



# Terms and Conditions

## DEFINITIONS IN THESE CONDITIONS

**Client** - the person, firm or company with whom the Company has agreed to provide the Services in accordance with these Conditions;

**Client Agreement** - means the agreement for the supply of Services;

**Charges** - the fees agreed between the Company and Client;

**Services** - the services to be provided by the Company to the Client, as set out in the Client Agreement, in accordance with these Conditions;

**Company** – means Market Avenue Limited, a company registered in England and Wales with number 6820331 and VAT No. GB 946795265, whose registered office is at 319a Uttoxeter Road, Blythe Bridge, Staffordshire, ST11 9QA.

## 1. BASIS OF THE AGREEMENT

- 1.1 The Company shall provide the Services to the Client subject to these Conditions, which shall govern the Agreement to the exclusion of any other terms put forward by the Client.
- 1.2 An Agreement shall only be formed on acceptance by the Company of the Client's order and signature attained from both parties on the Agreement.
- 1.3 The Company may employ sub-contractors to carry out any part of its obligations under the Agreement at its sole discretion and it may assign its rights and obligations under this Agreement to any other party. The Company acts as principal in this Agreement. The Client may not assign its rights and obligations under this Agreement without the written consent of the Company.
- 1.4 No variation of these Conditions shall be binding unless agreed in writing between the Client and a duly authorised representative of the Company.

## 2. COMPANY'S RESPONSIBILITIES

- 2.1 Subject to payment of the requisite charge the Company shall provide the Client with the Services as specified in the Agreement.
- 2.2 The Company shall devote to its obligations set out in the Agreement such of its time, attention, expertise, and skill as may be necessary for the proper performance of those obligations in accordance with the standards generally observed in the industry for similar services provided with reasonable skill and care. For the avoidance of doubt the obligation set out in this clause does not negate or in any way vary the Company's obligations to the Client under the Supply of Goods and Services Act 1982.
- 2.3 The Company undertakes to use its reasonable endeavours to provide the Services in accordance with the time schedules agreed to between the Client and the Company provided always that time shall not be of the essence in this regard.
- 2.4 While the Company's method of work is its own, the Company shall comply with the reasonable requests of the Client.
- 2.5 The Company shall assign to the Services for the duration of the Agreement only such personnel as are qualified, skilled, and experienced in their several professions, trades and callings.
- 2.6 Subject to clause 5.3, the Company shall use its reasonable endeavours to ensure that the personnel it has assigned to the Services continue in the functions and responsibilities to which

they are initially assigned for the duration of the Agreement. However, if for any reason, including at the reasonable request of the Client, any person employed in carrying out the Services ceases to carry out the Services, the Company will use its reasonable endeavours to provide as promptly as possible in the circumstances a suitable substitute.

2.7 The Company shall make an additional charge in accordance with its standard scale of charges from time to time in force for any services provided by the Company

(a) at the request of the Client but which the Company is not required to provide; or

(b) at the request of the Client but which the Company finds are not necessary

For the avoidance of doubt nothing in this clause shall impose any obligation on the Company to provide services which the Company is not specifically contracted to provide, as set out in the Contract

### **3 CLIENT'S OBLIGATIONS**

3.1 In addition to its obligations set out elsewhere in these Conditions, and as set out in the Agreement, the Client shall:

3.1.1 Promptly furnish the Company with such information and documents (copy guidelines, brand guidelines and house style information, logos and design) as it may reasonably request for the proper performance of its obligations under the Agreement and be responsible for ensuring that such information is true, accurate, complete and not misleading in any material respect; The Company reserves the right to edit or amend any copy that it considers to be offensive, unlawful or inappropriate, or which appear to infringe the intellectual property rights of any third party.

3.1.2 Ensure that its employees co-operate fully with the Company's personnel in relation to the provision of the Services and that such employees will be qualified to carry out any tasks which may be assigned to them in relation to the performance of the Services or otherwise as required under the Contract.

3.1.3 Be able to request that the Company makes changes to any copy at any time in writing, and the Company may levy reasonable additional charges for such work.

3.2 If the Client shall fail to perform any of its obligations under the Agreement, then the Company will not be responsible for any delay, cost, expense or other consequences arising from such failure, and the Client shall reimburse the Company for all costs and expenses incurred as a direct or indirect result of such failure.

