has the meaning given in clause 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 11.6.

**Contract:** the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions.

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

**Customer Default:** has the meaning set out in clause 4.2.

**Data Protection Legislation:** the UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to privacy.

**Deliverables:** the deliverables set out in the Order produced by the Supplier for the Customer.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Order:** the Customer's purchase order for Services as set out in the Customer's purchase order form.

**Services:** the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Specification.

**Specification:** the statements of works, description or specification of the Services provided in writing by the Supplier to the Customer.

**Supplier:** Kadel Consulting Limited incorporated and registered in England and Wales with company number 08583068 whose registered office is at 1 The Green, Richmond, Surrey, England, TW9 1PL.

**Supplier Materials** has the meaning set out in clause 4.1(f).

## 1.2 Interpretation:

- (a) Unless expressly provided otherwise in this Contract, a reference to legislation or a legislative provision:
  - (i) is a reference to it as it is in force as at the date of this Contract; and
  - (ii) shall include all subordinate legislation made at the date of this Contract under that legislation or legislative provision.
- (b) Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (c) A reference to **writing** or **written** includes email and other agreed electronic messaging system or platform as agreed for each Order.

## 2 Basis of contract

- 2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.5 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue.

## 3 Supply of Services

- 3.1 The Supplier shall supply the Services to the Customer in accordance with the Specification in all material respects.
- 3.2 The Supplier shall use all reasonable endeavours to meet any performance dates specified in Order, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

3.3 The Supplier reserves the right to amend the specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

3.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

#### **4 Customer's obligations**

4.1 The Customer shall:

- (a) ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Services;
- (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier;
- (d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (e) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- (f) keep all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and
- (g) comply with any additional obligations as set out in the Specification.

4.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

## **5 Charges and payment**

- 5.1 The Charges for the Services shall be calculated on the basis set out in each Order:
- (a) the Charges shall be calculated in accordance with the Supplier's daily fee rates, as set out in each Order;
  - (b) the Supplier's daily fee rates for each individual are calculated on the basis of an eight-hour day from 9.00 am to 5.00 pm worked on Business Days;
  - (c) the Supplier shall be entitled to charge an overtime rate set out in each Order on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 5.1(b); and
  - (d) the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.
- 5.2 The Supplier reserves the right to increase the Charges on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be the latest available figure for the percentage increase in the Retail Prices Index.
- 5.3 The Supplier shall invoice the Customer in line with the agreed payment schedule set out in each Order.
- 5.4 The Customer shall pay each invoice submitted by the Supplier:
- (a) as set out in each Order or if not stated in an Order within 30 Business Days of the date of the invoice or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer; and
  - (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.
- 5.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.6 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 9, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 5.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 5.7 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## **6 Intellectual property rights**

- 6.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.
- 6.2 The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to copy the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business.
- 6.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 6.2.
- 6.4 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free, nontransferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer. The Supplier and Customer agree that any use of the materials must still show the Supplier's branding on any copied or amended materials.

## **7 Data Protection**

- 7.1 Each party only expects to give and receive to the other business to business contact personal data containing for example email address and mobile phone contact information of its staff for the purposes only of the duties and obligations under this agreement and shall delete such data upon termination of this agreement.
- 7.2 **Compliance:** Each party shall comply with the Data Protection Legislation and agrees that any material breach of the Data Protection Legislation shall, if not remedied within 30 Business Days of written notice from the other party to do so, give grounds to the other party to terminate this agreement with immediate effect.

