



Arculus Cyber Security - Terms and Conditions

This proposal is issued by Arculus Ltd: Company Registration Number:13158390

Registered Address: The Old Casino, 28 Fourth Avenue, Hove, East Sussex, BN3 2PJ, United Kingdom

Payment Terms

All costs are in GBP (£) and exclusive of VAT, which will be charged at the prevailing rate

For all Services, Arculus shall invoice the Customer monthly in arrears or, if earlier, on the provision of a draft report to Customer or completion of the relevant Services

Customer shall pay any invoice submitted by Arculus within 30 days of the date of the invoice

Customer Confidentiality

Each party may be given access to confidential information from the other party in order to perform its obligations under this Agreement. A party's confidential information shall not be deemed to include information that:

- is or becomes publicly known other than through any act or omission of the receiving party
- was in the other party's lawful possession before the disclosure
- is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
- is independently developed by the other party, which independent development can be shown by written evidence

Each party shall hold the other's confidential information in confidence and not make the other's confidential information available to any third party or use the other's confidential information for any purpose other than the implementation of this Agreement.

Deployment of Arculus's Resources

Unless otherwise stated in the Proposal, the Charges shall be calculated on a per day or per part-day basis using the relevant rates for Arculus Personnel as set out in the Proposal. Work will be carried out during core office hours (09.00 – 17.30 Monday to Friday) or as agreed with the Customer

Proposal Duration

Any Proposal is only valid for acceptance for a period of 20 Business Days from its date of issue.

Expenses

The Customer shall pay the reasonable expenses of Arculus Personnel, as further detailed in the Proposal, monthly in arrears following submission of an appropriate invoice.

Terms and Conditions

These Terms of Business shall apply to the provision of the Services by Arculus to the Customer.

1. Interpretation

1.1. In this Agreement, unless the context otherwise requires, the following expressions shall have the following meanings:

Agreement: the agreement between the Customer and Arculus for the purchase of the Services comprising the Proposal, these Terms of Business and any other documents expressly included by reference.

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

Arculus Personnel: all officers, employees, agents, consultants and contractors of Arculus engaged in the performance the Services.

Charges: the charges payable by the Customer for the Services as set out in the Proposal and payable in accordance with clause 6 (Charges and Payment).

Customer: the person or firm who purchases the Services from Arculus Ltd.

Customer Data: the data provided by the Customer for the purpose of facilitating the delivery of the Services.

Customer Materials: all documents, information and materials in any form, whether owned by the Customer or a third party, which are provided by the Customer to Arculus in connection with the Services.

Data Protection Legislation: means:

(a) the General Data Protection Regulation (GDPR), the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003; and

(b) any other legislation in force from time to time relating to privacy and/or the Processing of Personal Data and applicable to the provision and receipt of Services under this Agreement; and

(c) any statutory codes of practice issued by the relevant supervisory authority in relation to such legislation.

Deliverables: any output of the Services (excluding the Customer Materials) to be provided by Arculus to the Customer as specified in Proposal.

Effective Date: has the meaning set out in clause 2.1.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, 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.

Parties: the Customer and Arculus Ltd.

Penetration Testing Services: the provision of penetration testing and delivery of any reports arising from such testing.

Personal Data: has the meaning given to it in the Data Protection Legislation.

Proposal: the proposal document sent by Arculus to the Customer, setting out the details of the Services to be provided and the basis upon which Arculus proposes to provide them.

Service Commencement Date: the date on which the delivery of the Services is due to commence as set out in the Proposal, or otherwise agreed.

Services: the service(s) and / or any associated solutions / products to be provided by Arculus to the Customer as set out in the Proposal

Terms of Business: these terms of business governing the supply of Services by Arculus to the Customer.

A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

2. Basis of this agreement

2.1. The Agreement shall be deemed agreed and binding on the parties on the earlier of:

- receipt by Arculus of a Purchase Order, or an electronic or hard copy of the Proposal signed by the Customer;
- commencement of the delivery of the Services (in whole or in part) by Arculus and receipt of the Services by the Customer; or
- any act by the Customer consistent with receipt of the Services.

(the Effective Date).

2.2. This Agreement shall commence on the Effective Date and shall continue until the last remaining Service is completed, or earlier terminated, in accordance with this Agreement.

2.3. This Agreement applies to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.4. Where there is a direct conflict between the terms set out in the Proposal and these Terms & Conditions, the terms in the Proposal shall prevail in respect of such conflict.

2.5. So far as is reasonably practicable within any agreed timescale, Arculus shall supply the Services to the Customer in accordance with this Agreement in all material respects.

