

Entec Si

Standard Terms and Conditions



Table of Contents

Contents

1	DEFINITIONS.....	1
2	THE SERVICES.....	2
3	FEES.....	3
4	VARIATIONS	3
5	INVOICING	4
6	INTELLECTUAL PROPERTY	5
7	TERMINATION	5
8	NOTICES	7
9	SUB-CONTRACTORS	7
10	CLIENT'S RESPONSIBILITIES	8
11	NON SOLICITATION	9
12	LIMITATION OF LIABILITY	9
13	DATA PROTECTION AND PRIVACY.....	10
14	CONFIDENTIALITY.....	13
15	SEVERANCE.....	14
16	GOVERNING LAW	15
17	JURISDICTION	15
18	THIRD PARTY RIGHTS.....	15

1 Definitions

"Client" means the organisation contracting with Entec Si for the provision of Services as stated in the Proposal.

"Change" means amendment to:

- a) the scope, nature, volume or execution of the Services under the Contract; or
- b) any other term or schedule to the Contract including the Proposal.

"Change Control Note" means the written record of any Change agreed or to be agreed by the parties pursuant to the Change Control Procedure.

"Change Control Procedure" means the procedure for agreeing a Change, as set out clause 3.3.

"Commission" means the work to be undertaken by Entec Si for the Client as described in the Proposal.

"Contract" means the contract formed by the acceptance of the Proposal by the Client and the provision of a Purchase Order accepted by Entec Si, and such contract shall be governed by these terms and conditions.

"Deliverables" means those items identified in the Proposal (if any) to be provided by Entec Si to the Client in the course of delivering the Commission.

"Entec Si" means Entec Si Limited; company registration number 3170987; registered office Alpha Works, Alpha Tower, Suffolk Street Queensway, Birmingham B1 1TT.

"Implementation" means any project or programme for which Entec Si is engaged to provide Services.

"Intellectual Property Rights" means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), 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.

"Proposal" means the document provided by Entec Si detailing the proposed work to be provided to the client, including scope, objectives, approach, deliverables, resources and costs. If the proposal is accepted, it constitutes a formal contract between the Client and Entec Si in accordance with these terms.

"Purchase Order" is the written authorisation from the Client to acquire the Services from Entec Si, as described in the Proposal.

"Services" means any activity performed by Entec Si in relation to the Commission.

"Working Days" means Monday to Friday excluding bank or public holidays in England.

- 1.1 Clause, headings shall not affect the interpretation of this agreement.
- 1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.4 A reference to **writing** or **written** includes email but not faxes.
- 1.5 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

2 The Services

- 2.1 By accepting the Proposal and providing a Purchase Order, the Client agrees to be bound by these Entec Si terms and conditions, to the exclusion of all other terms and conditions (including any terms or conditions which the Client purports to apply under any purchase order, specification or other document).
- 2.2 Entec Si shall provide the Services using reasonable skill and care.
- 2.3 In providing the Services, Entec Si shall use its reasonable endeavours to give sound advice based on the information available, but the Client will remain wholly responsible for determining matters of policy or action related to that advice and in the Implementation of such advice.

3 Fees

- 3.1 The fees payable by the Client for the Commission will be charged at Entec Si rates specified in the Proposal.
- 3.2 Entec Si daily fee rates for each individual are calculated on the basis of an eight-hour day, worked on Working Days.
- 3.3 Entec Si shall be entitled to charge the Client for any expenses reasonably incurred by the individuals whom Entec Si 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 Entec Si for the performance of the Services, and for the cost of any materials. All travel and subsistence will be charged on a Time and Materials basis.

4 Variations

- 4.1 Any variations to the contract will be handled in writing through a formal Change Control process as set out in this Clause 4. Change control is the process through which all requests to change the baseline scope of a project, programme or portfolio are captured, evaluated and then approved, rejected or deferred.
- 4.2 Either party may submit a written request for Change to the other party in accordance with this clause 3.3, but no Change will come into effect until a Change Control Note has been signed by the authorised representatives of both parties.
- 4.3 If the Client requests a Change:
 - a) the Client will submit a written request to Entec Si containing as much information as is necessary to enable Entec Si to prepare a Change Control Note; and
 - b) within 10 Working Days of receipt of a request, Entec Si will, unless otherwise agreed in writing by the parties, send to the Client a Change Control Note.
- 4.4 If Entec Si requests a Change, it will send to the Client a Change Control Note.
- 4.5 A Change Control Note must contain sufficient information to enable the Client to assess the Change, including as a minimum:

