



Software Consultancy Services

Terms of Business

*THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF
CLAUSE 8 (LIMITATION OF LIABILITY).*

1. Definitions and interpretation

1.1 Definitions:

Bespoke Components:	any Deliverables created by Fuzzy Labs specifically for the Customer which relate exclusively to the Services or solution set out in the Proposal;
Business Day	a day other than a Saturday, Sunday or public holiday in England (and Business Hours means 9:00am-6:00pm on a Business Day);
Charges	the charges payable by the Customer for the supply of the Services in accordance with clause 5;
Commencement Date	has the meaning given in clause 2.1;
Contract	the contract between Fuzzy Labs and the Customer comprising these Terms and an Order accepted in accordance with clause 2.1;
Customer	the organisation purchasing Services from Fuzzy Labs, as set out in the Order;
Customer Default	has the meaning set out in clause 4.2;
Data Protection Legislation	the Data Protection Act 2018, the General Data Protection Regulation (EU) 2016/679 and any other data protection laws applicable in the UK from time to time;
Deliverables	the deliverables to be provided by Fuzzy Labs as part of the Services, comprising Bespoke Components, Library Components, and/or Third Party Components;
Fuzzy Labs	Fuzzy Labs Limited, registered in England and Wales with company number 11762819;
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 or unfair competition, 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;

Library Components: any Deliverables (excluding Third Party Components) which are not created specifically for the Customer or which do not relate exclusively to the solution set out in the Proposal.

Order the Customer's order for Services, comprising a signed acceptance of Fuzzy Labs' Proposal;

Proposal the description or specification of the Services provided by Fuzzy Labs to the Customer;

Restricted Person has the meaning given in clause 12.3;

Services the services, including the Deliverables, supplied by Fuzzy Labs to the Customer as set out in the Proposal;

Terms these terms of business as amended from time to time in accordance with clause 14.6; and

Third Party Components: any Deliverables provided by Fuzzy Labs which are supplied under an open source licence or third party licence (as set out in the Order or notified by Fuzzy Labs to the Customer at any time).

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

1.3 Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.4 A reference to **writing** or **written** includes email.

1.5 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

2. **Basis of Contract**

2.1 The Order is an offer by the Customer to purchase Services in accordance with these Terms, and is accepted only when Fuzzy Labs issues written acceptance of the Order, at which point the Contract shall come into existence (**Commencement Date**).

2.2 These Terms are the only terms that apply to the Contract. Any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing, are excluded.

2.3 Any quotation given by Fuzzy Labs shall not constitute an offer, and is valid only for a period of 20 Business Days from its date of issue.

3. **Supply of Services**

3.1 Fuzzy Labs shall supply the Services to the Customer in accordance with the Proposal in all material respects.

- 3.2 Fuzzy Labs shall use all reasonable endeavours to meet any performance dates set out in the Proposal, but any such dates shall be estimates only. Time is not of the essence for performance of the Services.
- 3.3 Fuzzy Labs may amend the Proposal 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. Fuzzy Labs shall notify the Customer of any amendment to the Proposal.
- 3.4 Fuzzy Labs warrants to the Customer that the Services will be provided using reasonable care and skill.

4. **Customer's Obligations**

4.1 The Customer shall:

- 4.1.1 ensure that the terms of the Order (and any information it provides in the Proposal) are complete and accurate;
- 4.1.2 co-operate with Fuzzy Labs in all matters relating to the Services, including providing access to the Customer's premises, systems and facilities, and providing such information and materials, as Fuzzy Labs may reasonably require in order to perform the Services; and
- 4.1.3 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start.

4.2 If Fuzzy Labs' performance of the Services is prevented or delayed by any act or omission by the Customer (**Customer Default**):

- 4.2.1 Fuzzy Labs may suspend performance of the Services until the Customer remedies the Customer Default;
- 4.2.2 Fuzzy Labs shall not be liable for any failure or delay to perform any of its obligations under the Contract, or any costs or losses incurred by the Customer, arising directly or indirectly from the Customer Default; and
- 4.2.3 the Customer shall reimburse Fuzzy Labs for any costs or losses incurred by Fuzzy Labs arising directly or indirectly from the Customer Default.

5. **Charges and Payment**

5.1 Unless otherwise specified in the Order, the Charges for the Services shall be calculated on a time and materials basis:

- 5.1.1 the Charges shall be calculated in accordance with Fuzzy Labs' daily and/or hourly fee rates, as set out in the Order;
- 5.1.2 Fuzzy Labs' daily fee rates for each individual are calculated on the basis of an eight-hour day worked during Business Hours on Business Days;
- 5.1.3 Fuzzy Labs shall be entitled to charge an overtime rate of 150% of the usual fee rate where the Customer requests any work to be carried out on the Services outside Business Hours; and
- 5.1.4 Fuzzy Labs shall be entitled to charge the Customer for any expenses reasonably incurred in connection with the Services including travel, accommodation, subsistence, the cost of services provided by third parties and required by Fuzzy Labs for the performance

of the Services and the cost of any materials (provided that such expenses shall be agreed in writing with the Customer in advance).

