

Terms & Conditions

1 Interpretation

1.1 The following definitions apply in these terms and conditions ('Conditions'):

'Agreement'	Summary of the Services to be performed, costs and any relevant dates including reference to the relevant proposal and/or quotation. These terms and conditions form part of that agreement;
'Felber'	Felber Consulting Limited;
'Contract'	any contract between Felber and the Client for the supply of Services;
'Client'	the person, firm or company who purchases Services from Felber;
'Intellectual Property Rights'	means and includes all copyright and selected rights, trademarks, database rights and any other intellectual property rights of any description (whether registered and including all applications for or renewals or extensions of such rights);
'Price'	the price (or charge rates) for the Services specified in the Contract or otherwise agreed in writing between Felber and the Client;
'Proposal'	any written proposal of Felber to the Client for the supply of Services;
'Services'	the Services to be provided by Felber to the Client under the Contract incorporating any relevant Proposal which may include any of the Services mentioned in clause 2;
'Software'	includes (without limitation) web-based application, PC or Apple application and mobile application software.

1.2 The following rules of interpretation apply in these conditions:

- 1.2.1 'Person' includes a natural person, corporate or unincorporated body.
- 1.2.2 words in the singular include the plural and vice versa.
- 1.2.3 references to writing or written include e-mail.

2 Services

The range of Services which Felber offers include:

- Support of cloud-enabled business transformation programmes.
- Support of the implementation of Kantata SX and associated systems and software.
- An operations management/support service for Kantata SX PSA undertaking the management, administration and support of the system on behalf of the client.
- Support for existing Kantata SX PSA users to ensure the system meets their needs and delivers ROI as they grow or mature, and develop their own capabilities, products and services.

3 Contract

3.1 These Conditions shall:

- 3.1.1 apply to and be incorporated into the Contract, and

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3.1.2 prevail over any inconsistent terms or conditions contained or referred to in the Proposal or notified by the Client.

3.2 The Client's purchase order or acceptance of the Proposal or signed Agreement (or other quotation for the supply of Services by Felber) constitutes an offer to purchase the Services specified in the Proposal (or other such quotation). No such offer shall be deemed accepted by Felber unless expressly acknowledged in writing.

3.3 Unless otherwise agreed by Felber in writing:

3.3.1 all proposals or quotations of Felber are given on the basis that no Contract shall come into existence except in accordance with Condition 3.2 (or by Felber commencing provision of the Services), and

3.3.2 any proposal or quotation is valid for a period of 90 days from its date (unless previously withdrawn).

4 Felber's obligation

4.1 Felber shall use reasonable endeavours to perform the Services with reasonable skill and care and on or before any completion date agreed for performance (or, if none, within a reasonable time) but any such date shall be an estimate only and time shall not be of the essence of the Contract.

4.2 Felber shall be entitled (at its discretion) to suspend or cease performance of the Services (or any of them) if the Client is in breach of any of its obligations under the Contract.

4.3 Felber shall be entitled to assign the benefit of the Contract or to sub-contract the performance of all or any of the Service subject to the consent of the Client, not to be unreasonably withheld or delayed.

5 Client's obligations

5.1 The Client shall provide Felber (in a timely manner and at no charge) with such co-operation, access to its data files, personnel and other information and facilities as it may properly and reasonably require in connection with the performance of the Services.

5.2 The Client is responsible for ensuring that it owns or is appropriately licensed to use (or to authorise Felber's use of) all Intellectual Property Rights in documents, materials and Software made available to Felber in connection with the provision of the Services.

5.3 The Client shall be liable to pay to Felber all reasonable costs, charges or losses sustained or incurred by Felber (including any direct, indirect, or consequential loss or loss of profit) arising directly or indirectly from the Client's negligence, default or delay in the performance of any of its obligations under the Contract.

5.4 The Client shall not (without Felber's prior written consent) at any time during the period of six months immediately following the date on which Felber is entitled to payment in full of the Price solicit or entice away from Felber or employ or attempt to employ any person who is, or has been, engaged as an employee or (directly or indirectly) as a sub-contractor of Felber in the provision of the Services.

5.5 The Client shall be entitled (at its discretion) to suspend or terminate performance of the Services (or any of them) if Felber is in breach of its obligations under the Contract.

6 Change control

6.1 If either party wishes at any time to change the scope, or specification or any other aspect of the Services it shall submit such a request in writing. All consequential variations to the Contract (including, without limitation, to the Price, specification and time for performance) are agreed and recorded in writing to the satisfaction of Felber.

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6.3 Except as provided in Condition 6.1, no variation to the Contract shall be valid unless it is agreed by Felber, in writing, and signed by or on behalf of Felber and the Client.

7 Price and payment

7.1 Conditions 7.2 and 7.4 apply to Services provided by Felber which are charged on a measured basis and Conditions 7.3 and 7.4 apply to Services charged at a fixed price. The remaining provisions of this Condition 7 apply to Services charged on either basis.

7.2 Where Services are charged on a measured basis (measured as to time and, if applicable, materials) the charge shall be calculated in accordance with Felber's standard daily fee rates and Felber shall be entitled to invoice for Services monthly in arrears (or at such other intervals as may be stipulated or otherwise agreed in writing).

