

**TERMS AND CONDITIONS OF BUSINESS
OF
ACUITY BUSINESS SOLUTIONS LTD.**

1 DEFINITIONS

The following expressions shall have the following meanings:

- 1.1 “Consultancy” means Acuity Business Solutions of 2/3 Hamlyns Cottages, Shillingford Abbot, Exeter, Devon EX2 9QG;
- 1.2 “Client” means any person who purchases Services from the Consultancy;
- 1.3 “Proposal” means a quotation or other similar document describing the Services;
- 1.4 “Services” means the consultancy services as described in the Proposal;
- 1.5 “Terms and Conditions” means the terms and conditions of supply of Services as set out in this document and any subsequent terms and conditions agreed in writing by the Consultancy;
- 1.6 “Agreement” means the contract between the Consultancy and the Client for the provision of the Services incorporating these Terms and Conditions;
- 1.7 “Intellectual Property Rights” means any patent, trademark, service mark, registered design, copyright, design right, right to extract or exploit information from a database, database rights, know-how, confidential information or process, any application for any of the above, and any other Intellectual Property Right recognised in any part of the world whether or not presently existing or applied for;
- 1.8 “Mediator” is the party nominated to resolve a dispute between the Consultancy and the Client.

2 GENERAL

- 2.1 These Terms and Conditions shall apply to the Agreement for the supply of Services by the Consultancy to the Client and are to be used in conjunction with the RM 1557iii G-Cloud Services III Framework Agreement. In the unlikely event of a dispute, the G-Cloud Services III Framework Terms & Conditions shall apply.
- 2.2 Any variation to these Terms and Conditions must be agreed in writing by the Consultancy.
- 2.3 Nothing in these Terms and Conditions shall prejudice any condition or warranty, express or implied, or any legal remedy to which the Consultancy may be entitled in relation to the Services, by virtue of any statute, law or regulation.

3 PROPOSAL

- 3.1 The Proposal for Services is to be agreed prior to commencement of work.
- 3.2 The Proposal for Services shall remain valid for a period of thirty (30) days.
- 3.3 The Proposal must be accepted by the Client in its entirety.

- 3.4 The Agreement between the Consultancy and the Client, incorporating these Terms and Conditions, shall only come into force when the Consultancy confirms acceptance in writing to the Client.

4 SERVICES AND DELIVERY

- 4.1 The Services are as described in the Proposal.
- 4.2 Any variation to the Services must be agreed by the Consultancy in writing.
- 4.3 The Services shall commence on the start date contained within the Proposal, or as otherwise agreed with the Client, and continue until the end date contained within the Proposal, or as otherwise agreed with the Client, unless terminated according to the terms of this Agreement.
- 4.4 The Services shall be carried out at the place of work of the Consultancy or the Client or any other location that may be agreed between the Consultancy and the Client.
- 4.5 Dates given for the delivery of Services are estimates only and not guaranteed. Time for delivery shall not be of the essence of the Agreement and the Consultancy shall not be held liable for any loss, costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery.

5 PRICE AND PAYMENT

- 5.1 The price for Services is as specified in the Proposal and is exclusive of VAT and any other charges as outlined in the Proposal.
- 5.2 The terms for payment are as specified in the Proposal.
- 5.3 All direct costs and expenses incurred by the Consultancy in connection with the provision of the Services will be re-charged in line with the expenses policy detailed in the Proposal.
- 5.4 The Client must settle all payments for Services within thirty (30) days from the invoice date.
- 5.5 The Consultancy is entitled to recover all reasonable expenses incurred in obtaining payment from the Client where any payment due to the Consultancy is late.
- 5.6 The Client is not entitled to withhold any monies due to the Consultancy.
- 5.7 The Consultancy is entitled to vary the price to take account of:
- 5.7.1 any additional Services requested by the Client which were not included in the original Proposal;
 - 5.7.2 any additional work required to complete the Services which was not anticipated at the time of the Proposal;

and any variation must be intimated to the Client in writing by the Consultancy.

6 CLIENT OBLIGATIONS

- 6.1 The Client agrees to cooperate with the Consultancy and shall provide any support, information and facilities to the Consultancy as may be required.
- 6.2 The Client agrees to refrain from directly or indirectly recruiting any person employed or engaged by the Consultancy for the purpose of providing the Services for a period of six (6) months following completion of the Services.

7 CONSULTANCY OBLIGATIONS

- 7.1 The Consultancy shall supply the Services as specified in the Proposal.
- 7.2 The Consultancy shall perform the Services with reasonable skill and care and to a reasonable standard and in accordance with recognised codes of practice.
- 7.3 The Consultancy shall have the authority to delegate any obligations to other employees or subcontractors but undertakes to notify the Client of any significant changes to personnel.

