

Terms and conditions for supply of services

## **1. Interpretation**

The following definitions and rules of interpretation apply in these Conditions.

### **1.1 Definitions**

#### **Business Day**

A day other than a Saturday, Sunday or public holiday in England, 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 7 (*Charges and payment*).

#### **Commencement Date**

Has the meaning given in clause 2.2.

#### **Conditions**

These terms and conditions as amended from time to time.

#### **Contract**

The contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions.

#### **Customer**

The person or firm who purchases Services from the Supplier.

#### **Customer Default**

Has the meaning set out in clause 6.2.

#### **Deliverables**

The deliverables set out in the Order produced by the Supplier for the Customer.

#### **Intellectual Property Rights**

Patents, utility models, rights to inventions, copyright and [neighbouring and] related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, 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.

#### **Order**

The Customer's order for Services as set out in the Customer's purchase order form **OR** the Customer's written acceptance of the Supplier's quotation as the case may be.

#### **Services**

The services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Specification.

#### **Specification**

The description or specification of the Services provided in writing by the Supplier to the Customer.

#### **Supplier**

Avery Leather Consulting Ltd registered in England and Wales with company number 6082922.

#### **Supplier Materials**

Has the meaning set out in clause 6.1(g).

1.2 Interpretation, a reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision 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 faxes and emails.

## **2. Basis of contract**

2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (Commencement Date).

2.3 The supplier reserves the right to refuse to accept any order based upon a quotation unless the quotation is stated to be open for a defined period and the quotation has not been withdrawn in that period.

2.4 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations, 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. Any samples submitted with the quotation or at the customer's request must be returned within 90 days of receipt and if not so returned the cost of samples shall be added to the contract price.

2.5 All price lists, samples, particulars of dimensions and other advertising or descriptive material submitted to the customer are intended to be approximate only and to give a general impression of the goods and or services. Unless expressly incorporated the same shall not form part of the contract. The supplier reserves the right to make minor alterations to the design specification or construction of the goods and the type of services supplied without prior notification to the customer. The supplier reserves the right to make any changes in the specification of the goods which are required to conform with any applicable safety or other statutory requirements or, where the goods are to be supplied to specification, which do not materially affect their quality or performance.

2.6 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.

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

## **3. Supply of Goods**

3.1 Legal ownership of the goods is to remain vested in the supplier until both the goods and any additional items have been paid for in full, and until full payment has been received by the supplier under any other contract with the customer for which payment is outstanding:

(a) If the customer obtains possession of the goods prior to such payment, the customer shall hold the goods in a separate and identifiable form as Bailee and fiduciary agent for the supplier.

(b) Failure to pay the full payment when due shall give the supplier, or its employees or agents, the right to repossess the goods (and enter the customer's premises for that purpose if necessary) with or without notice and without liability and, as its option, to avail itself of any other legal remedy.

(c) The suppliers shall have the right to sell the goods once they have been repossessed under this condition.

(d) Notwithstanding this condition 3, the supplier shall be entitled to maintain any action for the price of the goods and services and additional items at any time after the date when payment is due.

(e) If prior to payment in full being made the goods become commingled with similar goods belonging to the customer and or third party the customer shall hold the suppliers proportion of the commingled goods or their proceeds of sale on trust for the supplier. The supplier shall be treated as a tenant in common of the commingled goods and the customer shall hold as a trustee for the supplier's proportion and (if the commingled goods have been sold) pay to the supplier its due proportion of the proceeds of sale.

## **4. Supply of Services**

4.1 The Supplier shall supply the Services to the Customer in accordance with the Project Proposal Specification in all material respects.

4.2 The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Project Proposal Specification, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

4.3 The Supplier reserves the right to amend the Specification 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, and the Supplier shall notify the Customer in any such event.

## **5. Risk Carriage Packaging and Storage**

5.1 Where no specific instructions about the manner in which the goods are to be delivered to the customer or the delivery address are given, the supplier reserves the right in its absolute discretion to choose the means of carriage to the customer and to direct the goods to the customer's last known business address. Any such specific instructions must be given to the supplier at the time of the order and where such specific instructions are given the supplier reserves the right to charge for delivery.

