



ITSUS Consulting

G-Cloud 15 Terms & Conditions

Commercial-in-Confidence



TERMS & CONDITIONS FOR THE SUPPLY OF SERVICES

1. Interpretation

1.1 The definitions and rules of interpretation in this clause apply in these terms and conditions.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 2.2.

Contract: the Customer's purchase order and the Supplier's acceptance of it under condition 3.

Customer: the person, firm or company who purchases Services from the Supplier.

Customer's Project Manager: the Customer's manager for the Project appointed in accordance with condition 5.1(a).

Deliverables: as defined in the Scope of Work (including media) but, unless agreed otherwise, excluding all of the Supplier's internal drafts and materials and any documentation or information produced in line with the Supplier's quality control processes and procedures.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Pre-existing Materials: materials which existed before the commencement of the Project.

Project: the project as described in the Scope of Work.

Project Milestone: a date by which a part of the Project is estimated to be completed, as set out in the Scope of Work.

Scope of Work: the detailed plan describing the Project and setting out the estimated timetable (including Project Milestones) and responsibilities for the provision of the Services by the Supplier in accordance with the Contract.

Services: the services to be provided by the Supplier under the Contract and as set out in the Scope of Work.

Supplier: ITSUS Consulting Limited, a company registered in England and Wales under company number 6628075.

Supplier's Project Manager: the Supplier's manager for the Project, appointed in accordance with condition 4.3. NVAT: value added tax chargeable under English law for the time being and any similar additional tax.

1.2 Construction

In these Conditions, the following rules apply:

- a) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- b) A reference to a party includes its personal representatives, successors or permitted assigns.
- c) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- d) Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- e) A reference to writing or written includes faxes and e-mails.

2. Application of Conditions

2.1 These Conditions shall apply to and be incorporated in the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing notwithstanding any explicit or implied terms that the Customer seeks to impose to exclude these Conditions and/or to ensure that their terms prevail over these Conditions.

2.2 Any variation of the Contract shall be in writing and signed by or on behalf of the parties.

3. Effect of Purchase Order

The Customer's purchase order constitutes an offer by the Customer to purchase the Services specified in it on these Conditions; accordingly, the execution and return of the acknowledgement copy of the purchase order form by the Supplier, or the Supplier's commencement or execution of work pursuant to the purchase order, shall establish a contract for the supply and purchase of those Services on these Conditions. The Customer's standard terms and conditions (if any) attached to, enclosed with, or referred to in, the purchase order shall not govern the Contract.

4. Supplier Obligations

4.1 The Supplier shall use reasonable endeavours to manage and complete the Project, and to deliver the Deliverables to the Customer, in accordance in all material respects with the Scope of Work.

4.2 The Supplier shall use reasonable endeavours to meet the performance dates specified in the Scope of Work, but any such dates shall be estimates only and time shall not be of the essence of the Contract.

4.3 The Supplier shall appoint the Supplier's Project Manager who shall have authority to contractually bind the Supplier on all matters relating to the Project. The Supplier shall use reasonable endeavours to ensure that the same person acts as Supplier's Project Manager throughout the Project, but may replace them from time to time where reasonably necessary in the interests of the Supplier's business.

5. Customer Obligations

5.1 The Customer shall:

a) co-operate with the Supplier in all matters relating to the Project and appoint the Customer's Project Manager, who shall have the authority to contractually bind the Customer on matters relating to the Project;

b) provide in a timely manner such access to the Customer's premises and data, and such office accommodation and other facilities, as is requested by the Supplier;

c) provide in a timely manner such information as the Supplier may request, and ensure that such information is accurate in all material respects; and

d) be responsible (at its own cost) for preparing the relevant premises for the supply of the Services.

5.2 If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer or the Customer's agents, sub-contractors or employees, the Customer shall be liable to pay to the Supplier on demand all reasonable costs, charges or losses sustained or incurred by it (including, without limitation, any direct or indirect consequential losses, loss of profit and loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere), subject to the Supplier confirming such costs, charges and losses to the Customer in writing.

5.3 The Customer shall not, without the prior written consent of the Supplier, at any time from the date of the Contract to the expiry of twelve months after the completion of the Services, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of the Supplier.

5.4 Any consent given by the Supplier in accordance with condition 5.3 shall be subject to the Customer paying to the Supplier a sum equivalent to 20% of the then current annual remuneration of the Supplier's employee or sub-contractor or, if higher, 20% of the annual remuneration to be paid by the Customer to such employee or sub-contractor.

6. Change Control

6.1 The Customer's Project Manager and the Supplier's Project Manager shall meet in person or via video or conference call at least once every month to discuss matters relating to the Project. If either party wishes to change the scope of the Services, it shall submit details of the requested change to the other in writing.

6.2 If either party requests a change to the scope or execution of the Services, the Supplier shall, within a reasonable time, provide a written estimate to the Customer of:

a) the likely time required to implement the change;

6.3 If the Supplier requests a change to the scope of the Services, the Customer shall not unreasonably withhold or delay consent to it.

6.4 If the Customer wishes the Supplier to proceed with the change, the Supplier has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its charges, the Scope of Work and any other relevant terms of the Contract to take account of the change.

7. Charges and Payment

7.1 Condition 7.2 shall apply if the Services are to be provided on a time-and-materials basis. Condition 7.3 shall apply if the Services are to be provided for a fixed price. The remainder of this condition 7 shall apply in either case.

