

TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

The attention of the Customer is particularly drawn to the provisions of clause 8.

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Charges: the charges payable by the Customer for the supply of the Services in accordance with clause 5.

Commencement Date: has the meaning set out in clause 2.1.

Conditions: these terms and conditions as amended from time to time in accordance with clause 11.8.

Consultant: Performance Projects Limited (registered in England and Wales with company number 07273226).

Consultant Materials: has the meaning set out in clause 4.1(g).

Contract: the contract between the Consultant and the Customer for the supply of Services in accordance with these Conditions.

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

Deliverables: the deliverables specified in the Specification produced by the Consultant for the Customer.

Goods: means any goods supplied under the Contract provision of which shall be subject to the terms of Supply of Good Schedule.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or 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.

Services: the services, including the Deliverables, supplied by the Consultant to the Customer as set out in the Specification.

Specification: the description or specification for the Services provided in writing by the Consultant to the Customer.

1.2 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. BASIS OF CONTRACT

- 2.1 An order from a Customer shall only be deemed to be accepted when the Consultant issues written acceptance at which point and on which date the Contract shall come into existence (Commencement Date).
- 2.2 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Consultant which is not set out in the Contract.
- 2.3 Any samples, drawings, descriptive matter or advertising issued by the Consultant, and any descriptions or illustrations contained in the catalogues or brochures of the Consultant, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.4 These Conditions apply to 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.
- 2.5 In the event of a conflict between the Specification and the Terms the provisions of the Specification shall prevail.
- 2.6 Any quotation given by the Consultant shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

3. SUPPLY OF SERVICES

- 3.1 The Consultant shall supply the Services to the Customer in accordance with the Specification in all material respects.
- 3.2 The Consultant shall use all reasonable endeavours to meet any performance dates specified in the Specification, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 The Consultant shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Consultant shall notify the Customer in any such event.
- 3.4 The Consultant warrants to the Customer that the Services will be provided using reasonable care and skill.

4. OBLIGATIONS OF THE CUSTOMER

- 4.1 The Customer shall:
- (a) ensure that any information it provides in the Specification are complete and accurate;
 - (b) co-operate with the Consultant in all matters relating to the Services;
 - (c) provide the Consultant, its employees, agents, consultants and subcontractors, with access to the premises of the Customer, office accommodation and other facilities as reasonably required by the Consultant;
 - (d) provide the Consultant with such information and materials as the Consultant may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
 - (e) prepare the premises of the Customer for the supply of the Services;
 - (f) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start; and
 - (g) keep and maintain all materials, equipment, documents and other property of the Consultant (Consultant Materials) at the premises of the Customer in safe custody at its own risk, maintain the Consultant Materials in good condition until returned to the Consultant, and not dispose of or use the Consultant Materials other than in accordance with the written instructions or authorisation of the Consultant.

4.2 If the performance of the Consultant of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) the Consultant shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the performance of the Consultant of any of its obligations;
- (b) the Consultant shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the failure or delay of the Consultant to perform any of its obligations as set out in this clause 4.2; and
- (c) the Customer shall reimburse the Consultant on written demand for any costs or losses sustained or incurred by the Consultant arising directly or indirectly from the Customer Default.

5. CHARGES AND PAYMENT

5.1 The Charges for the Services shall be either:

- (a) the price set out in the Specification; or
- (b) on a time and materials basis:
 - (i) the Charges shall be calculated in accordance with the standard daily fee rates of the Consultant, as set out in the Specification;
 - (ii) the standard daily fee rates of the Consultant for each individual are calculated on the basis of an eight-hour day from 8.00 am to 5.00 pm worked on Business Days;
 - (iii) the Consultant shall be entitled to charge an overtime rate of 150% of the standard daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 5.1(b)(ii); and
 - (iv) the Consultant shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Consultant engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Consultant for the performance of the Services, and for the cost of any materials.

5.2 The Consultant reserves the right to increase its standard daily fee rates, provided that such charges cannot be increased more than once in any 12 month period. The Consultant will give the Customer written notice of any such increase two month(s)

before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify the Consultant in writing within four weeks of the date of the notice provided by the Consultant and the Consultant shall have the right without limiting its other rights or remedies to terminate the Contract by giving four weeks' written notice to the Customer.