5.2 From the time when the goods are dispatched from the suppliers premises the risk of any loss, damage or to a deterioration of the goods shall be and

- remain with the customer notwithstanding that the supplier may arrange carriage. The supplier shall be under no liability arising from their choice of carrier or carrier's, or from the act or omission of such carrier or carrier's, and the customer waives all rights under the section 32.2 of the Sale of Goods Act 1979 in addition to any other rights hereby excluded or restricted.
- 5.3 in the case of sales where the supplier delivers directly or contracts directly with the carrier, then the supplier will repair or (at its option) replace or (at its option) issue a credit note in respect of goods lost or damaged in transit (other than by default of the customer provided that:
- (a) the customer specifies on the carriers consignment note details of such loss or damage and;
  - (b) in respect of complete non arrival of all of the goods compromised in the contract notification is made to the supplier within 14 days of the date of dispatch of the goods (the date of dispatch to be identified from the copy dispatch note sent to the customer) and separately to the carrier within the period stipulated by the carriers terms of carriage for claims against the carrier and;
  - (c) in respect of damage to all or part of the goods or loss of part of the goods compromised in the contract, notification is made to the supplier within 5 days of delivery of the goods (which will normally be stated on the carriers consignment note) and separately to the carrier within the period stipulated by the carriers terms of carriage for claims against the carrier. On request the supplier will inform the customer of the name and address of the carrier and any time limit for claims stipulated by them.
- 5.4 if it is necessary to dispatch goods in crates, cases, pallets, stillage or skids the supplier reserves the right to charge for packaging. The amount charged for packaging will be credited in full to the customer if the packaging is returned in good condition at the expense of the customer within one month of delivery.
- 5.5 once the goods are ready for delivery and services are ready to be provided the supplier shall be entitled to invoice and be paid for the goods and services as if they had been delivered and provided respectively if for any reason the customer does not arrange for or accept delivery of the goods or allow provision of the services. The supplier shall arrange storage of the goods and the cost of storage shall be added to the contract price.
- 5.6 where the goods and or services are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the supplier to deliver any one or more of the instalments in accordance with these conditions or any claim by the customer in respect of any one or more instalments shall not entitle the customer to treat the contract as a whole as repudiated.
- 5.7 The customer shall be responsible for complying with any legislation or regulations (of the United Kingdom or any other country) governing the export and import of the goods in to the country of destination (and any other country through which the goods pass in transit) and for the payment of any duties thereon. The customer shall fully indemnify the supplier against any fines, penalties, costs, claims, damages, losses and the expense suffered by the supplier as a result of the customer failing to comply with this clause.
- 5.8 The supplier reserves the right to make part deliveries and to submit invoices for goods and or services as part of an order.
- 6. Customer's Obligations**
- 6.1 The Customer shall:
- (a) ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;
  - (b) co-operate with the Supplier in all matters relating to the Services;
  - (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier;
  - (d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
  - (e) 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;
  - (f) comply with all applicable laws, including health and safety laws;
  - (g) keep all materials, equipment, documents and other property of the Supplier (Supplier Materials) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation.
- 6.2 If the Supplier's performance 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) without limiting or affecting any other right or remedy available to it, the Supplier shall 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 in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
  - (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 6.2; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.
- 7. Charges and Payment**
- 7.1 The Charges for the Services shall be calculated on a time and materials basis:
- (a) the Charges shall be calculated in accordance with the Supplier's daily fee rates, as set out in the Contract, Order or Project Proposal Specification;
  - (b) the Supplier's daily fee rates 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 unless otherwise agreed in writing by the parties;
  - (c) the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier 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 the Supplier for the performance of the Services, and for the cost of any materials.
- 7.2 The Supplier shall invoice the Customer at specified intervals which will usually include a deposit payment, an interim payment and on completion of the Services. This will be detailed in the Project Proposal Specification.
- 7.3 Unless otherwise stated, any other additional items shall be added to the price. The Customer shall pay each invoice submitted by the Supplier:
- (a) within 7 days of the date of the invoice; and
  - (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.
- 7.4 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 7.5 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, , 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 7.5 will accrue each day at 4% a year above National Westminster Bank base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 7.7 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).

7.8 All amounts due are payable in £Sterling unless otherwise agreed in writing between the parties. The Customer shall be responsible for payment of all bank conversion costs and commission should such an agreement be reached.

## **8. Intellectual Property Rights**

8.1 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 Customer) shall be owned by the Supplier.