- a) the title of the Change;
 - b) the originator of the Change and date of request;
 - c) description of the Change;
 - d) details of the effect of the proposed Change on:
 - (i) the Services;
 - (ii) the fee for the Services;
 - e) the date of expiry of validity of the Change Control Note; and
 - f) provision for signature by the Client and Entec Si.
- 4.6 If, following the Client's receipt of a Change Control Note pursuant to clause 4.3 or clause 4.4:
- 4.7 the parties agree the terms of the relevant Change Control Note, they will sign it and that Change Control Note will amend this agreement;
- 4.8 either party does not agree to any term of the Change Control Note, then the other party may refer the disagreement to be dealt with in accordance with clause 5.2.
- 4.9 Each party will bear its own costs in relation to compliance with the Change Control Procedure.

5 Invoicing

- 5.1 Invoices will be submitted to the Client on a monthly basis, after the end of each calendar month, with terms of 28 days net from the date the invoice is submitted. Time for payment shall be of the essence of the Contract. Payments will be made by bank transfer to Entec Si. Where Proposal states that the Commission is fixed price, this will be invoiced in accordance with the Proposal. Entec Si reserve the right to suspend services if invoices are not paid in accordance with agreed terms.
- 5.2 All work completed will be verified by weekly checkpoint reports submitted to the Client. Any disputes regarding the delivery or quality of work or any other dispute in connection with the Contract will be managed to resolution between Entec Si and the Client. In the first instance, the Client should raise the dispute with Entec Si's lead person for the Commission. Entec Si will investigate the dispute and provide a formal response within 5 Working Days.

Entec Si will continue to engage directly with the Client thereafter to resolve the dispute.

- 5.3 If the Client fails to make a payment due to Entec Si under the Contract by the due date, then, without limiting Entec Si's remedies under clause 7, the Client 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 5.3 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%.
- 5.4 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

- 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 Client) shall be owned by Entec Si.
- 6.2 Entec Si grants to the Client, or shall procure the direct grant to the Client of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to copy and modify the Deliverables (excluding materials provided by the Client) for the purpose of receiving and using the Services and the Deliverables in its business.
- 6.3 The Client shall not sub-license, assign or otherwise transfer the rights granted in clause 6.2.
- 6.4 The Client grants Entec Si a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Client to Entec Si for the term of the Contract for the purpose of providing the Services to the Client.

7 Termination

- 7.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving one month's written notice to the other party. Notice commences on the first Working Day after deemed receipt by the receiving party.

- 7.2 Entec Si, without affecting any other right or remedy available to it, may terminate the Contract with immediate effect if the Client:
- a) fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
 - b) commits a breach of any other term of the Contract breach and is not remedied within a period of 14 days after being notified in writing to do so;
 - c) suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed under any law of England unable to pay its debts or as having no reasonable prospect of so doing;
 - d) commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors or the Client or any creditor of the Client institutes an insolvency procedure or debt enforcement procedure of any kind; or
 - e) suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- 7.3 On termination any provision of the contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the contract shall remain in full force and effect.
- 7.4 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 7.5 On termination of the Contract, the Client shall pay all invoices for work performed up to the date of termination and such invoices are immediately due and payable. Entec Si shall use its reasonable endeavours to invoice all work performed up to the date of termination within 30 days of termination but is not bound to do so.
- 7.6 On termination of the Contract, the Client shall pay Entec Si (subject to the duty to minimise its loss) all its reasonable costs and losses that flow from the termination of the Contract including but not limited to, any termination

payments due or contractually payable to its staff or contractors which Entec Si cannot cancel.

8 Notices

8.1 Any notice or other communication given to a party under or in connection with this agreement shall be in writing and shall be:

- a) 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); or
- b) sent by email to the address as each, or one party has advised the other for the receipt of notices and other communications pursuant to this agreement.

