



Terms of Business

GCLOUD 14

Release Date: 2024-05-06

1. Overview

1.1. These terms of business set out the basis on which we provide our services and, together with the letter, email or written proposal setting out the scope and fees for our services ("proposal"), form the contract between us.

2. SERVICES

2.1. We will perform the services set out in the proposal with all reasonable skill and care and in the manner described. However, you acknowledge that we rely on you to provide us with accurate and complete information, to notify us of any restrictions or issues that may impact on our services, and to update that information promptly as necessary. Failure to do so may affect our ability to provide the services.

2.2. Any reports we provide will be accurate on the date given. You acknowledge that you may not rely on any draft reports until provided in final form (which may be materially different from the draft) and that future changes in circumstances may reduce or even invalidate the contents.

2.3. Reports are provided for your sole benefit and cannot be used or relied upon for any other purpose or by any other person without our prior written agreement.

3. CONFIDENTIAL INFORMATION

3.1. We will keep your information confidential.

3.2. You agree that we may disclose your confidential information to those of our directors, employees, consultants, professional advisors and sub-contractors who have a need to know subject to the same obligation of confidentiality. You also agree that we may disclose your confidential information to third party advisors or other selected third parties who provide us with professional or administrative services, or where required by law or regulation.

3.3. You agree that the information that we provide to you, including our proposal, is confidential and must not be disclosed to any third party without our prior written consent.

4. DATA PROTECTION

4.1. Our use of personal data is subject to the General Data Protection Regulations (Regulation (EU) 2016/679), the Data Protection Act 2018 (to the extent it applies to the processing of personal data and privacy), our duty of confidentiality and the terms of this contract. You acknowledge that we will act as a data controller and not as a data processor as those terms are defined in the Act.

4.2. We may process any personal data provided to us in the course of providing our services where it is lawful for us to do so, which may include with the consent of the data subject and where we have a legitimate interest unless the interests of the data subject override ours.

4.3. We will take reasonable and appropriate technical and organisational measure to protect against the unlawful or unauthorised processing of your personal data and against its accidental loss, damage or destruction.

5. ELECTRONIC COMMUNICATIONS

5.1. We may communicate with you by email, text messages or through other electronic means.

5.2. While we will take reasonable steps to safeguard the security and confidentiality of information transmitted electronically we cannot guarantee its security and confidentiality. However, we will use additional levels of encryption where we deem it appropriate or at your reasonable request.

5.3. Unless caused by our own negligence, we do not accept liability for any loss or damage caused by any malicious computer code or for misdirection or unauthorised interception of electronic communications.

6. FEES

6.1. The fees for our services are described in our proposal and are exclusive of VAT (where applicable).

6.2. Fee estimates are provided as a guide based on the information available to us at the time; the final fee may therefore differ. [For fixed fee proposals, the final fee may differ if the scope of work changes or any conditions provided in our fee proposal are not met. We will notify you if we believe the scope or a fixed fee for a project changes, and provide you with an updated quote based on our standard rates.]

6.3. You will also be responsible for the costs and expenses of any third party service providers we need to instruct, advise you to instruct or which you ask us to instruct. Such instructions, including cost estimates, will be agreed with you at the relevant time.

6.4. Unless otherwise agreed with you we will issue invoices at the end of each month, though we may still invoice you immediately in respect of any third party expenses incurred.

6.5. You agree that you will pay invoices within 30 days of the date of the invoice ("Due Date"). We may charge interest on any unpaid invoice from the Due Date until the bill is paid in full at the applicable rate pursuant to the Late Payment of Commercial Debts (Interest) Act 1998. We may also suspend or terminate our services and retain your information and documents until our fees, costs and expenses have been paid in full. Furthermore, we may charge you an administration fee of £100 (ex VAT) plus our legal costs on an indemnity basis for any overdue invoices that are referred to a debt recovery agent.

6.6. We reserve the right to review our fee rates periodically. If there is any increase we will notify you in advance.

7. LIABILITY

7.1. Subject to clause 7.4 and unless otherwise agreed in writing with you, our aggregate liability for loss or damage arising directly from a breach of contract or the failure to provide our services is limited to £1,000,000.

7.2. Without prejudice to clause 7.1 and whether or not we were aware in advance, we will not be liable for any consequential, special, indirect or exemplary damages, costs or losses or any damages, costs or losses attributable to lost profits or opportunities.