7.3 Where Services are charged at a fixed price, the total price for the Services shall be the amount (if any) set out in the Contract. Felber shall be entitled to invoice in full for the Services in accordance with the milestone provisions of the Contract.

7.4 The Price:

7.4.1 assumes that all information, dates and design input and other co-operation and facilities to be provided by the Client to Felber in connection with the Services is full, complete and accurate and provided not later than any date specified by Felber, and

7.4.2 excludes (where applicable) all accommodation, subsistence, travelling and ancillary expenses reasonably incurred by or on behalf of Felber (or any sub-contractor engaged by Felber) in connection with the Services which Felber shall be entitled to invoice as and when incurred.

7.5 The Price is stated exclusive of VAT and all invoices of Felber are (unless otherwise stated in the Contract) payable in full and in cleared funds without set or other deductions within 30 days of the date of invoice. Time for payment of Felber's invoices shall be of the essence of the Contract.

7.6 Without prejudice to any other right or remedy it may have, if the Client fails to pay any invoice of Felber on the due date, Felber shall be entitled to charge interest on such sum from the due date for payment at the annual rate of 5% above the base lending rate of Lloyds TSB Bank plc, accruing on a daily basis and compounded monthly until payment is made whether before or after judgement. Felber may at its discretion elect to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

7.7 Where any party disputes any sum to be paid, then a payment equal to the sum not in dispute shall be paid. The dispute as to the sum that remains unpaid shall be considered by the parties, and if necessary, shall be referred to an independent third party. Interest due on any sums in dispute shall not accrue until the earlier of 30 days after resolution of the dispute between the parties or receipt of the decision of the independent third party.

8 Intellectual Property Rights

8.1 The ownership of Intellectual Property Rights in all materials originated by Felber specifically in connection with the Services vests jointly in the Client and Felber. For the avoidance of doubt, these rights do not extend to Felber's existing methods, designs and collateral.

8.2 Felber acknowledges that, if it sub-contracts the provision of any element of the Services, the Intellectual Property Rights attaching to such element will vest as set out at 8.1 above.

8.4 The Client shall keep in strict confidence all technical or commercial know-how and other valuable or confidential information disclosed to it by Felber while providing the Services.

8.5 For the avoidance of doubt, the Client retains ownership of all Intellectual Property Rights in all documents and images provided by the Client in connection with or arising out of the Contract.

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9 Liability

- 9.1 This Condition 9 sets out the entire financial liability of Felber (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Client in respect of:
- 9.1.1 any breach of the Contract;
 - 9.1.2 any use made by the Client of the Services or any part of them; and
 - 9.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 9.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 9.3 Nothing in these Conditions limits or excludes the liability of Felber:
- 9.3.1 for death or personal injury resulting from negligence; or
 - 9.3.2 for any damage or liability incurred by the Client because of fraud or fraudulent misrepresentation by the Supplier.
- 9.4 Subject to condition 9.2 and 9.3:
- 9.4.1 the Client shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for loss of profits or business or anticipated savings, depletion of goodwill and/or similar losses, loss of contract, loss of use or loss of corruption of data or information or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses, and
 - 9.4.2 Felber'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 in respect of which the liability arose.

10 Termination

- 10.1 Without prejudice to any other rights or remedies which it may have, either party may terminate the Contract without liability to the other immediately on giving notice to the other if:
- 10.1.1 the party receiving such notice commits a material breach of any of the terms of the Contract and (if such breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
 - 10.1.2 an order is made, or a resolution is passed for the winding up of that party or an administrator or receiver is appointed to manage the affairs, business or property of that party or that party makes any arrangement or composition with its creditors, or the party giving notice reasonably concludes that any of such events are likely to occur.
- 10.2 On termination of the Contract for any reason the Client shall immediately pay to Felber all the company's outstanding unpaid invoices and interest and in respect of Services supplied but for which no invoice has been submitted, Felber may submit an invoice, which shall be payable immediately on receipt.
- 10.3 Either party may terminate this Contract at any time on three months' notice in writing to the other party, to the address given in this Contract or as otherwise notified.

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11 General provisions

11.1 Felber shall have no liability to the Client 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.

11.2 If any provision (or part of a provision) of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force and if any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, that provision will apply with whatever modification is necessary to make it valid, enforceable and legal.

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

11.4 Notice given under the Contract shall be in writing, sent for the attention of the person, **and to the correspondence address given in the Contract** (or such other address or person as the relevant party may notify to the other party) and shall be delivered personally, or sent by pre-paid, first-class post or recorded delivery. A notice is deemed to have been received, (i) if delivered personally, at the time of delivery, (ii) in the case of pre-paid first class post or recorded delivery, 48 hours from the date of posting and, (iii) if the deemed receipt under this Condition 11.4 is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is a business day), at 9.00 am on the first business day following delivery. To prove service, it is sufficient to prove that in the case of post, that the envelope containing the notice was properly addressed and posted.

11.5 These terms and conditions in combination with one or more schedules and the statement of service form the agreement between Felber and the Client.