8.2 Any notice shall be deemed to have been received:

- a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and
- b) if sent from and to an address in the United Kingdom of Great Britain and Northern Ireland by pre-paid first-class post or other next working day delivery service, at 11.00 am on the second Business Day after posting or at the time recorded by the delivery service if a timed service;
- c) if sent by any other mail service, when received;
- d) if sent by email on a Working Day between 9.00am to 5.00pm, at the time of transmission. If sent at any other time, deemed receipt will be at 9.00am on the next Working Day.

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

8.4 A notice given under the contract is not valid if sent by fax.

9 Sub-contractors

9.1 Entec Si shall be entitled, in its absolute discretion, to appoint sub-contractors to provide all or part of the Services.

- 9.2 If the Client nominates sub-contractors to work with Entec Si in the provision of the Services, the Client shall be responsible for such nominated sub-contractors. Entec Si reserves the right to withdraw co-operation from any nominated sub-contractors if the performance or actions of such persons or organisations prevents Entec Si delivering the Services.

10 Client's Responsibilities

10.1 The Client will:

- a) ensure that its staff, contractors and other suppliers co-operate fully with Entec Si;
- b) ensure that whilst Entec Si employees or sub-contractors are working on the Client's premises, the Client will ensure the health and safety of those people;
- c) ensure that the terms of the Proposal are complete and accurate;
- d) co-operate with Entec Si in all matters relating to the Services;
- e) provide Entec Si, its employees, agents, consultants and subcontractors, with access to the Client's premises, office accommodation and other facilities as reasonably required by Entec Si;
- f) provide Entec Si with such information and materials as Entec Si may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects; and
- g) comply with any additional obligations as set out in the Proposal.

10.2 If the Entec Si's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation ("Client Default**"):**

- a) without limiting or affecting any other right or remedy available to it, Entec Si shall have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations in each case to the extent the Client Default prevents or delays Entec Si's performance of any of its obligations;

- b) Entec Si shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from Entec Si's failure or delay to perform any of its obligations as set out in this clause 10.2; and
- c) the Client shall reimburse Entec Si on written demand for any costs or losses sustained or incurred by Entec Si arising directly or indirectly from the Client Default.

11 Non Solicitation

11.1 The Client shall not, without the prior written consent of Entec Si, at any time from the date of Contract to the expiry of 6 months after the termination or expiry of the Contract, solicit or entice away from Entec Si or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of Entec Si in the provision of the Services.

12 Limitation of Liability

12.1 References to liability in this clause 12 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

12.2 Nothing in this clause 12 shall limit the Client's payment obligations under the Contract.

12.3 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:

- a) death or personal injury caused by negligence;
- b) fraud or fraudulent misrepresentation; and
- c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

12.4 Subject to clause 12.3 Entec Si's total liability to the Client for all loss or damage shall not exceed the fees paid by the Client to Entec Si for the Commission.

12.5 Subject clause 12.2 and clause 12.3, this clause 12.5 sets out the types of loss that are wholly excluded:

- a) loss of profits.

- b) loss of sales or business.
- c) loss of agreements or contracts.
- d) loss of anticipated savings.
- e) loss of use or corruption of software, data or information.
- f) loss of or damage to goodwill; and
- g) indirect or consequential loss.

12.6 The terms implied by sections 3 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

12.7 Unless the Client notifies Entec Si that it intends to make a claim in respect of an event within the notice period, Entec Si shall have no liability for that event. The notice period for an event shall start on the day on which the Client became, or ought reasonably to have become, aware of the event having occurred and shall expire 2 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

12.8 This clause 12 shall survive termination of the Contract.

13 Data Protection and Privacy

13.1 For the purposes of this clause the following definitions shall apply:-

- a) Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures: as defined in the Data Protection Legislation.
- b) Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.
- c) Domestic Law: the law of the United Kingdom or a part of the United Kingdom.
- d) UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

