

## STANDARD TERMS AND CONDITIONS OF EXTRIUM LIMITED

### 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 Client 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 12.7.1.

**Consultant:** Extrium Limited registered in England and Wales with company number: 05279384.

**Consultant Materials:** has the meaning set out in clause 4.1.6.

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

**Client:** the person or firm who purchases Services from the Consultant.

**Client Material:** all Documents, information and material provided by the Client to the Consultant relating to the Services, including computer programs, data, reports and specifications.

**Deliverables:** all Documents, products and materials developed by the Consultant or its agents, subcontractors, consultants and employees in relation to the Services in any form, including computer programs, data, reports and specifications (including drafts).

**Document:** includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), 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 Client's order for Services as set out in the Client's purchase order form or the Client's acceptance of the Consultant's quotation or as set out in correspondence between the Client and the Consultant, as the case may be.

**Services:** the services, including the Deliverables, supplied by the Consultant to the Client as set out in the Specification together with any other services which the Consultant provides or agrees to provide to the Client.

**Specification:** the description or specification of the Services provided in writing by the Consultant to the Client.

1.2 **Construction.** In these Conditions, the following rules apply:

1.2.1 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

1.2.2 a reference to a party includes its successors or permitted assigns;

1.2.3 a reference to a statute or statutory provision is a reference to such statute or statutory 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; and

1.2.4 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.

## 2 **BASIS OF CONTRACT**

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

2.2 The Order shall only be deemed to be accepted when the Consultant issues written acceptance of the Order or the Consultant first provides and the Client first accepts the Services at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 The Contract constitutes the entire agreement between the parties. The Client acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Consultant which is not set out in the Contract.

2.4 Any samples, drawings, descriptive matter or advertising issued by the Consultant, and any descriptions or illustrations contained in the Consultant's catalogues, brochures or website, 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.

2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

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 Client in accordance with the Specification in all material respects.

3.2 The Consultant shall use all reasonable endeavours to meet any performance dates agreed with the Client, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

3.3 If the Consultant or the Client requests a change to the scope or execution of the Services, the Consultant shall, within a reasonable time, provide a written estimate to the Client of:

- 3.3.1 the likely time required to implement the change;
  - 3.3.2 any necessary variations to the Charges arising from the change;
  - 3.3.3 the likely effect of the change on any related project plan; and
  - 3.3.4 any other impact of the change on the Services.
- 3.4 If the Client wishes the Consultant to proceed with the change, the Consultant has no obligation to do so unless and until the parties have agreed the necessary variations to its charges, the Services, any relevant project plan and any other relevant terms of this agreement to take account of the change and the Contract has been varied in accordance with clause 12.7.1.
- 3.5 Notwithstanding clause 3.4, 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 Client in any such event. If the Consultant requests a change to the scope of the Services for any other reason, the Client shall not unreasonably withhold or delay consent to it.
- 3.6 The Consultant warrants to the Client that the Services will be provided using reasonable care and skill.

#### 4 CLIENT'S OBLIGATIONS

- 4.1 The Client shall:
- 4.1.1 ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;
  - 4.1.2 co-operate with the Consultant and act in good faith towards the Consultant in all matters relating to the Services and appoint a Client manager who shall have the authority to contractually bind the Client on matters relating to the Services;
  - 4.1.3 provide the Consultant, its employees, agents, consultants and subcontractors, with access, free of charge, to the Client's premises, office accommodation and other facilities as reasonably required by the Consultant;
  - 4.1.4 provide the Consultant, in a timely manner and free of charge, 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;
  - 4.1.5 obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start; and
  - 4.1.6 keep and maintain all materials, equipment, documents and other property of the Consultant (**Consultant Materials**) at the Client's premises 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 Consultant's written instructions or authorisation.
- 4.2 If the Consultant's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (**Client Default**):
- 4.2.1 the Consultant shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations to the extent the Client Default prevents or delays the Consultant's performance of any of its obligations;

- 4.2.2 the Consultant shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from the Consultant's failure or delay to perform any of its obligations as set out in this clause 4.1.6; and
- 4.2.3 the Client shall reimburse the Consultant on written demand for any costs or losses sustained or incurred by the Consultant arising directly or indirectly from the Client Default.
- 4.3 The Client shall be liable to pay to the Consultant, on demand, all reasonable costs, charges or losses sustained or incurred by the Consultant (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) that arise directly or indirectly from the Client's fraud, negligence, failure to perform or delay in the performance of any of its obligations under this agreement, including in relation to the Contractor's use or reliance on any Client Material, subject to the Consultant confirming such costs, charges and losses to the Client in writing.
- 4.4 The Client shall not, without the prior written consent of the Consultant, at any time while the Services are being provided and for a period of 24 months after the last date of supply of the Services, solicit or entice away from the Consultant or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant, agent or subcontractor of the Consultant in the provision of Services or any employee, consultant, agent or subcontractor who has been introduced to the Client by the Consultant.
- 4.5 Any consent given by the Consultant in accordance with clause 4.4 shall be subject to the Client paying to the Consultant a sum equivalent to 20% of the then current annual remuneration of the Consultant's employee, consultant, agent or subcontractor or, if higher, 20% of the fees paid or to be paid by the Client to that employee, consultant, agent or subcontractor.