The Supplier grants to the Customer, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables within its business only.

8.2 The Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 8.2.

8.3 The Customer grants the Supplier a fully paid up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

8.5 If the goods are to be manufactured or any process is to be applied to the goods by the supplier in accordance with a specification submitted by the customer, the customer shall indemnify the supplier against all loss, damages, costs and expenses awarded against or incurred by the supplier in connection with or paid or agreed to be paid by the supplier in settlement of any claim for infringement of any patent, copyright, design, trademark or other industrial or intellectual property rights of any other person which results from the suppliers use of the customers specification.

## **9. Terms and Representation**

9.1 The supplier agrees to repair or (at its discretion) replace or (at its discretion) issue a credit note in respect of goods which are found to be defective (fair wear and tear expected) and which are returned to the supplier within the warranty period provided that each of the following are satisfied:

- (a) notification of any defect is given to the supplier immediately upon it becoming apparent to the customer and within 7 days of receipt of the goods
- ( b) the goods have only been operated under normal operating conditions and have only been subject to normal use
- (c) the goods are returned to the suppliers premises at the customers expense
- (d) any goods or parts of goods replaced shall be the property of the supplier
- (e) no work whatsoever (other than normal and proper maintenance) has been carried

out to the goods or any part of the goods without the suppliers written consent

- (f) the defect has not arisen from the design made, furnished or specified by the customer
- (g) the goods have been assembled or incorporated in to other goods only in accordance with any instructions issued by the supplier
- (h) the defect has not arisen from a design modified by the customer
- (i) the defect has not arisen from an item manufactured by a person other than the supplier. In respect of any item manufactured by a person other than the supplier, the customer shall only be entitled to the benefit of any warranty or guarantee provided by such manufacturer to the supplier.

## **10. Limitation of liability**

### **THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**

10.1 Nothing in the Contract shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
  - (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) or any other liability which cannot be limited or excluded by applicable law.
- 10.2 Subject to clause 10.1, the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
- (d) loss of profits;
  - (e) loss of sales or business;
  - (f) loss of agreements or contracts;
  - (g) loss of anticipated savings;
  - (h) loss of use or corruption of software, data or information;
  - (i) loss of damage to goodwill; and
  - (j) any indirect or consequential loss.

10.3 Subject to clause 10.1, the Supplier's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to £2,000,000 (Two Million pounds) or the total contract price, whichever is the lesser amount.

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

10.5 This clause 10 shall survive termination of the Contract.

## **11. Termination**

11.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party one months' written notice.

11.2 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:

- (a) 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 3 days of that party being notified in writing to do so;
- (b) the other party 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, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction];
- (c) 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
- (d) 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.

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

- (a) the Customer fails to pay any amount due under the Contract on the due date for payment
- 11.4 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services under the Contract or any other contract between the Customer and the Supplier 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 11.2(b), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

## **12. Consequences of Termination**

12.1 On termination of the Contract:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) The Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises 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 the Contract.

- 12.2 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.
- 12.3 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.
- 13. General**  
**Force majeure**  
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. Assignment and other dealings**
- 14.1 The Supplier 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.
- 14.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, 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 the Supplier.
- 15. Confidentiality**
- 15.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 15.2.
- 15.2 Each party may disclose the other party's confidential information:
- (a) 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 15.2; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.
- 16. Entire agreement**
- 16.1 The Contract constitutes 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.
- 16.2 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. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 16.3 Nothing in this clause shall limit or exclude any liability for fraud.
- 17. Variation**  
Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 18. Waiver**  
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 breach or default. 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.
- 19. Severance**  
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 shall not affect the validity and enforceability of the rest of the Contract.
- 20. Notices**
- 20.1 Any notice or other communication 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 (if a company) or its principal place of business (in any other case), or by way of email if this form of communication has previously been used by the parties. For the avoidance of doubt, SMS text messages, internet messaging or chat service and video calls may be used for communication purposes but are not deemed to be official methods of communication for the purpose of this clause;
- 20.2 Any notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or, if sent email, at 9.00 am on the next Business Day after transmission.
- 20.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
- 21. Third party rights**
- 21.1 Unless it expressly states otherwise, 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.
- 21.2 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 22. Governing law**  
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.
- 23. Jurisdiction**  
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.