7.2 Where the Services are provided on a time-and-materials basis:

a) the charges payable for the Services shall be calculated in accordance with the Supplier's quoted daily fee rates as amended from time to time;

b) the Supplier's standard daily fee rates are calculated on the basis of an eight-hour day (including 30 minutes for lunch) worked between 09:00 and 17:00 on weekdays (excluding weekends and public holidays);

c) the Supplier shall be entitled to charge at an overtime rate of 150% of the normal rate for part days and for time worked by members of the project team outside the hours referred to in condition 7.2(b) on a pro-rata basis;

d) the Supplier shall ensure that all members of the project team complete time sheets recording time spent on the Project, and the Supplier shall use such time sheets to calculate the charges covered by each monthly invoice referred to in condition 7.2(e); and

e) the Supplier shall invoice the Customer monthly in arrears for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this condition 7.

7.3 Where the Services are provided for a fixed price the total price for the Services shall be the amount set out in the Scope of Work. The total price shall be paid to the Supplier (without deduction or set-off) in instalments as set out in the Scope of Work on its achieving the corresponding Project Milestone. On achieving a Project Milestone, the Supplier shall invoice the Customer for the charges that are then payable, together with expenses and the costs of materials (and VAT, where appropriate), calculated as provided in condition 7.4.

7.4 Any fixed price contained in the Scope of Work excludes (unless stated otherwise in the Scope of Work):

a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the project team in connection with the Services, and the cost of any materials or services reasonably and properly provided by third parties required by the Supplier for the supply of the Services. Such expenses, materials and third party services shall be invoiced by the Supplier;

b) the cost of hiring specialist equipment (which shall be hired at the sole discretion of the Supplier) for the purpose of carrying out the Services; and

c) VAT, which the Supplier shall add to its invoices at the appropriate rate.

7.5 The Customer shall pay each invoice submitted to it by the Supplier in full, and in cleared funds, within 30 days of receipt.

7.6 Without prejudice to any other right or remedy that the Supplier may have, if the Customer fails to pay the Supplier on the due date the Supplier may:

a) charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of HSBC Bank plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment. The Supplier may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and

b) suspend all Services until payment has been made in full.

b) any variations to the Supplier's charges arising from the change;

c) the likely effect of the change on the Scope of Work; and

d) any other impact of the change on the terms of the Contract.

7.7 Time for payment shall be of the essence of the Contract.

7.8 All payments payable to the Supplier under the Contract shall become due immediately on termination of the Contract, despite any other provision. The Customer acknowledges that if it terminates the Contract, the Supplier may issue an invoice in respect of work done to the date of termination. This condition is without prejudice to any other rights and remedies which the Supplier may have, including but not limited to the right to claim for interest under the law, or any such right under the Contract.

7.9 The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer.

8. Intellectual Property Rights

8.1 All Intellectual Property Rights and all other rights in the Deliverables shall be owned by the Supplier. The Supplier hereby licenses all such rights to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services as is envisaged by the parties. If the Supplier terminates the Contract under condition 11.1, this licence will automatically terminate.

8.2 The Customer acknowledges that the Customer's use of rights in Pre-existing Materials is conditional on the Supplier obtaining a written end-user licence (or sub-licence) of such rights from the relevant licensor or licensors on such terms as will entitle the Supplier to license such rights to the Customer.

9. Confidentiality and Supplier's property

9.1 The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by the Supplier or its agents, and any other confidential information concerning the Supplier's business or its products which the Customer may obtain. The Customer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know it for the purpose of discharging the Customer's obligations to the Supplier, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Customer.

9.2 All materials, equipment and tools, drawings, specifications and data supplied by the Supplier to the Customer shall at all times be and remain the exclusive property of the Supplier, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Supplier, and shall not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation.

9.3 This condition 9 shall survive termination of the Contract, however arising.

10. Limitation of Liability

10.1 The following provisions set out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

- a) any breach of the Contract;
- b) any use made by the Customer of the Services, the Deliverables or any part of them; and
- c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

10.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

10.3 Nothing in these Conditions excludes the liability of the Supplier:

- a) for death or personal injury caused by the Supplier's negligence; or
- b) for fraud or fraudulent misrepresentation.

10.4 Subject to condition 10.2 and condition 10.3:

a) the Supplier shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for:

- I. loss of profits; or
- II. loss of business; or

- III. depletion of goodwill or similar losses; or
 - IV. loss of anticipated savings; or
 - V. loss of goods; or
 - VI. loss of contract; or
 - VII. loss of use; or
 - VIII. loss or corruption of data or information; or
 - IX. any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- b) the Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price paid for the Services.

11. Termination

11.1 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Contract without liability to the other if:

- a) the other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
- b) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the other party; or
- c) an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
- d) a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or
- e) the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way, or becomes bankrupt; or
- f) the other party ceases, or threatens to cease, to trade; or
- g) there is a change of control of the other party; or
- h) the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

11.2 Termination of the Contract, however arising, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive, or implicitly surviving, termination.

12. Force Majeure

The Supplier shall have no liability to the Customer under the Contract if it is prevented from, or delayed in, performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service; internet provider or transport network, computer failure, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

13. Waiver

13.1 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

13.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

14. Severance

14.1 If any provision of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

14.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

15. Status of Pre-Contractual Statements

Each of the parties acknowledges and agrees that in entering into the Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the subject matter of this agreement other than as expressly set out in the Contract.

16. Assignment

16.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

16.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

17. No Partnership or Agency

Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

18. Third party rights

The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.

19. Notices

Any notice under the Contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address as set out in the Contract, or such other address as may have been notified by that party for such purposes, or sent by fax to the other party's fax number as set out in the Contract. A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not during business hours, at 9.00 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

20. Governing Law and Jurisdiction

20.1 The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the laws of England and Wales.

20.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).