## 5 CHARGES AND PAYMENT

- 5.1 The Charges for the Services shall be on a time and materials basis:
- 5.1.1 the Charges shall be calculated in accordance with the Consultant's standard daily fee rates, as amended from time to time in accordance with clause 5.2 ;
- 5.1.2 the Consultant's standard daily fee rates for each individual are calculated on the basis of a seven and a half hour working day (between the hours of 9.00 am to 5.30 pm) worked on Business Days; f
- 5.1.3 the Consultant shall be entitled to charge an overtime rate of 125 per cent 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 5.1.2; and
- 5.1.4 the Consultant shall be entitled to charge the Client 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 Client written notice of any such increase 3 months before the proposed date of the increase. If such increase is not acceptable to the Client, it shall notify the Consultant in writing within 2 weeks of the date of the Consultant's notice and the Consultant shall have the right without limiting its other rights or remedies to terminate the Contract by giving 2 weeks' written notice to the Client.

5.3 The Consultant shall invoice the Client monthly in arrears and each invoice shall set out details of the individuals involved, their work tasks (if defined) and time spent during that previous month.

5.4 The Client shall pay each invoice submitted by the Consultant:

5.4.1 within 7 days of the date of the invoice; and

5.4.2 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 amounts payable by the Client under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Consultant to the Client, the Client shall, on receipt of a valid VAT invoice from the Consultant, pay to the Consultant 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.

5.6 If the Client fails to make any payment due to the Consultant under the Contract by the due date for payment, then the Client shall pay interest on the overdue amount at the rate of 4% per cent per annum above Bank of England base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Client shall pay the interest together with the overdue amount.

5.7 The Client shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Consultant may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Client against any amount payable by the Consultant to the Client.

## 6 INTELLECTUAL PROPERTY RIGHTS

6.1 All Intellectual Property Rights and all other rights in the Deliverables and in or arising out of or in connection with the Services shall be owned by the Consultant.

6.2 The Client acknowledges that, in respect of any third party Intellectual Property Rights, the Client's use 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 Client.

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 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, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 7 shall survive termination of the Contract.

## 8 LIMITATION OF LIABILITY: THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

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

- 8.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
  - 8.1.2 fraud or fraudulent misrepresentation; or
  - 8.1.3 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:
- 8.2.1 the Consultant shall under no circumstances whatever be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of agreements or contracts, loss of or damage to goodwill, or any indirect or consequential loss arising under or in connection with the Contract; and
  - 8.2.2 the Consultant's total liability to the Client 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 the Charges received by the Consultant in the previous 12 month period or, if the Contract has not been running for 12 months, the Charges which the Consultant has received in full and cleared funds.
- 8.3 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.
- 8.4 This clause 8 shall survive termination of the Contract.

## 9 **TERMINATION**

- 9.1 Without limiting its other rights or remedies, the Consultant may terminate the Contract by giving the Client 4 weeks' written notice.
- 9.2 Without limiting its other rights or remedies, the Client may terminate the Contract by giving the Consultant 3 months' written notice.
- 9.3 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
  - 9.3.1 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 14 days of that party being notified in writing to do so;
  - 9.3.2 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 or limited liability partnership) 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;
  - 9.3.3 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 other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
  - 9.3.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

- 9.3.5 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
  - 9.3.6 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
  - 9.3.7 the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
  - 9.3.8 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
  - 9.3.9 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 9.3.1 to clause 9.3.7 (inclusive);
  - 9.3.10 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
  - 9.3.11 the other party's financial position deteriorates to such an extent that in the Consultant's opinion the Client's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 9.4 Without limiting its other rights or remedies, the Consultant may terminate the Contract with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under this Contract on the due date for payment and fails to pay all outstanding amounts within 7 days after being notified in writing to do so.
- 9.5 Without limiting its other rights or remedies, the Consultant may suspend provision of the Services under the Contract or any other contract between the Client and the Consultant if the Client becomes subject to any of the events listed in clause 9.3.2 to clause 9.3.11, or the Consultant reasonably believes that the Client is about to become subject to any of them, or if the Client fails to pay any amount due under this Contract on the due date for payment.

## 10 CONSEQUENCES OF TERMINATION

- 10.1 On termination of the Contract for any reason:
- 10.1.1 the Client shall immediately pay to the Consultant all of the Consultant's outstanding unpaid invoices and interest 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 Client immediately on receipt;
  - 10.1.2 the Client shall return all of the Consultant Materials and any Deliverables which have not been fully paid for. If the Client fails to do so, then the Consultant may enter the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
  - 10.1.3 the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, 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.

## 11 FORCE MAJEURE

- 11.1 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.

11.2 The Consultant shall not be liable to the Client as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

11.3 If the Force Majeure Event prevents the Consultant from providing any of the Services for more than 12 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 Client.

## 12 GENERAL

### 12.1 Assignment and other dealings

12.1.1 The Consultant may at any time assign, transfer, mortgage, 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.

12.1.2 The Client shall not, without the prior written consent of the Consultant, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

### 12.2 Notices

12.2.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.

12.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.2.1; 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; 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 or e-mail, one Business Day after transmission.

12.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

### 12.3 Severance

12.3.1 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.

### 12.4 Waiver

12.4.1 A waiver of any right under the Contract or law 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 provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such



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

**12.5 No partnership or agency**

12.5.1 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

**12.6 Third parties**

12.6.1 A person who is not a party to the Contract shall not have any rights to enforce its terms.

**12.7 Variation**

12.7.1 Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Consultant.

**12.8 Governing law**

12.8.1 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 the law of England and Wales.

**12.9 Jurisdiction**

12.9.1 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).