

Standard terms and conditions for the supply of services



1. Definitions

In these Standard Terms and Conditions for Supply of Services: **"Company"** means Occam Group Limited (company number 11986732), whose registered office is at One New Street, Wells, Somerset, United Kingdom, BA5 2LA; **"Company's Group"** means every subsidiary or holding company of the Company and all subsidiaries of every such holding company; **"Conditions"** means these Standard Terms and Conditions for Supply of Services as amended from time to time in accordance with clause 2; **"Confidential Information"** means all confidential information in any form but excludes information which (i) is or becomes generally available to the public (other than as a result of its disclosure in breach of the Contract); (ii) was available to the recipient on a non-confidential basis prior to the disclosure by the disclosing party; or (iii) was lawfully in the possession of the recipient before the information was disclosed to it; **"Contract"** means the contract between the Company and the Customer for the supply of Goods and/or Services by the Company which shall be formed in accordance with clause 3.2 and which shall comprise of these Conditions and the Proposal; **"Customer"** means any company, individual, partnership or organisation who enters into a Contract with the Company; **"Customer Materials"** means all materials, information, equipment, designs, tools, drawings, specifications, documents and data supplied by the Customer to the Company; **"Deliverables"** means the results of the Services and shall be as specified by the Company; **"Goods"** means all goods, materials, equipment, articles (including documents) supplied by the Company to the Customer, whether in the form delivered or combined with any other item; **"IPR"** means any patent, copyright, registered design, design right, trademark or other industrial or intellectual property rights, whether registrable or not, anywhere in the world; **"Proposal"** means the Company's proposal (including quotations and estimates) for the supply of Goods and/or Services; **"Services"** means the work or services of the Company (including the Deliverables) as referred to in the Proposal, or as otherwise agreed in writing with the Customer.

2. Applicability

These Conditions shall apply to any Contract between the Company and the Customer, and shall prevail over any terms or conditions which the Customer may purport to apply, whether in correspondence, under a purchase order (or similar document) or through a course of dealing. No variation of these Conditions or of any Contract shall be valid unless agreed in writing by an authorised representative of the Company.

3. Proposal and Contract Formation

3.1 The Proposal constitutes an invitation to treat by the Company and does not constitute a binding contract.
3.2 The Contract shall be formed on the earlier of: (i) the date on which the Company accepts in writing the Customer's order placed in accordance with a Proposal; or (ii) the date on which the Company commences provision of the Goods and/or Services.
3.3 Unless previously withdrawn, all Proposals given by the Company are valid for a period of thirty days from their date, or such other period expressly specified in writing by the Company.
3.4 Unless otherwise expressly specified by the Company, all prices quoted shall be exclusive of costs of delivery, packaging, carriage, insurance, value added tax and all other sales taxes or duties.
3.5 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by, or on behalf of, the Company which is not set out in the Contract.
3.6 Any samples, drawings, descriptive matter or advertising issued by the Company are published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.

4. IPR and Confidentiality

4.1 Subject to these Conditions and payment in full by the Customer, the Customer shall be granted a royalty-free licence to use the Deliverables to the extent necessary to have the benefit of the Services supplied.
4.2 The Customer grants the Company a royalty-free licence to use, copy and modify any Customer Materials (and the IPR therein) for the duration of the Contract for the purpose of providing the Services.
4.3 All rights and title in the Deliverables and the Company's background and foreground IPR shall remain the property of the Company.
4.4 Unless otherwise agreed in writing between the parties, neither party shall use the other party's Confidential Information for any purpose other than the performance of its obligations under the Contract.
4.5 Neither party shall disclose the Confidential Information of the other party to any other person except: (i) to its employees, representatives, subcontractors and advisors who require such Confidential Information in connection with the Contract; or (ii) as required by law.

5. Customer Responsibilities

5.1 The Customer shall, as and when requested by the Company, provide all necessary Customer Materials, instructions, and access to personnel and facilities required to enable the Company to meet its obligations under the Contract. The Customer undertakes to pay any additional charges arising from errors or delays in providing any of the foregoing.
5.2 The Customer shall be responsible for ensuring that Customer Materials and instructions are accurate, unambiguous, clearly legible and that they meet the Customer's and the Company's requirements. The Company shall not be liable for any loss, damages, costs or expenses incurred or suffered by the Customer arising (directly or indirectly) from any inaccuracy, ambiguity or illegibility of any Customer Materials.
5.3 The Customer shall be responsible for obtaining and maintaining all necessary licenses, permissions and authorisations applicable to the supply of the Goods and/or Services, including (without limitation) export and/or import licences for any Goods, Deliverables or other data or materials transferring between the Company and the Customer.