### **4 FEES AND EXPENSES**

4.1 The Client shall pay the Company for the time spent by the Company's employees and sub-contractors in providing the Services at the charge out rates (on a project or agreed retainer basis, as notified by the Company to the Client from time to time) in respect of the functional responsibilities designated for the employee or sub-contractor utilised to provide the Services as notified by the Company to the Client from time to time, or otherwise on a fixed fee basis as provided in the Contract.

4.2 The charge-out rates (on either an hourly or project basis, as notified by the Company to the Client from time to time) for any additional Services that the Client wishes the Company to provide (in accordance with **clause 2.7**) from time to time shall be as notified in writing to the Client by the Company.

4.3 In addition, all costs and expenses incurred by the Company in providing the Services will be payable by the Client. Costs and expenses include, but are not limited to, local and national travel, hotel accommodation and subsistence, and support costs.

- 4.4 Unless otherwise agreed in writing between the Client and a duly authorised representative of the Company, the Company shall be entitled at any time and from time to time to vary any or all of such charge-out rates to accord with its standard scale rates in force from time to time, provided that no such variation shall have effect unless and until notice in writing thereof is given to the Client.
- 4.5 The Company shall render invoices, in line with an agreed schedule (together with relevant expenses, receipts or vouchers) to the Client in respect of the said charges and shall show any Value Added Tax separately on such invoices.
- 4.6 All charges payable by the Client shall be paid after receipt by the Client of the Company's invoice or as otherwise agreed in writing between the Client and the Company, without any set-off or other deductions whatsoever by cheque, banker's draft, electronic payment or cleared funds.
- 4.7 If the Client fails to make any payment on the due date then, without prejudice to any other right or remedy available to it, the Company may:
- (a) cancel the Agreement and cease provision of the Services to the Client;
  - (b) suspend provision of the Services to the Client;
  - (c) appropriate any payment made by the Client to such invoices as the Company may think fit (notwithstanding any purported appropriation by the Client);
  - (d) charge the Client interest (both before and after judgment) on the amount outstanding on a daily basis at the rate of [3]% per annum above the Bank of England base lending rate from time to time in force until all outstanding amounts are paid in full; and/or
  - e) bring an action against the Client for recovery of the invoice value.
- 4.8 If the recovery of any sums outstanding from the Client to the Company is passed to a debt collection agency, the Client shall pay on an indemnity basis the Company's costs incurred in instructing such debt collection agency and all legal and other costs ancillary thereto.

## **5. VARIATION OR SUSPENSION OF THE SERVICES**

- 5.1 In the event that a change to the nature or scope of the Services is identified as being desirable by either the Company or the Client, a request may be submitted to the other party to effect such change. Any such request shall be sufficiently detailed to enable the other party to assess the impact of the proposed change and no such change will become effective until agreed in writing between the Client and a duly authorised representative of the Company.
- 5.2 When expedited performance or completion of the Services, or any part thereof, is requested by the Client and agreed to by the Company, the Client shall pay to the Company any additional costs incurred for such expedited performance or completion.
- 5.3 If the performance of the Agreement is suspended at the request of the Client or delayed, through default of the Client for a period of 14 days or more, the Company shall be entitled to invoice the Client for any additional costs thereby incurred, and the Company shall not be obliged to make available the same personnel to perform the Agreement after the suspension or delay as performed it before the suspension or delay.
- 5.4 Where a schedule of delivery and specific dates have been agreed and the Client suspends, cancels, or otherwise terminates the Agreement or asks the Company to provide the Services on an alternative date the following charges shall be paid by the Client:

(a) where a change is requested up to two weeks prior to the start date 25% of the agreed fee shall be payable;

(b) where a change is requested one week prior to the start date 50% of the agreed fee shall be payable;

(c) where a change is requested less than one week prior to the start date the full amount of the fee shall be payable.

5.5 The Company may waive any of the above notice periods at clause 5.4 at its own discretion, but the Client shall not.

## **6. CONFIDENTIAL INFORMATION**

6.1 The Client and the Company shall treat as confidential all Confidential Information. The Client and the Company shall ensure that its employees and/or sub-contractors are aware of and comply with the provisions of this clause.

6.2 Client personal information is not sold or shared by the Company to any third party, whether this is for marketing or advertising purposes. Client consent would be sought in writing if this unlikely event arose. However, the Company may disclose your information within the Market Avenue Limited software systems to assist with providing the Services outline in the Agreement. Your personal information may also be shared if we are required by Law or to detect, prevent or investigate any illegal or fraudulent activity that may be related to our services. At all times we will minimise the amount of personal information disclosed and will only share what is relevant and deemed a necessity for the purpose gained.