- 2.6. Arculus shall use reasonable endeavours to meet any performance dates specified in the Proposal, but any such dates shall be estimates only and time for performance by Arculus shall not be of the essence under this Agreement.
- 2.7. Arculus reserves the right to amend this Agreement 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 Arculus shall notify the Customer in any such event.
- 2.8. If Arculus's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, then, without prejudice to any other right or remedy it may have, Arculus shall be entitled to an extension of time to perform its obligations under this Agreement which is equal to the delay caused by the Customer. In such circumstances Arculus shall have no liability in respect of such delay in the provision of the Services and shall invoice Customer for any Charges incurred as a result.
- 2.9. The Services are for Customer's benefit only and may not be used or relied upon by any other person or for any other purpose, and Arculus shall not be liable in either circumstance.
- 2.10. Notwithstanding the remainder of this Agreement, to the extent the Services include the provision of reports by Arculus to the Customer, Customer acknowledges that the purpose of any reports is solely for Arculus to highlight any risks that it has identified in performing the Services and to make recommendations. Arculus shall not be liable to the extent that Customer does not implement these recommendations.
3. Penetration Testing Services
- 3.1. Penetration Testing Services will be carried out by appropriately skilled and qualified personnel using approved methodology. However, Arculus does not guarantee that all conceivable problems will be discovered in the course of the provision of the Penetrating Testing Services. While care will be taken to avoid damage to Customer systems, due to the invasive nature of penetration testing there remains a residual risk of damage to the Customer's systems.
- 3.2. The Customer:
- confirms that it has the legal permission, and/or has sought any necessary permission required from third-parties, to allow Arculus to perform Penetration Testing Services on the applications, hostnames or any other in-scope target, and on any assets which may be directly connected to them (which may be discovered as a result of an assessment);
 - shall ensure that the assets being tested, and all relevant test information will be available during the agreed project period and shall indicate to Arculus any production/live assets that are not authorised for potential changes to data in the relevant database(s)
 - shall ensure that prior to commencement of the Penetration Testing Services a full, back up of data is carried out and verified;
 - agrees that Arculus may carry out the scanning element of the Penetration Testing Services at any time of day and shall arrange the Penetration Testing Services for a time that will have least impact on the business (e.g. out of normal business hours or weekends);
 - consents to the targeting and exploitation of vulnerabilities identified during the engagement or will clearly indicate to Arculus which targets it does not wish exploitation to be carried out on;
 - acknowledges (i) that Arculus uses the same attack payloads (e.g. attack strings and brute-force attempts) as real world attackers (ii) (and shall notify its information and security teams as necessary) that there may be an increase in logging activity and an increase in any intrusion detection or prevention system alerts during the period of provision of the Penetration Testing Services.
 - confirms that it provides express legal approval (under Computer Misuse Act 1990 and other relevant legislation and/or equivalent legislation in other jurisdictions) for Penetration Testing Services to be provided in respect of the in-scope target assets; and
 - indemnifies, defends, and holds harmless Arculus and its officers, agents, employees, from and against any and all third-party claims, demands, losses, liability, damages, or expenses (including reasonable solicitor's fees) arising from the running of Penetration Testing Services.
4. Customer's obligations
- 4.1. The Customer shall:
- co-operate with Arculus in all matters relating to the Services;
 - provide Arculus, its employees, agents, consultants, and subcontractors with:
 - (a) in a prompt manner, any information, documents, or materials which may reasonably be required by Arculus in the delivery of the Services and, in relation to any information so provided, ensure that such information is complete and accurate in all material respects;
 - (b) access to the Customer's premises, equipment, personnel, and other facilities as reasonably required by Arculus for the delivery of the Services in a timely manner and at no charge to Arculus; and
 - (c) any relevant rules, regulations, and policies in respect of Customer's premises and equipment which Customer considers Arculus should reasonably comply with in order to deliver the Services.
 - keep Arculus its employees, agents, consultants, and subcontractors (as appropriate) informed of any special requirements relating to the delivery or receipt of the Services. If Arculus's compliance with such requirements give rise to an increase in the actual cost to Arculus of providing the Services, the Charges may be increased accordingly; and
 - obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable Arculus to provide the Services.

- 4.2. Arculus shall not be liable for its provision of the Services to the extent that Customer has not materially complied with its obligations in this clause 4.

5. Non-Solicitation

The Customer shall not, without the prior written consent of Arculus, at any time from the Effective Date to the expiry of 1 year after the last of the Services to be provided under this Agreement, solicit or entice away from Arculus or employ or attempt to employ any Arculus Personnel.