- 13.2 Entec Si is committed to protecting and respecting Clients' and other users' privacy and acting in compliance with the Data Protection Legislation.
- 13.3 The Entec Si Privacy Policy states what should be expected when Entec Si collects personal information. Our Privacy Policy, which includes details of how you can exercise the rights given to you by UK GDPR, can be accessed [here](#).
- 13.4 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 13 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 13.5 The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Controller and Entec Si is the Processor. The Proposal sets out the scope, nature and purpose of processing by Entec Si, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 13.6 Without prejudice to the generality of clause 13.4, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Entec Si and/or lawful collection of the Personal Data by Entec Si on behalf of the Client for the duration and purposes of the Contract.
- 13.7 Without prejudice to the generality of clause 13.4, Entec Si shall, in relation to any Personal Data processed in connection with the performance by Entec Si of its obligations under this Contract:
- a) process that Personal Data only on the documented written instructions of the Client which are set out in the Proposal unless Entec Si is required by Domestic Law to otherwise process that Personal Data. Where Entec Si is relying on Domestic Law as the basis for processing Personal Data, Entec Si shall promptly notify the Client of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits Entec Si from so notifying the Client;
 - b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of

technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

- c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- d) not transfer any Personal Data outside of the UK unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:
 - (i) the Client or Entec Si has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject has enforceable rights and effective legal remedies;
 - (iii) Entec Si complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) Entec Si complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;
- e) assist the Client, at the Client's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- f) notify the Client without undue delay on becoming aware of a Personal Data Breach;
- g) at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the agreement unless required by Domestic Law to store the Personal Data; and
- h) maintain complete and accurate records and information to demonstrate its compliance with this clause 13.

13.8 The Client consents to Entec Si appointing a third-party processor of Personal Data under the Contract. Entec Si confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 13. As between the Client and Entec Si, Entec Si shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 13.8.

13.9 Either party may, at any time on not less than 30 (thirty) days' notice, revise this clause 13 by replacing it with any applicable controller to processor standard clauses or similar terms adopted under the Data Protection Legislation or forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Contract).

14 Confidentiality

14.1 For the purpose of this clause 14, the following terms shall have the meaning stated opposite them:

- **"Confidential Information"** means all proprietary information or information marked as confidential or of a nature that it would normally be considered confidential or not for publication to members of the public, including without limitation, commercial information, financial information, trade secrets processes, designs, customer lists, commercial secrets and know-how;
- **"Recipient"** the party who receives the Confidential Information from the other party, the **"Discloser"**.

14.2 Subject to the provisions herein, both parties agree that:

- a) they shall not use such Confidential Information relating to the Discloser except in connection with the Services nor divulge it to any third party without the prior written permission of the Discloser;
- b) they will during such time that the Services are being performed under a contract and for 3 years thereafter keep confidential the Confidential Information of the Discloser;
- c) each party may disclose the Confidential Information to any of its officers, employees, advisers, subcontractors and contractors that need to know the relevant Confidential Information for the provision of the Services, provided that it procures that each such person to whom the Confidential Information is disclosed complies with the obligations set

out in this clause as if they were a party to such contract made on these terms;

- d) each party may disclose the Confidential Information to the minimum extent required by:
- any order of any court of competent jurisdiction or any regulatory, judicial, governmental or similar body or taxation authority of competent jurisdiction;
 - the rules of any listing authority or stock exchange on which its shares are listed; or
 - the laws or regulations of any country to which its affairs are subject.

14.3 The obligations set out in 14.2 shall not apply, or shall cease to apply, to Confidential Information:

- a) that it is, or becomes generally available to the public other than as a direct or indirect result of the information being disclosed by the Recipient in breach of any contract made on these terms;
- b) was already lawfully known to the Recipient before it was disclosed by the Discloser; or
- c) has been received by the Recipient from a third party source that is not connected with the parties hereto and that such source was not under any obligation of confidence in respect of that information.

15 Severance

15.1 If any provision or part-provision of these terms or any additional terms contained within a contract made under these terms is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

15.2 If one party gives notice to the other of the possibility that any provision or part-provision of these terms or any contract made under these terms is invalid, illegal or unenforceable, the parties shall negotiate in good faith to

amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

16 Governing Law

- 16.1 Any contract made under these terms and any dispute or claim 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.
- 16.2 Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with any contract made under these terms or its subject matter or formation.

17 Jurisdiction

- 17.1 Any contract made under these terms any dispute or claim 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.
- 17.2 Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with any contract made under these terms or its subject matter or formation.

18 Third Party Rights

- 18.1 Any contract made under these terms is made for the benefit of the parties and their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else.
- 18.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under any contract made under these terms are not subject to the consent of any other person.