- 5.3 The Consultant shall invoice the Customer:
- (a) In the case of clause 5.1(a) above – on the date(s) or events set out in the Specification; or
 - (b) In the case of Charges under clause 5.1(b) or where no invoicing interval is indicated in the Specification - monthly in arrears.
- 5.4 The Customer shall pay each invoice submitted by the Consultant:
- (a) within 30 days of the date of the invoice; and
 - (b) in full and in cleared funds to a bank account nominated in writing by the Consultant, and

time for payment shall be of the essence of the Contract.

- 5.5 All prices are exclusive of VAT and other charges and duties.
- 5.6 Without limiting any other right or remedy of the Consultant, if the Customer fails to make any payment due to the Consultant under the Contract by the due date for payment (**Due Date**), the Consultant shall have the right to charge interest on the overdue amount at the rate of 4% per annum above the then current base rate of HSBC Bank plc accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 5.7 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Consultant in order to justify withholding payment of any such amount in whole or in part. The Consultant may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Consultant to the Customer.

6. INTELLECTUAL PROPERTY RIGHTS

- 6.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Consultant.

6.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the use by the Customer of any such Intellectual Property Rights is conditional on the Consultant obtaining a written licence from the relevant licensor on such terms as will entitle the Consultant to license such rights to the Customer.

6.3 All Consultant Materials are the exclusive property of the Consultant.

7. CONFIDENTIALITY

A party (**Receiving Party**) 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, or otherwise obtained by, the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the business of Disclosing Party or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the obligations of the Receiving Party under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 7 shall survive termination of the Contract.

8. LIMITATION OF LIABILITY

8.1 Nothing in these Conditions shall limit or exclude the liability of the Consultant for:

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

8.2 Subject to clause 8.1:

- (a) the Consultant shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) the total liability of the Consultant to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed £10,000.

8.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

8.4 This clause 8 shall survive termination of the Contract.

9. TERMINATION

9.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 10 days of receipt of notice in writing of the breach;
- (b) the other party 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 (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) the other party 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 its creditors;
- (d) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.1(b) and clause 9.1(c); or
- (e) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business

9.2 Without limiting its other rights or remedies, the Consultant may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.

9.3 Without limiting its other rights or remedies, each party shall have the right to terminate the Contract by giving the other party 60 days written notice.

9.4 Without limiting its other rights or remedies, the Consultant shall have the right to suspend provision of the Services under the Contract or any other contract between the Customer and the Consultant if the Customer becomes subject to any of the events listed in clause 9.1(b) to clause 9.1(e) or the Consultant reasonably believes

that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

10. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Consultant all of the outstanding unpaid invoices and interest of the Consultant and, in respect of Services supplied but for which no invoice has been submitted, the Consultant shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) return or destroy (as directed in writing by the other party) any documents, handbooks, CD-ROMs or DVDs or other information or data provided to it by the other party for the purposes of this agreement. If required by the other party, it shall provide written evidence (in the form of a letter signed by its director) no later than 28 days after termination of this agreement that these have been destroyed and that it has not retained any copies of them, except for one copy that it may use for audit purposes only and subject to the confidentiality obligations in clause 7;
- (c) the Customer shall return all of the Consultant Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Consultant may enter the premises of the Customer and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (d) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, 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; and
- (e) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

11. GENERAL

11.1 Force majeure:

- (a) For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Consultant including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Consultant or any other party), failure of a utility service or transport network, 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 Consultants or subcontractors.

- (b) The Consultant shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- (c) If the Force Majeure Event prevents the Consultant from providing any of the Services for more than two weeks, the Consultant shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

11.2 Assignment and subcontracting:

- (a) The Consultant may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- (b) The Customer shall not, without the prior written consent of the Consultant, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

11.3 Notices:

- (a) Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.
- (b) Any notice or communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.
- (c) This clause 11.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

11.4 Waiver:

- (a) A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial

exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

- (b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

11.5 Severance:

- (a) If a court or any other competent authority finds that any provision (or part of any provision) of the Contract is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

11.6 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

11.7 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.

11.8 Variation: Except as set out in these Conditions, any variation, including any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by the Consultant.

11.9 Governing law and jurisdiction: This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.