8 CONFIDENTIALITY

- 8.1 The Consultancy shall keep secret and confidential all information relating to the business or affairs of the Client, the Clients subsidiaries and the Clients customers.
- 8.2 The Consultancy shall ensure that any other parties to whom work has been delegated will sign an appropriate secrecy undertaking.

9 INTELLECTUAL PROPERTY RIGHTS

- 9.1 The Consultancy shall take all reasonable steps to ensure that they, or others to whom work has been delegated, refrain from causing damage to the Intellectual Property Rights belonging to the Client.
- 9.2 The Client shall not distribute any Intellectual Property Rights belonging to the Consultancy to any third party without the written consent of the Consultancy.
- 9.3 Any Intellectual Property Rights created as a result of the Services shall belong to the Consultancy unless provision has been made to the contrary in the Proposal.
- 9.4 The Client and the Consultancy shall not infringe the Intellectual Property Rights of any third party during the term of this Agreement.

10 TERMINATION

- 10.1 The Agreement shall continue until the Services have been provided in terms of the Proposal or any subsequent date as mutually agreed in writing by both parties or until terminated by either party in accordance with these Terms and Conditions.
- 10.2 The Client may terminate the Agreement if the Consultancy fails to comply with any aspect of these Terms and Conditions and this failure continues for a period of four (4) weeks after notification of non-compliance is given.
- 10.3 The Consultancy may terminate the Agreement if the Client has failed to make over any payment due within four (4) weeks of the sum being requested.

- 10.4 Either party may terminate the Agreement by notice in writing to the other if:
- 10.4.1 the other party commits a material breach of these Terms and Conditions and, in the case of a breach capable of being remedied, fails to remedy it within a reasonable time of being given written notice from the other party to do so; or
 - 10.4.2 the other party commits a material breach of these Terms and Conditions which cannot be remedied under any circumstances; or
 - 10.4.3 the other party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect; or
 - 10.4.4 the other party ceases to carry on its business or substantially the whole of its business; or
 - 10.4.5 the other party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets.
- 10.5 In the event of termination the Client must make over to the Consultancy any payment for work done and expenses incurred up to the date of termination.
- 10.6 Any rights to terminate the Agreement shall be without prejudice to any other accrued rights and liabilities of the parties arising in any way out of the Agreement as at the date of termination.

11 WARRANTY

Both parties warrant their authority to enter into this Agreement and have obtained all necessary approvals to do so.

12 LIMITATION OF LIABILITY

- 12.1 The Consultancy shall not be liable under any circumstances to the Client or any third party for any indirect or consequential loss of profit, consequential or other economic loss suffered by the Client howsoever caused, as a result of any negligence, breach of contract, misrepresentation or otherwise.
- 12.2 Nothing in these Terms and Conditions shall exclude or limit the liability of the Consultancy for death or personal injury, however the Consultancy shall not be liable for any direct loss or damage suffered by the Client howsoever caused, as a result of any negligence, breach of contract or otherwise in excess of the sum insured under the professional indemnity insurance policy held by the Consultancy in the insurance year in which the Clients claim is first notified.

13 INDEMNITY

The Client shall indemnify the Consultancy against all claims, costs and expenses which the Consultancy may incur and which arise directly or indirectly from the Clients breach of any of its obligations under these Terms and Conditions.

14 FORCE MAJEURE

Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, breakdown of plant or machinery or shortage or unavailability of raw materials from a natural source of supply, and the party shall be entitled to a reasonable extension of its obligations.

15 ASSIGNMENT

The Client shall not be entitled to assign its rights or obligations or delegate its duties under this Agreement without the prior written consent of the Consultancy.

16 RELATIONSHIP OF PARTIES

Nothing in the Agreement shall be construed as establishing or implying a partnership or joint venture between the parties or suggest that either of the parties are agent for the other.

17 THIRD PARTY RIGHTS

Nothing in these Terms and Conditions intend to or confer any rights on a third party.

18 SEVERANCE

If any term or provision of these Terms and Conditions is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Terms and Conditions had been agreed with the invalid, illegal or unenforceable provision eliminated.

19 WAIVER

The failure by either party to enforce at any time or for any period any one or more of the Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all Terms and Conditions.

20 NOTICES

Any notice to be given by either party to the other may be served by email, fax, personal service or by post to the address of the other party given in the Proposal or such other address as such party may from time to time have communicated to the other in writing, and if sent by email shall unless the contrary is proved be deemed to be received on the day it was sent, if sent by fax shall be deemed to be served on receipt of an error free transmission report, if given by letter shall be deemed to have been served at the time at which the letter was delivered personally or if sent by post shall be deemed to have been delivered in the ordinary course of post.

21 ENTIRE AGREEMENT

These Terms and Conditions supersede any previous agreements, arrangements, documents or other undertakings either written or oral.

22 GOVERNING LAW

These Terms and Conditions shall be governed by and construed in accordance with the law of England and the parties hereby submit to the exclusive jurisdiction of the English courts.