5.2 Fuzzy Labs reserves the right:

5.2.1 to increase its daily and/or hourly fee rates on an annual basis (with effect from each anniversary of the Commencement Date), provided that such increase shall not exceed 10%; and

5.2.2 to increase the Charges set out in an Order (or any quotation) where:

5.2.2.1 the Charges were based wholly or partly on incorrect or incomplete information provided by the Customer;

5.2.2.2 the Customer fails to provide any information, materials, facilities or other dependencies within agreed timescales; and/or

5.2.2.3 any equipment provided by the Client fails to operate correctly.

5.3 Unless otherwise specified in the Order, Fuzzy Labs may invoice the Customer monthly in arrear.

5.4 The Customer shall pay each invoice submitted by Fuzzy Labs in full and cleared funds within 20 Business Days of the date of the invoice. Time for payment shall be of the essence of the Contract.

5.5 All amounts payable by the Customer under the Contract are exclusive of value added tax (VAT). The Customer shall pay any applicable VAT in addition to and at the same time as payment of such amounts, subject to receipt of a valid VAT invoice from Fuzzy Labs.

5.6 If the Customer fails to make a payment due to Fuzzy Labs by the due date, then, without limiting Fuzzy Labs' remedies under clause 9, 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 clause 5.6 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%.

5.7 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 Rights

6.1 Library Components.

6.1.1 All Intellectual Property Rights in the Library Components are and shall be and remain owned by Fuzzy Labs (or its licensors, as the case may be). Fuzzy Labs reserves the right to grant a licence to use such Library Components to any other party or parties.

6.1.2 Fuzzy Labs grants to the Customer a fully paid-up, worldwide, non-exclusive, royalty-free, perpetual and irrevocable licence (without the right to sub-licence) to use, copy and modify the Library Components for the purpose of receiving and using the Services and the Deliverables in its business.

6.2 Third Party Components.

6.2.1 All Intellectual Property Rights in the Third Party Components are and shall be and remain owned by the applicable third party licensor (if any).

6.2.2 The use by the Customer of any Third Party Components provided under the Contract shall be subject to the applicable third party licence or open source licence, of which

Fuzzy Labs shall notify the Customer prior to (or at the same time as) providing such Third Party Components.

6.3 Bespoke Components.

- 6.3.1 All Intellectual Property Rights in the Bespoke Components shall, at the Commencement Date or (if later) on creation of the rights, vest in the Customer.
- 6.3.2 Fuzzy Labs hereby assigns (by way of present and, where appropriate, future assignment) all Intellectual Property Rights in the Bespoke Components with full title guarantee to the Customer.
- 6.3.3 The Customer grants Fuzzy Labs an unlimited, fully paid-up, non-exclusive, royalty-free, non-transferable licence to use the Bespoke Components for the purposes of performing its obligations under the Contract.

7. Data Protection

- 7.1 Both parties will (and will procure that any of their respective directors, officers, employees, permitted agents, licensees and contractors will) comply with all applicable requirements of the Data Protection Legislation. These Terms are in addition to, and do not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 7.2 In respect of Personal Data, the Customer is the controller and Fuzzy Labs is a processor acting on behalf of the Customer. The processing of Personal Data by Fuzzy Labs permitted under these Terms shall be as follows:
 - 7.2.1 **Duration:** the duration of the Contract;
 - 7.2.2 **Subject matter and purpose:** the provision of the Services;
 - 7.2.3 **Nature:** as set out in the Order; and
 - 7.2.4 **Types of personal data and categories of data subject:** as set out in the Order.
- 7.3 The Customer shall:
 - 7.3.1 ensure that it has in place all necessary appropriate legal bases, consents (if required), notices and policies to enable the lawful transfer of Personal Data to Fuzzy Labs;
 - 7.3.2 not instruct Fuzzy Labs to undertake any processing activity that does not comply with, or which would result in either party breaching its obligations under, the Data Protection Legislation;
 - 7.3.3 ensure that all Personal Data transferred to Fuzzy Labs by or on behalf of the Customer shall be accurate and up-to-date;
 - 7.3.4 not knowingly or negligently do or omit to do anything which places Fuzzy Labs in breach of its obligations under the Data Protection Legislation.
- 7.4 Fuzzy Labs shall:
 - 7.4.1 process Personal Data only on the written instructions of the Customer save where otherwise required by law (in which case Fuzzy Labs will notify the Customer of such requirement prior to such processing, unless prohibited from doing so by such law);
 - 7.4.2 transfer Personal Data outside the EEA only where the European Commission has adopted a decision that the recipient country ensures an adequate level of protection,

where Fuzzy Labs provides appropriate safeguards and ensures the availability for data subjects of enforceable data subject rights and effective legal remedies (in accordance with the requirements of the Data Protection Legislation) or otherwise where the transfer is permitted under the Data Protection Legislation (including where the transfer falls within the specific derogations set out in Article 49 GDPR);

- 7.4.3 obtain a commitment of confidentiality from any person it allows to process Personal Data, and engage third parties to process Personal Data on its behalf only with the prior consent of the Customer and on contractual terms no less restrictive than this clause 7;
- 7.4.4 implement appropriate technical and organisational measures to (a) ensure an appropriate level of security of Personal Data; and (b) assist the Customer to respond to requests for exercising data subjects' rights;
- 7.4.5 assist the Customer to comply with its obligations in respect of any Personal Data breach (including notification of the same to the supervisory authority and/or data subjects);
- 7.4.6 make available to the Customer all information reasonably necessary to demonstrate compliance with this clause 7; and
- 7.4.7 on termination or expiry of the Contract (however caused), at the Customer's choice and cost, delete or return to the Customer all Personal Data and copies thereof that it has within its power, ownership or control.