6. Delivery, Performance and Acceptance

6.1 The Company shall use reasonable endeavours to comply with any dates stated for delivery of Goods or performance of Services but any such dates are estimates only. Time is not of the essence for delivery of the Goods or performance of the Services. Failure to deliver Goods or perform Services by such dates shall not be a breach or repudiation of the Contract, and the Company shall not be liable for any loss or damage suffered by the Customer as a result of such delay.
6.2 Unless otherwise agreed in writing, Goods will be delivered ex works (Incoterms 2010) at the Company's premises when the Goods are handed over to the Customer, its agent or carrier.
6.3 Unless otherwise stated in the relevant Proposal or agreed in writing between the parties, Goods will be deemed to be accepted fourteen days following delivery to the Customer or, in the case of Goods to be collected from the Company's premises, fourteen days following written notice to the Customer that the Goods are ready for delivery, whichever is the sooner.
6.4 Risk of loss or damage in the Goods shall pass to the Customer upon delivery of the Goods or, in the case of Goods to be collected from the Company's premises, following seven days' notice from the Company that the Goods are ready for collection or despatch.

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7. Liability

7.1 Subject to clause 7.4, the Company shall have no liability to the Customer (whether in contract, tort (including negligence), breach of statutory duty or otherwise) arising out of, or in connection with, the Goods, Services and/or Contract for any:

7.1.1 indirect or direct loss of, or damage to: (a) profit; (b) business; (c) contracts; (d) opportunity; (e) goodwill; (f) revenue; (g) anticipated savings, expenses, costs or similar loss; or

7.1.2 indirect, special or consequential loss or damage; or

7.1.3 claim arising out of a claim against the Customer by a third party.

7.2 Each of the sub-clauses in clause 7.1 and each of the sub-paragraphs 7.1.1(a) to 7.1.1(g) constitute separate terms, and the introductory wording of clause 7.1 shall be applied to each of them separately.

7.3 Subject to clauses 7.1 and 7.4, the total aggregate liability of the Company to the Customer for all losses arising out of or in connection the Contract, whether in contract, tort, negligence, breach of statutory duty, indemnity or otherwise shall be limited to the lesser of: (i) twice the amount paid by the Customer for the Goods and/or Services; or (ii) £100,000.

7.4 Nothing in these Conditions will operate or be construed to operate so as to exclude or limit the liability of the Company for death or personal injury caused by the negligence of the Company, fraud, fraudulent misrepresentation or any other liability which cannot be limited or excluded by applicable law.

8. Warranty

8.1 Subject to clauses 8.2 to 8.7 below, the Company warrants that:

8.1.1 it shall carry out the Services with reasonable skill and care; and

8.1.2 the Goods shall be free from defects in materials and workmanship for six months from the date of delivery.

8.2 Where any valid warranty claim is made in respect of any Services, Deliverables or Goods, and such claim arises directly from the Company's fault or negligence, the Company can choose, at its absolute discretion, to either: (a) re-perform the Services to the extent necessary to make good any defect; or (b) repair or replace the Goods (or the defective part in question); or (c) to credit or refund to the Customer the price paid for the Goods or Services (or a proportionate part of the price paid). The Company will have no further liability to the Customer under the warranties in clause 8.1.

8.3 There will be no extension of the warranty period in respect of re-performed Services or repaired or replacement Goods.

8.4 Owing to the research and development nature of the work carried out by the Company, the Company does not warrant that the results will fully meet the objectives sought, or that any product resulting from the work will correspond exactly to specifications or estimated performance.

8.5 The Company can only warrant its work if the whole of the relevant work programme as defined in the Proposal is carried out, including budgeted quality checks and report generation. The Company shall be under no liability in respect of work programmes that are curtailed due to action or inaction by the Customer.

8.6 The warranties given in clause 8.1 shall not apply in respect of any claims:

8.6.1 made more than six months after the completion of performance of the relevant Services or delivery of the relevant Goods;

8.6.2 where the Customer has not paid in full for the relevant Services and/or Goods;

8.6.3 in respect of fair wear and tear, abnormal working conditions or wilful damage by the Customer;

8.6.4 arising as a result of, or in connection with, errors or omissions in designs, drawings, instructions or specifications supplied by the Customer, or on the Customer's behalf, in respect of the Goods and/or Services;

8.6.5 arising as a result of the Customer's failure to follow the Company's written instructions regarding use or maintenance of the Goods;

8.6.6 arising directly or indirectly from the Customer's failure or delay to perform any of its obligations under the Contract;

8.7 Except as set out in this clause 8, all other warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

9. Payment

9.1 In consideration of the provision of the Goods and/or Services, the Customer shall pay the Company the charges set out in the Proposal.

