

Business Flow UK Limited – Terms and conditions for the supply of services

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.

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

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.

Deliverables: all products and materials produced by the Supplier for the Customer in relation to the Services, including documentation, data, reports and similar output and/or as set out in the Specification.

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 right, 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.

Order: the Customer's order for Services as set out in the Customer's purchase order or the Customer's written acceptance of a quotation by the Supplier 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 to the Customer by the Supplier.

Supplier: BUSINESS FLOW UK LIMITED registered in England and Wales with company number 05678935 of 7 London Road, Hythe, Kent, CT21 4DF.

2. BASIS OF CONTRACT

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

- 2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance, or, if earlier, starts to perform the Services, at which point and on which date the Contract shall come into existence.
- 2.3 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 Supplier which is not set out in the Contract. Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, 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 any other contract between the Supplier and the Customer for the supply of the Services.
- 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 Quotations are based on estimates of the time required to complete the specified task or project. Services shall be charged on a time and materials basis, calculated according to the Supplier's daily fee rates. The Supplier reserves the right to charge more than is stated in the quotation if Services take longer to perform than anticipated or if the Specification or scope of the Service changes.
- 2.6 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 SERVICES**

- 3.1 The Supplier shall supply the Services to the Customer in accordance with the Specification in all material respects.
- 3.2 The Supplier shall use reasonable endeavours to meet any performance dates specified in the project plan and/or the Specification, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services by the Supplier.
- 3.3 The Supplier 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 Supplier shall notify the Customer in any such event.
- 3.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

4. **CUSTOMER'S OBLIGATIONS**

4.1 The Customer shall:

- (a) ensure that the terms of the Order and 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 in a timely manner with such information and materials and such access to the Customer's personnel as the Supplier may reasonably require in order to supply the Services, and ensure that any such information is accurate in all material respects; and
- (e) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start.

4.2 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) the Supplier 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 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 4.2; 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.

5. **CHARGES AND PAYMENT**

5.1 Charges for the Services shall be on a time and materials basis:

- (a) the charges shall be calculated in accordance with the Supplier's standard daily fee rates, as set out in the quotation;
- (b) the Supplier's standard 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, or as otherwise agreed;
- (c) part days shall be charged at the full daily rate, unless the Supplier, in its sole discretion, decides otherwise; and

- (d) the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals performing the Services including, but not limited to, mileage or travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of any materials.
- 5.2 The Supplier 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 Supplier will give the Customer written notice of any such increase two months before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify the Supplier in writing within four weeks of the date of the Supplier's notice and the Supplier 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 If the Customer cancels or postpones [a /an agreed] site visit by or meeting with the individual performing the Services on behalf of the Supplier on less than 8 days notice, [the Customer shall be liable to pay / the Supplier shall be entitled to charge the Customer] for the full day at the daily rate in addition to any price agreed for the Services [,unless the Supplier is able to re-book the day to another Customer or otherwise utilise the day in the performance of the Services].
- 5.4 Unless otherwise agreed, the Supplier shall invoice the Customer monthly in arrears.
- 5.5 The Customer shall pay each invoice submitted by the Supplier in full and in cleared funds within 30 days of the date of invoice. Time for payment shall be of the essence of the Contract.
- 5.6 All amounts payable by the Customer under the Contract are exclusive of VAT, which shall be charged at the appropriate rate where applicable.
- 5.7 If the Customer fails to make any payment due to the Supplier on the due date then, without prejudice to any other right or remedy available to the Supplier, the Supplier shall be entitled to:
- (a) cancel the Contract or any contract between the parties or suspend any further performance of services;
 - (b) require immediate payment in respect of any services supplied;
 - (c) charge the Customer interest on the amount unpaid at the rate of 8% per annum above the Bank of England Bank Rate from time to time accruing on a daily basis from the due date until payment is made, whether before or after judgment;
 - (d) notwithstanding clause 5.7(c) the Supplier may in the alternative and at its sole discretion claim interest and penalties under the Late Payment of Commercial Debts (Interest) Act 1988; and

(e) charge the Customer on a full indemnity basis for any legal and/or administrative costs it incurs in attempting to recover or recovering any monies due.

5.8 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 Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

6. **INTELLECTUAL PROPERTY RIGHTS**

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

7. **CONFIDENTIALITY**

7.1 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 the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain in negotiating or performing its obligations under the Contract.

7.2 The Receiving Party may disclose such confidential information:

(a) to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, in which case it shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party; and

(b) as required by law, court order or any governmental; or regulatory authority.

7.3 The obligations in clause 7.1 shall not apply to information which:

(a) is or becomes publicly available through no fault of the Receiving Party; or

(b) was known to or in the possession of the Receiving Party prior to disclosure by the Disclosing Party; or

(c) was, is or becomes available to the Receiving Party on a non-confidential basis from a third party who, to the Receiving Party's knowledge, is not prohibited from disclosure.

7.4 This clause 7 shall survive termination of the Contract.

8. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 8.1 Nothing in these Conditions 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).

8.2 Subject to clause 8.1:

- (a) the Supplier shall have no liability to the Customer in respect of Services provided free of charge;
- (b) the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or for any indirect or consequential loss arising under or in connection with the Contract; and
- (c) the Supplier's total liability 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 not exceed [the price paid for the Services / any limit applicable under the Supplier's professional indemnity insurance.

- 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, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of being notified in writing to do so; or
- (b) the Customer suspends, or threatens to suspend, payment of or is unable or deemed unable to pay its debts, or becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Customer, or if the Customer is the subject of a bankruptcy petition or order, or if an administrator, administrative receiver or receiver is appointed in respect of the whole or any part of the Customer's assets

or business, or if the Customer makes any composition with its creditors or takes or suffers any similar or analogous action in consequence of debt; or

(c) the Customer suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or

(d) the Customer (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

9.2 Without limiting its other rights or remedies, the Supplier shall have the right to terminate the Contract by giving the Customer one months' written notice.

9.3 Without limiting its other rights or remedies, the Supplier shall have the right to suspend provision of the Services under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 2.1 to clause 9.1(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

10. **CONSEQUENCES OF TERMINATION**

On termination of the Contract for any reason:

(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 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 this Contract;

(c) 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

(d) 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 Supplier including but not limited to strikes, lock-

outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), ill-health or disability of key employees or subcontractors, failure of a utility service or transport network, computer or systems 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 subcontractors.

(b) The Supplier 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 Supplier from providing any of the Services for more than [NUMBER] weeks, the Supplier 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 Supplier 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 Supplier, 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 other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at 10.00 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 of the Contract (or part of any provision) 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: Any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by the Supplier.

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.