- 7.5 Each party (the **first party**) shall indemnify the other party (to the fullest extent permitted by law) against any claim, loss, damage, expense or fine incurred by the other party arising under or in connection with the Data Protection Legislation and caused by any action or omission of the first party (or its directors, officers, employees, permitted agents, licensees and contractors) unless such action or omission is specifically requested by the other party.

8. **Limitation of Liability**

- 8.1 The restrictions on liability in this clause 8 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 8.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
 - 8.2.1 death or personal injury caused by negligence;
 - 8.2.2 fraud or fraudulent misrepresentation; and
 - 8.2.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 8.3 Neither party shall be liable under any circumstances for any:
 - 8.3.1 loss of profits, anticipated savings, sales, business, agreements or contracts;
 - 8.3.2 loss of use or corruption of software, data or information;
 - 8.3.3 loss of or damage to goodwill; and/or
 - 8.3.4 indirect or consequential loss.

8.4 Subject to clauses 8.2 and 8.3, Fuzzy Labs' total liability to the Customer shall not exceed the greater of £25,000 (twenty five thousand pounds) and 100% (one hundred percent) of the total Charges paid or payable under the Contract.

8.5 Fuzzy Labs has given commitments in clause 3 as to the Services' quality and compliance with the Proposal. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

9. Termination

9.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party 2 (two) weeks' written notice.

9.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

9.2.1 the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 20 Business Days of that party being notified in writing to do so;

9.2.2 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business, or takes any step or action in connection with its entering administration, provisional liquidation 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

9.2.3 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

9.3 Without affecting any other right or remedy available to it, Fuzzy Labs may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

9.4 Without affecting any other right or remedy available to it, Fuzzy Labs may suspend the supply of Services under the Contract if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 9.2.2 or clause 9.2.3, or Fuzzy Labs reasonably believes that the Customer is about to become subject to any of them.

10. Consequences of Termination

10.1 On termination or expiry of the Contract (however caused), the Customer shall immediately pay to Fuzzy Labs all of Fuzzy Labs' outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Fuzzy Labs shall submit an invoice, which shall be payable by the Customer immediately on receipt.

10.2 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.

10.3 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.

11. **Confidentiality**

- 11.1 Each party undertakes that it shall not at any time during the Contract, and for a period of three years after termination or expiry of the Contract (however caused), disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.2.
- 11.2 Each party may disclose the other party's confidential information:
- 11.2.1 to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11; and
- 11.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 11.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

12. **Non-solicitation**

- 12.1 In order to protect the legitimate business interests of Fuzzy Labs, the Customer covenants with Fuzzy Labs that it shall not, except with Fuzzy Labs' prior written consent, solicit or entice away (or attempt to solicit or entice away) from the employment or service of Fuzzy Labs the services of any Restricted Person other than by means of a national advertising campaign open to all-comers and not specifically targeted at such staff of Fuzzy Labs.
- 12.2 The Customer shall be bound by the covenant set out in clause 12.1 during the term of this agreement, and for a period of 12 months after termination or expiry of this agreement (however caused).
- 12.3 For the purposes of this clause 12, a **Restricted Person** shall mean any firm, company or person employed or engaged by Fuzzy Labs during the term of this agreement, who has been engaged in the provision of the Services or the management of this agreement either as principal, agent, employee, independent contractor or in any other form of employment or engagement.

13. **Notices**

- 13.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office or principal place of business, or sent by email to such address as the recipient may nominate from time to time.
- 13.2 Any notice shall be deemed to have been received:
- 13.2.1 if delivered by hand, at the time the notice is left at the proper address;
- 13.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9:00am on the second Business Day after posting; and
- 13.2.3 if sent by email, at the time of transmission (or, if this time falls outside Business Hours, when Business Hours resume).

14. General

- 14.1 Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- 14.2 Fuzzy Labs may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- 14.3 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Fuzzy Labs.
- 14.4 The Contract is the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 14.5 Each party acknowledges that in entering into the Contract 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 the Contract.
- 14.6 Except as set out in these Terms, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 14.7 A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 14.8 If any provision or part-provision of the Contract 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 14.8 shall not affect the validity and enforceability of the rest of the Contract.
- 14.9 The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 14.10 The Contract, and any dispute or claim (including non-contractual disputes or claims) 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 and Wales.
- 14.11 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.