9.2 Invoices issued by the Company are payable in full by the Customer within thirty days of the date of such invoice, and prompt settlement shall be of the essence of the Contract. Without prejudice to its right to terminate the Contract for non-payment, the Company reserves the right to suspend work on the Contract, and the Customer shall indemnify the Company against any costs arising as a result of such suspension.

9.3 In spite of delivery having been made, all Goods and Deliverables supplied under or arising from the Contract shall remain the Company's property until full payment of all monies (including any value added tax) due has been made.

9.4 The Customer will pay all monies due in full without any discount, deductions, set off or abatement on any grounds.

10. Third Parties

10.1 At the Customer's request and expense, the Company will carry out agreed patent searches in respect of the Contract. In the event of any claim being made against the Customer in respect of an alleged infringement of a third party's IPRs arising out of the application of the Services, Deliverables or Goods supplied by the Company, the Company shall be under no liability to the Customer or any third party, except to the extent that the Company has negligently carried out the agreed patent searches, in which case the Company's liability shall be limited in accordance with clause 7.

10.2 The Customer warrants that any Customer Materials or instructions furnished or given by it shall not be such as will cause the Company to infringe any IPR or other like right or privilege whatsoever and by whomsoever owned, and that it will indemnify and hold harmless the Company against any and all claims made in respect thereof.

10.3 The Company and the Customer agree that the Contracts (Rights of Third Parties) Act 1999 shall not apply to Contracts, save that companies within the Company's Group shall be entitled in their own right to enforce the benefit of the indemnities, exclusions and limitations in favour of the Company contained in these Conditions. The rights of the Company and the Customer to terminate, rescind or by agreement vary or waive any term of any Contract are not subject to the consent of the companies within the Company's Group or any other person.

11. Termination

11.1 The Contract may be terminated forthwith by either party ("**the Terminating Party**") if: (i) the other party commits a material breach of the Contract which is incapable of remedy, or (if such breach is remediable) fails to remedy such breach within fourteen days of receiving notice of such a breach; or (ii) the other party makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt, or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of a solvent amalgamation or reconstruction), or an encumbrancer takes possession, or a receiver is appointed of any of the property or assets of the other, or the other ceases or threatens to cease to carry on business, or is unable to pay its debts as they fall due; or any event analogous to those previously listed occurs in

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any other jurisdiction, or the Terminating Party reasonably believes that any of the events mentioned in this clause is about to occur (and notifies the other accordingly).

11.2 The Company may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract by the due date for payment.

11.3 Termination of the Contract howsoever arising shall be without prejudice to any rights which the Customer or the Company have against each other which have accrued prior to or on such termination.

11.4 Upon termination of the Contract for any reason, the Company shall be entitled to payment for all work carried out under the Contract and any related commitments made by the Company.

12 General

12.1 Force Majeure - The Company shall not be liable for any failure or delay in performance of its obligations under any contract which is caused by circumstances beyond the reasonable control of the Company.

12.2 Assignment - Neither the Company nor the Customer may assign, charge or transfer in any way any of its rights or obligations without the written consent of the other party.

12.3 Severability - If any provision of these Conditions is held to be illegal, void or unenforceable, the legality, validity and enforceability of the remainder of these Conditions shall not be affected.

12.4 Anti-Bribery - Both parties shall comply with all applicable laws, statutes and regulations relating to the prevention of bribery including, but not limited to, the Bribery Act 2010.

12.5 Dispute Escalation - Any dispute, difference or controversy ("**Dispute**") arising out of or in relation to a Contract shall be referred to a Director of the Company (or his nominee) and a person of an equivalent level within the Customer's organisation. If the Dispute remains unresolved within 14 days of the date of such referral, the Dispute shall be referred to the Managing Director of the Company (or his nominee) and a person of equivalent level within the Customer's organisation (together "the Senior Management"). If the Dispute cannot be resolved within 21 days of the referral to the Senior Management, the parties may consider referring the Dispute to mediation or other agreed form of dispute resolution. Unless the parties separately agree on a binding form of dispute resolution, nothing in this clause will prevent either party from commencing legal proceedings at any time.

12.6 Governing Law - The Contract shall be governed by and construed in accordance with the laws of England and Wales. Subject to clause 12.5, all disputes arising out of the Contract shall be subject to the exclusive jurisdiction of the Courts of England and Wales.