6. Charges and payment

- 6.1. In consideration of the provision of the Services by Arculus, the Customer shall pay the Charges.
- 6.2. Unless otherwise stated in the Proposal, the Charges shall be calculated on a per day or per hour basis using the relevant rates for Arculus Personnel as set out in the Proposal. Work will be carried out during core office hours (0900 - 1730 Monday to Friday) or as agreed with the Customer.
- 6.3. Arculus shall invoice Customer and Customer shall pay for the Services (to a bank account provided on the invoice or as otherwise directed by Arculus) as follows, or as otherwise set out in the Proposal:
- 6.4. Arculus shall invoice the Customer monthly in arrears or, if earlier, on the provision of a draft report to Customer or completion of the relevant Services. Customer shall pay any invoice submitted by Arculus within 30 days of the date of the invoice.
- 6.5. The Customer shall pay the reasonable expenses of Arculus Personnel, as further detailed in the Proposal, monthly in arrears following submission of an appropriate invoice.
- 6.6. Failure by the Customer to pay any Charges when they fall due may, at Arculus's discretion, result in Arculus suspending delivery of the Services.
- 6.7. Without prejudice to any other right or remedy that it may have, if the Customer fails to pay Arculus any sum due under this Agreement on the due date, 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 will accrue each day at 4% a year above the European Central Bank's base rate from time to time.
- 6.8. All sums payable to Arculus under this Agreement:
- are exclusive of VAT, and the Customer shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice; and
 - 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).
 - All Services agreed in the Agreement must be assigned dates on which they shall be delivered within 12 months of the Effective Date (or as specified in the Proposal). Any Services which are not assigned dates to be delivered within 12 months of the Effective Date shall remain payable in full by the Customer.

7. Intellectual property rights

- 7.1. All Intellectual Property Rights in or arising out of the Services and/or Deliverables (excluding the Customer Materials) shall be owned by Arculus and/or its licensors.
- 7.2. In relation to the Deliverables:
- Arculus and its licensors shall retain ownership of all Intellectual Property Rights in the Deliverables; and
 - Arculus grants the Customer or shall procure the direct grant to the Customer of, a worldwide, non-exclusive, non-sublicensable, royalty-free licence to copy the Deliverables for the purpose of receiving and using the Services and the Deliverables.
- 7.3. In relation to Customer Materials:
- the Customer and its licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials; and
 - the Customer grants to Arculus a worldwide, non-exclusive, royalty-free, licence to copy and modify the Customer Materials for the sole purpose of providing the Services to the Customer.
 - the Customer warrants that the receipt and use of the Customer Materials in the delivery of the Services by Arculus, its agents, subcontractors, or consultants shall not infringe any Intellectual Property Rights of any third party; and shall indemnify Arculus in full against all costs, expenses, damages and losses, including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by Arculus as a result of or in connection with any claim brought against Arculus, its agents, subcontractors, consultants or any Arculus Personnel for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt or use of the Customer Materials in the delivery of the Services.

8. Limitation of liability

- 8.1. Nothing in this Agreement limits any liability which cannot legally be limited, including, but not limited to, liability for:
- death or personal injury caused by negligence; and
 - fraud or fraudulent misrepresentation.

Subject to clause 8.1:

- 8.2. Arculus shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising; and
- 8.3. Arculus's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with this Agreement shall be limited to the total Charges paid or payable under this Agreement.
- 8.4. This clause 8 shall survive termination of this Agreement.

9. Confidentiality

- 9.1. Each party may be given access to confidential information from the other party in order to perform its obligations under this Agreement. Each party shall hold the other's confidential information in confidence and not make the other's confidential information available to any third party, or use the other's confidential information for any purpose other than the implementation of this Agreement.
- 9.2. A party may disclose confidential information to the extent such confidential information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 9.3. The Customer acknowledges that its information may be used by Arculus on an anonymised basis without limitation including compiling and publishing reports. This clause shall survive termination of this Agreement, however arising.
10. Termination
- 10.1. Without affecting any other right or remedy available to it, either party to this Agreement may terminate them with immediate effect by giving written notice to the other party if:
- the other party commits a material breach of any term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
 - the other party takes any step or action in connection with its entering administration, provisional liquidation, bankruptcy or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), 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; or
- 10.2. Without affecting any other right or remedy available to it, Arculus may terminate this Agreement with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Agreement on the due date for payment.
- 10.3. On termination of this Agreement:
- the Customer shall immediately pay to Arculus all of Arculus's outstanding invoices and interest and, in respect of the Services supplied but for which no invoice has been submitted, Arculus may submit an invoice, which shall be payable immediately on receipt;
 - Arculus shall on request return all Customer Materials not used up in the provision of the Services;
 - any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination of this Agreement shall remain in full force and effect.
- 10.4. Termination of this Agreement shall not affect any of the 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 this Agreement which existed at or before the date of termination.
11. Force majeure
- 11.1. Arculus shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Arculus or any other party), failure of a utility service or transport or telecommunications 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, provided that the Customer is notified of such an event and its expected duration.
12. Entire agreement
- 12.1. This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations, and understandings between them relating to its subject matter.
- 12.2. Each party acknowledges that in entering into this Agreement 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 this Agreement.
13. Assignment and Sub-Contracting
- 13.1. Arculus 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 this Agreement.
14. No partnership or agency
- 14.1. Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
15. Governing law
- 15.1. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales.