

Terms and Conditions for Supply of Services

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 8 (LIMITATION OF LIABILITY).

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 5.

Commencement Date: has the meaning given in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 11.5.

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

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.

Customer: the person or firm who purchases Services from Kubus.

Customer Default: has the meaning set out in clause 4.2.

Customer Equipment: equipment or hardware owned, leased, rented by the Customer or to be delivered to the Customer in relation to which Kubus is to provide Services.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time including the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder); UK GDPR (as defined by section 3(10) (as supplemented by section 205(4)) of the DPA 2018; and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications).

Deliverables: any output of the Services to be provided by Kubus to the Customer as specified in the Scope of Work and any other documents, products and materials provided by Kubus to the Customer in relation to the Services (excluding Kubus' Materials).

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.

Kubus: Kubus Group Limited (registered in England and Wales with company number 04197529).

Kubus Materials: has the meaning set out in clause 4.1(f).

Location: any location other than Kubus' own premises at which the Services are to be carried out.

Order: the Customer's order for Services as set out in the Customer's purchase order form, the Customer's written acceptance of Kubus' Scope of Works, or overleaf, as the case may be.

Scope of Works: Kubus' scope of works or such other document(s) setting out details of the Services and Charges

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

Special Conditions: any special conditions set out in the Scope of Works.

Specification: the description or specification of the Services set out in the Scope of Works or as otherwise provided in writing by Kubus to the Customer.

1.2 Interpretation:

- (a) A reference to legislation or a legislative provision:
 - (i) is a reference to it as amended, extended or re-enacted from time to time; and
 - (ii) shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- (b) 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.
- (c) A reference to **writing** or **written** includes fax and email unless otherwise stated.

2. BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions and any Special Conditions. To the extent that there is a conflict between these Conditions and the Special Conditions, the Special Conditions shall prevail and take precedence.
- 2.2 The Order shall only be deemed to be accepted when Kubus issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 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 law, trade custom, practice or course of dealing.

3. SUPPLY OF SERVICES

- 3.1 Kubus shall supply the Services to the Customer in accordance with the Specification in all material respects.
- 3.2 Kubus shall use all reasonable endeavours to meet any performance dates specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 Kubus 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 Kubus shall notify the Customer in any such event.
- 3.4 Kubus warrants to the Customer that the Services will be provided using reasonable care and skill.
- 3.5 Risk in the Customer Equipment shall pass to Kubus upon the unloading of the Customer Equipment at Kubus' premises. Risk in the Customer Equipment shall pass to the Customer (or such other appropriate third party) upon collection of the Equipment from Kubus' premises or delivery of the Equipment to the Customer (or such other appropriate third party) as applicable.
- 3.6 Kubus shall procure that its personnel shall, while on site at the Location, comply with the Customer's reasonable health and safety and security policies provided that these policies have been brought to the attention of its personnel.

4. CUSTOMER'S OBLIGATIONS

- 4.1 The Customer shall:
- (a) ensure that the terms of the Order are complete and accurate;
 - (b) co-operate with Kubus in all matters relating to the Services and nominate a contact person or persons to be available to liaise with Kubus and respond to queries from Kubus with respect to the Services;
 - (c) provide Kubus, its employees, agents, consultants and subcontractors, with access to the Location and other facilities as reasonably required by Kubus (noting that any delay to the provision of access to the Location and Customer Equipment at agreed times will incur additional Charges);
 - (d) provide Kubus with such information and materials as Kubus 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) keep all materials, equipment, documents and other property of Kubus (**Kubus Materials**) at the Customer's premises in safe custody at its own risk, maintain Kubus Materials in good condition until returned to Kubus, and not dispose of or use Kubus Materials other than in accordance with Kubus's written instructions or authorisation; [and]
 - (g) comply with any additional obligations as set out in the scope of works.

4.2 If Kubus'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, Kubus 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 Kubus's performance of any of its obligations;
- (b) Kubus shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Kubus's failure or delay to perform any of its obligations as set out in this clause 4.2; and
- (c) the Customer shall reimburse Kubus on written demand for any costs or losses sustained or incurred by Kubus arising directly or indirectly from the Customer Default.

5. CHARGES AND PAYMENT

5.1 Where:

- (a) the Scope of Work states that the Charges for the Services shall be calculated on a time and materials basis:
 - (i) the Charges shall be calculated in accordance with Kubus's daily fee rates, as set out in the Scope of Works or (where there is no Scope of Works) the Order;
 - (ii) Kubus'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;
 - (iii) Kubus shall be entitled to charge an overtime rate of 150% of the 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(a)(ii); and
 - (iv) Kubus shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom Kubus 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 Kubus for the performance of the Services, and for the cost of any materials.
- (b) the Scope of Work states that the Charges for the Services is on a fixed basis, the charges for the Services shall be as set out in the Scope of Work and shall be the full and exclusive remuneration of Kubus in respect of the performance of the Services. Unless otherwise agreed in writing by the Customer, the charges shall include every cost and expense of Kubus directly or indirectly incurred in connection with the performance of the Services.

5.2 Kubus reserves the right to increase the Charges on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index.

- 5.3 Kubus shall invoice the Customer monthly in arrears unless otherwise set out in the Scope of Works or the Order.
- 5.4 The Customer shall pay each invoice submitted by Kubus:
- (a) upon receipt of the invoice or in accordance with any credit terms agreed by Kubus and confirmed in writing to the Customer; and
 - (b) in full and in cleared funds to a bank account nominated in writing by Kubus, and time for payment shall be of the essence of the Contract.
- 5.5 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 Kubus to the Customer, the Customer shall, on receipt of a valid VAT invoice from Kubus, pay to Kubus 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 Customer fails to make a payment due to Kubus under the Contract by the due date, then, without limiting Kubus's remedies under clause 9, the Customer shall pay interest and compensation on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment as set out in the Late Payment of Commercial Debts (Interest) Act 1988.
- 5.7 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).
- 6. INTELLECTUAL PROPERTY RIGHTS**
- 6.1 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 Kubus.
- 6.2 Kubus grants to the Customer, or shall procure the direct grant to the Customer of, 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 in its business.
- 6.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 6.2.
- 6.4 The Customer grants Kubus a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to Kubus for the term of the Contract for the purpose of providing the Services to the Customer.
- 7. DATA PROTECTION**
- 7.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 7 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 7.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and Kubus is the Processor. Clause 7.7 sets out the scope, nature

and purpose of processing by Kubus, the duration of the processing and the types of Personal Data and categories of Data Subject.

- 7.3 Without prejudice to the generality of clause 7.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Kubus and/or lawful collection of the Personal Data by Kubus on behalf of the Customer for the duration and purposes of this agreement.
- 7.4 Without prejudice to the generality of clause 7.1, Kubus shall, in relation to any Personal Data processed in connection with the performance by Kubus of its obligations under this agreement:
- (a) process that Personal Data only on the documented written instructions of the Customer which are set out in clause 7.7 unless Kubus is required by Domestic Law or EU Law to otherwise process that Personal Data. Where Kubus is relying on Domestic Law or EU Law as the basis for processing Personal Data, Kubus shall promptly notify the Customer of this before performing the processing required by the Domestic Law or EU Law unless the Domestic Law or EU Law prohibits Kubus from so notifying the Customer;
 - (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
 - (d) not transfer any Personal Data outside of the UK or EEA unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - (i) the Customer or Kubus has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject has enforceable rights and effective legal remedies;
 - (iii) Kubus complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) Kubus complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
 - (e) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

- (f) notify the Customer without undue delay on becoming aware of a Personal Data Breach;
 - (g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Domestic Law or EU Law to store the Personal Data; and
 - (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 7.
- 7.5 The Customer provides its prior general authorisation to Kubus appointing any of its third party subcontractors as a third-party processor of Personal Data under this agreement. Kubus confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement which reflects and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and Kubus, Kubus shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 7.
- 7.6 Either party may, at any time on not less than 30 (thirty) days' notice, revise this clause 7 by replacing it with any applicable controller to processor standard clauses or similar terms adopted under the Data Protection Legislation or forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).
- 7.7 Data processing details:
- (a) Subject matter of processing - the provision of the Services which involves Kubus communicating with Customer employees and attending the Locations.
 - (b) Duration of processing - the Term
 - (c) Nature and purpose of processing - to enable Kubus to carry out the Services
 - (d) Types of personal data to be processed - name, email address, telephone number
 - (e) Categories of data subject - Customer employees, subcontractors and agents.
8. **LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**
- 8.1 References to liability in this clause 8 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 8.2 Nothing in this clause 8 shall limit the Customer's payment obligations under the Contract.
- 8.3 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation; and
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

8.4 Subject to clause 8.3 Kubus's total liability to the Customer shall not exceed 100% of all sums paid or payable by the Customer to Kubus under the Contract.

8.5 Subject to clause 8.3, the following types of loss are wholly excluded:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill; and
- (g) indirect or consequential loss.

8.6 This clause 8 shall survive termination of the Contract.

8.7 Kubus has given commitments as to compliance of the Services with relevant specifications in clause 3. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

8.8 This clause 8 shall survive termination of the Contract.

9. TERMINATION

9.1 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.

9.2 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 14 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), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, 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.

9.3 Without affecting any other right or remedy available to it, Kubus 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;
- (b) there is a change of control of the Customer.

9.4 Without affecting any other right or remedy available to it, Kubus may suspend the supply of Services under the Contract or any other contract between the Customer and Kubus if:

- (a) the Customer fails to pay any amount due under the Contract on the due date for payment;
- (b) the Customer becomes subject to any of the events listed in clause 9.2(c) or clause 9.2(d), or Kubus reasonably believes that the Customer is about to become subject to any of them; and
- (c) Kubus reasonably believes that the Customer is about to become subject to any of the events listed in clause 9.2(b).

10. CONSEQUENCES OF TERMINATION

10.1 On termination or expiry of the Contract:

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

10.2 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.

10.3 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.

11. GENERAL

11.1 **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.

11.2 **Assignment and other dealings.**

- (a) Kubus 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.

- (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, 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 Kubus].

11.3 Confidentiality.

- (a) Each party undertakes that it shall not at any time during the Contract and for a period of two years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.3(b).
- (b) Each party may disclose the other party's confidential information:
 - (i) to its employees, officers, representatives, contractors, 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, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11.3; and
 - (ii) 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.

11.4 Entire agreement.

- (a) 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.
- (b) 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.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

11.5 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).

11.6 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 right or remedy. 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.

11.7 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision or part-provision of this

Contract deleted under this clause 11.7 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

11.8 Notices.

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
 - (i) 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
 - (ii) sent by email to the address set out in the Order (if any) (or an address substituted in writing by the party to be served):
- (b) Any notice shall be deemed to have been received:
 - (i) if delivered by hand, at the time the notice is left at the proper address;
 - (ii) 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
 - (iii) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
- (c) This clause 11.8 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.

11.9 **Third party rights.** 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.

11.10 **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.

11.11 **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.