6.3 The foregoing obligations as to confidentiality shall survive any termination or expiry of the Contract.

## **7. DATA PROTECTION**

7.1 The Company shall comply with the Data Protection Act 2018 (DPA 2018), the General Data Protection Regulation (Regulation (EU) 2016/679) (GDPR), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (PECR) and any other subsequent applicable laws or regulations relating to the processing of personal data (together, the "Data Protection Legislation"). In performing the Services under the Agreement, the Company may process (albeit for diagnostic or investigative purposes only) personal data belonging to the Client. The Company warrants to the Client that in such circumstances it will in respect of such personal data observe all the obligations pertaining to a data processor under the Data Protection Act 2018 and will indemnify the Client against all breaches of the Data Protection Act 2018 by the Company in respect of the Client's data.

7.2 The Client undertakes to the Company that in relation to such personal data it will observe any recommendations made or guidance given by the Data Protection Commissioner, and it will always comply with the provisions of the Data Protection Act 2018 and all regulations and requests for services made under that Act.

7.3 The Company's Data Protection and Privacy Policies can be found [online here](#). These policies are subject to change without notice and any such changes will be updated at the above website address.

## **8 WARRANTIES AND LIABILITIES**

8.1 The Company shall use its reasonable endeavours to provide the Services set out in the Agreement or the relevant specification or otherwise agreed between the Client and the Company in writing in accordance with the terms of these Conditions, and as far as reasonably possible, at the intervals and within the time frames agreed to between the Client and the Company, but time will not be of the essence in respect of the provision of the Services.

- 8.2 Subject to clause 8.7, where the provision of the Services (or any part of such provision) is shown to the reasonable satisfaction of the Company to be defective for any reason (including negligence) within a period of 90 days from the date of the original provision, the Company's liability (if any) shall be limited at its sole discretion to either:
- (a) provide additional services sufficient to rectify any such defect to the Client free of charge; or
  - (b) refund to the Client the appropriate proportion of the charges in respect of the Services; or
  - (c) grant to the Client a reasonable allowance in respect of such defects;
- in which case the Company shall have no further liability to the Client.
- 8.3 Notwithstanding clause 8.2, but subject to clause 8.7, the Company shall have no liability for any claim by the Client that is based on any defect in the provision of the Services unless the Client notifies the Company, in writing, within 14 days of becoming aware of any defect in the Services provided.
- 8.4 Where the Company supplies in connection with the provision of the Services any goods or materials supplied by a third party, the Company does not give any warranty, guarantee, undertaking or other commitment as to their quality, fitness for purpose or otherwise, but shall, where possible, assign to the Client the benefit of any warranty, guarantee or indemnity given by the person who supplied the goods or materials to the Company.
- 8.5 The Company shall have no liability to the Client for any loss, damage, costs, expenses, or other claims for compensation arising from any material, goods or information supplied by the Client which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of the Client.
- 8.6 Subject to clause 8.7, the Company shall have no liability for any loss, damage, costs, expenses or other claims sustained or incurred by the Client or any third party (including, without limitation any loss of use of the Client's computer / IT system or loss of or spoiling of the Client's data) occasioned by or as a result of delay in providing the Services except to the extent that such loss, damage, cost, expense or other claim arises from any unreasonable delay by the Company in providing the Services and then only to the extent not excluded by these Conditions.
- 8.7 Nothing in these Conditions shall exclude or restrict the Company's liability for death or personal injury because of its negligence or any other liability which cannot be limited or excluded by law (for which no limit applies).
- 8.8 Subject to clause 8.7, the Company shall not be liable to the Client by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or duty at common law, or under the express terms of the Agreement or by reason of any breach of any of the foregoing, for:
- (a) any loss of profits or contracts, loss of goodwill or any special, indirect, or consequential loss, whether arising from negligence, breach of Agreement or out of or in connection with the provision of the Services, or their use by the Client or howsoever otherwise; and/or
  - (b) any sum to the extent that it exceeds £250,000 in respect of any single incident or series of connected incidents.
- 8.9 The Client shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with, or paid or agreed to be paid by the Company in settlement of, any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property right of any other person or any claim of libel or illegality which results from the Company's use of any specification, materials, goods or other information supplied by the Client.

- 8.10 Any suggestions or recommendations by the Company for any person to act, or in respect of any goods or services, are made in good faith but without any responsibility on the part of the Company.
- 8.11 The Company shall not be liable to the Client for any loss arising out of (and to the extent caused by) any failure by the Client to keep full and up-to-date security copies of the computer programs and data it uses in accordance with best computing practice.