## **8 Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

- 8.1 **Unlimited liability.** Nothing in this agreement shall limit or exclude the liability of either party for:
- (a) **Death or personal injury.** Death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable).
  - (b) **Fraud.** Fraud or fraudulent misrepresentation.
  - (c) **Unlawful liability restrictions.** Any matter in respect of which it would be unlawful to exclude or restrict liability.
- 8.2 **Limitations of liability.** Subject to clause 8.1 above:
- (a) **Loss of profit, revenue, goodwill, or anticipated savings.** Neither party shall under any circumstances whatever be liable to the other, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for:
    - (i) any loss of profit, sales, revenue, or business;
    - (ii) loss of anticipated savings;
    - (iii) loss of or damage to goodwill;
    - (iv) loss of agreements or contracts;

- (v) loss of use or corruption of software, data or information;
  - (vi) any loss arising out of the lawful termination of this agreement or any decision not to renew its term, or
  - (vii) any loss that is an indirect or secondary consequence of any act or omission of the party in question.
- (b) **Damage to property.** The total liability of either party for damage to property caused by the negligence of its employees in connection with this agreement shall be limited to the amount of insurance cover currently that the relevant party has in place for such damage as set out in such policy.
- (c) **Total cap.** The total liability of either party to the other in respect of all other loss or damage arising under or in connection with this agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the higher of:
- (i) for each relevant party where Insurance Cover is reasonably obtainable for the relevant liability; and Public and products at £2m cover, employers liability at £10m cover professional liability £1m cover essentials £500,000
  - (ii) the amount of the Payments received under this agreement in the last 12 months before the liability arose by the relevant party seeking to rely on this clause.

In this clause 8.2(c), **Insurance Cover** includes the insurance cover reasonably obtainable by each party and at March 2024 the Supplier had the following insurance cover in place subject to the terms of the relevant insurance policy:

- (A) public and products liability - £5m;
- (B) professional liability - £5m
- (C) employers liability - £10m
- (D) cyber essentials - £20,000

- 8.3 **No limitations in respect of deliberate default.** Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
- 8.4 **No liability for claims not notified within 12 months.** Unless a party notifies the other party that it intends to make a claim in respect of an event within the notice period, the other party shall have no liability for that event. The notice period for an event shall start on the day on which the party wishing to make a claim became, or ought reasonably to have become, aware of the event having occurred and shall expire 12 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 8.5 This clause 8 shall survive termination of the Contract.



## **9 Termination**

- 9.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 Business Days of that party being notified in writing to do so;
  - (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
  - (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
  - (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 9.2 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 9.3 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services under the Contract or any other contract between the Customer and the Supplier if
- (a) the Customer fails to pay any amount due under the Contract on the due date for payment;
  - (b) the Customer becomes subject to any of the events listed in clause 9.2(c) to clause 9.2(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them; and
  - (c) the Supplier reasonably believes that the Customer is about to become subject to any of the events listed in clause 9.2(b).

## **10 Consequences of termination**

- 10.1 On termination of the Contract:
- (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 shall submit an invoice, which shall be payable by the Customer immediately on receipt;
  - (b) the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe

keeping and will not use them for any purpose not connected with the Contract; and

- (c) the Customer and Supplier shall agree, subject to the Customer's compliance with clauses 10.1(a) and (b) above, any handover or final delivery of Services for any ongoing Orders.

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

10.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

## **11 General**

11.1 **Anti-Bribery & Corruption:** Both parties shall ensure they, and any person associated with them who is performing services or providing goods in connection with the Contract, comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption (Relevant Requirements), including but not limited to the Bribery Act 2010 (BA 2010).

11.2 **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

11.3 **Assignment and other dealings.**

- (a) The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier. 11.4

11.4 **Confidentiality.**

- (a) Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.4(b).
- (b) Each party may disclose the other party's confidential information:
  - (i) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11.4; and



- (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
  - (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.
- 11.5 Entire agreement.**
- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
  - (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
  - (c) Nothing in this clause shall limit or exclude any liability for fraud.
- 11.6 Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 11.7 Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 11.8 Severance** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision or part-provision of this Contract deleted under this clause 11.8 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 11.9 Notices.**
- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case)
  - (b) Any notice or other communication shall be deemed to have been received:
    - (i) if delivered by hand, at the time the notice is left at the proper address; or
    - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting.

- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

**11.10 Third party rights.**

- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

**11.11 Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

**11.12 Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.