7.3. You acknowledge and agree that our duty and liability is to you. We do not accept liability or responsibility for the acts or omissions of any experts, consultants or other third parties instructed on your behalf. Furthermore, you agree that any claim may only be made against the company and not individually against its directors, employees, representatives or agents.

7.4. You further agree that liability for the failure of our services will be limited to the resupply of those services without further cost to you or the reimbursement of the cost of those services.

7.5. Our liability for loss or damage may be limited by the extent of your own responsibility for the loss or damage and that of any other party (regardless of your ability or inability to enforce a claim against that other party for any reason). If you have agreed with any third party to any exclusion or limit of liability that affects our ability to claim a contribution against any such person, our liability to you is reduced by the amount for which we would have been entitled to claim from such third party.

7.6. Nothing in this contract shall limit or exclude our liability for:

7.6.1. death or personal injury due to our negligence;

7.6.2. for the fraud or fraudulent misrepresentation of any or our directors, officers or employees; or

7.6.3. for any liability which cannot be limited or excluded by law.

8. TERMINATION

8.1. Either you or we may end this contract:

8.1.1. at any time by not less than [30] days' notice in writing;

8.1.2. on 14 days written notice if the other party commits an irremediable breach of this contract or a breach that is capable of remedy but which is not remedied within 14 days of written notice to do so; or

8.1.3. immediately if the other party is subject to an event of insolvency,

provided that we may retain your information and documents until you have satisfied any outstanding fees, costs and expenses.

8.2. For the purposes of clause 8.1.3, an event of insolvency includes:

8.2.1. an application is made to a court or an order made for the appointment of an administrator or the winding up of that party;

8.2.2. the party is unable pay its debts as and when they fall due within the meaning of s.123 of the Insolvency Act 1986 (save that any reference to £750 in that section shall be replace with £10,000);

8.2.3. a third party is entitled to or does appoint an administrative receiver over the assets of the party;

8.2.4. the party commences negotiations with its creditors with a view to rescheduling any of its debts or proposes to enter into a creditors voluntary arrangement; or

8.2.5. the party otherwise suspends or ceases to carry on all or a substantial part of its business, or an event analogous to any such event arises in any other jurisdiction in which the party trades.

8.3. Subject to clause 8.1, this contract will continue until we cease to provide our services to you or for your benefit. However, we may end this contract early if you fail to pay our invoice(s), provide reasonable instructions or it is otherwise appropriate to do so provided that we notify you in writing in advance.

9. DOCUMENT RETENTION AND USE

9.1. We will retain your information and documents for at least six years or as otherwise required by law. We may require a reasonable charge towards the cost of providing you with copies of your information or documents if requested.

9.2. You agree that we may hold all information and documents in electronic form only, and may destroy any paper copies.

9.3. You acknowledge and agree that we will retain the copyright, and any other intellectual property and proprietary rights in any software, documents and materials that we develop. We hereby grant you a licence to use any software, documents and materials but only for the purposes for which they were provided

10. GENERAL

10.1. We will not be liable to you if we are unable to perform our services as a result of any cause beyond our reasonable control.

10.2. Any changes to these terms of business must be agreed between us and confirmed in writing.

10.3. Nothing in the contract is intended to, or shall be deemed to, establish any partnership or joint venture between us, make either party the agent of the other, or authorise a party to make or enter into any commitments for or on behalf of the other.

10.4. A person who is not a party to this contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term provided this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

10.5. Any failure or delay to exercise any right or remedy provided under this contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. The single or partial exercise of such right or remedy shall not preclude or restrict any further exercise of that or any other right or remedy.

10.6. This contract constitutes the whole agreement and understanding between us and supersedes any previous arrangement or understanding, provided that nothing in this contract shall limit or exclude any liability for fraud or for fraudulent misrepresentation.

10.7. If any provision of this contract is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable for any reason, that provision shall be deemed not to form part of this contract to the extent necessary to give effect to the remainder. If any such part is fundamental to the purpose of this contract, then the parties shall seek to remedy that invalidity as soon as practicable through commercial discussions conducted in good faith.

10.8. Your continued instructions confirm your acceptance of this contract and, unless otherwise specified by us, these terms of business will apply to all future instructions received from you.

10.9. This contract is governed by the laws of England and Wales and the Courts of England and Wales shall have exclusive jurisdiction over any dispute which might arise out of or in connection with it.