## **9. FORCE MAJEURE**

- 9.1 The Company shall not be liable for any failure to carry out, or any delay in carrying out, the Services for any reason beyond its reasonable control, including (without limitation) act of God, legislation, acts of terrorism, war, fire, flood, drought, failure of power or other utility supply, lock-out, strike or other action taken by employees in contemplation or furtherance of a dispute.

## **10. INSOLVENCY OF CLIENT**

10.1 If:

(a) the Client makes any Voluntary Arrangement with its creditors (either as an individual, partnership or limited liability entity) or (being an individual) the Client becomes Bankrupt or (being a partnership) any of its members becomes Bankrupt or (being a limited liability entity) the Client becomes subject to a request for Administration or goes into any form of Liquidation, Receivership or Reconstruction;

(b) becomes subject to any non-UK insolvency proceedings;

(c) an encumbrancer takes possession, or a Receiver is appointed, of any of the property or assets of the Client;

(d) the Client ceases, or threatens to cease, to carry on business; or

(e) the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Client and notifies the Client accordingly.

then without prejudice to its other rights and remedies under these Conditions and/or at law the Company shall be entitled to cancel the Agreement and/or suspend the provision of the Services under the Agreement without liability, and if the Services have been provided and not paid for, the fee for such shall immediately become due and payable.

## **11. CLIENT WARRANTY**

- 11.1 The Client hereby warrants to the Company that the Client has not been induced to enter into the Agreement by any prior representations or warranties, whether oral or in writing, except as specifically contained in the Agreement and, by entering into the Agreement, the Client irrevocably and unconditionally waives any right it may have to claim damages for any misrepresentation not contained in the Agreement or for breach of any warranty not contained in the Agreement (unless such misrepresentation or warranty was made fraudulently and was relied upon by the Client) and/or to rescind the Contract.

## **12. NON-SOLICITATION OF STAFF**

- 12.1 The Client undertakes that it shall not during the continuance of the Agreement and for a period of one year following its expiry or termination employ or contract the services of any person who is or was employed or engaged by the Company at any time in the provision of the Services.

## **13. GENERAL**

- 13.1 The Agreement is personal to the Client who may not assign, transfer, declare a trust in respect of, or otherwise dispose of any of its rights under the Agreement to any other person without the prior consent in Writing of a duly authorised representative of the Company.
- 13.2 With the exception of clause 16.6, nothing in these Conditions is expressly or impliedly intended to confer on any third party any right to enforce any of its provisions pursuant to the Agreements (Rights of Third Parties) Act 1999.
- 13.3 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing and addressed to the Company at its registered office and to the Client at the address given on its request for services, or such other address (including electronic address) as may at the relevant time have been notified to the party giving notice pursuant to this provision.
- 13.4 Such notice(s) may be delivered by post, facsimile or by electronic communications, but in respect of electronic communications, the following should be noted:
- (a) During the provision of the Services the parties may from time to time communicate electronically with each other. However, the electronic transmission of information cannot be guaranteed to be secure or virus or error free and such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. Both parties recognise that systems and procedures cannot be a guarantee that transmissions will be unaffected by such hazards.
  - (b) Both parties accept the risks of and authorise electronic communications between themselves. Both parties agree to use commercially reasonable procedures to check for the then most known viruses before sending information electronically. Each party will be responsible for protecting its own systems and interests in relation to electronic communications. Neither party (including its respective partners, directors, employees, agents, or servants) will have any liability to the other on any basis, whether in contract, tort (including negligence) or otherwise, in respect of any error, damage, loss or omission arising from or in connection with the electronic communication of information between each other or any reliance on such information.
  - (c) The exclusion of liability in clause 13.4 will not apply to the extent that any liability arises out of acts, omissions or misrepresentations which are in any case criminal, dishonest or fraudulent on the part of either party's respective partners, directors, employees, agents, or servants.
- 13.5 No waiver by the Company of any breach of the Agreement by the Client shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 13.6 Any provision of these Conditions which is held invalid or unenforceable shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions of these Conditions.
- 13.7 The Company may at its discretion perform its obligations and exercise its rights under the Agreement through any other person and any such sub-contractors, agents and servants shall have the benefit of these Conditions.
- 13.8 The Agreement is subject to the laws of England and Wales and the Client agrees for the benefit of the Company to submit to the exclusive jurisdiction of the English Courts.