

Business Communicate Limited – Terms & Conditions of Trade

1. Definitions

- 1.1 "Consultant" shall mean Business Communicate Limited its successors and assigns or any person acting on behalf of and with the authority of Business Communicate Limited.
- 1.2 "Client" shall mean the person or entity described as such on the invoices, application for credit, quotation, work authorisation or any other forms to which these terms and conditions apply, and shall include any person acting on behalf of and with the authority of such person or entity.
- 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 "Goods" shall mean Goods supplied by the Consultant to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by the Consultant to the Client.
- 1.5 "Services" shall mean all services supplied by the Consultant to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 "Price" shall mean the cost of the Goods as agreed between the Consultant and the Client subject to clause 3 of this contract.

2. Acceptance

- 2.1 Any instructions received by the Consultant from the Client for the supply of Goods and/or the Client's acceptance of Goods supplied by the Consultant shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are irrevocable and can only be amended with the written consent of the Consultant.
- 2.4 The Client undertakes to give the Consultant at least fourteen (14) days notice of any change in the Client's name, address and/or any other change in the Client's details.

3. Price And Payment

- 3.1 At the Consultant's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by the Consultant to the Client in respect of Goods supplied; or
- (b) as indicated on the purchase order provided by the Client and agreed by the Consultant in respect of Goods supplied; or
- (c) the Consultant's quoted Price (subject to clause 3.2) which shall be binding upon the Consultant provided that the Client shall accept the Consultant's quotation in writing within thirty (30) days.
- 3.2 The Consultant reserves the right to change the Price in the event of a variation to the Consultant's quotation, or a variation to the Client's purchase order.
- 3.3 At the Consultant's sole discretion a deposit may be required.
- 3.4 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due thirty (30) days following the date of the invoice.
- 3.5 At the Consultant's sole discretion:
- (a) payment shall be due on delivery of the Goods; or
- (b) payment shall be due before delivery of the Goods; or
- (c) payment for approved Clients shall be made by instalments in accordance with the Consultant's payment schedule.
- 3.6 Payment will be made by cash, or by cheque, or by bank cheque, or by bank transfer, or by any other method as agreed to between the Client and the Consultant.
- 3.7 VAT and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

4. Third Party Services

- 4.1 A key part of the Consultant's services to the Client is the identification and engagement of a third party service provider ("Third Party Supplier") that will provide telephone services ("Third Party Services") to the Client. The Client acknowledges that any such Third Party Services will be provided subject to the Third Party Supplier's own terms and conditions and in order to receive the Third Party Services the Client will have to enter into an agreement with the Third Party Supplier and accept and abide by any such Third Party Supplier terms and conditions.
- 4.2 The Client acknowledges that the Consultant may receive a fee from the Third Party Supplier for the introduction of the Client (or any third party purchaser) to the Third Party Supplier.
- 4.3 In the event that the Client defaults on any agreement with a Third Party Supplier, the Client agrees to indemnify the Consultant for any loss incurred by the Consultant as a result of that default, including the loss of any fee paid by the Third Party Supplier to the Consultant for the introduction of the Client to the Third Party Supplier. The Client agrees that the Consultant shall invoice the Client directly for the value of the lost fee and the Client shall pay to the Consultant such invoiced amount.
- 4.4 Where the Client is acting on behalf of a third party (a "Third Party Purchaser") and the Consultant identifies and engages a Third Party Supplier to provide Third Party Services to the Third Party Purchaser, in the event that the Third Party Purchaser defaults on any agreement with a Third Party Supplier, the Client agrees to indemnify the Consultant for any loss incurred by the Consultant as a result of that default, including the loss of any fee paid by the Third Party Supplier to the Consultant for the introduction of the Third Party Purchaser to the Third Party Supplier. The Client agrees that the Consultant shall invoice the Client directly for the value of the lost fee and the Client shall pay to the Consultant such invoiced amount.

5. Delivery Of Goods

- 5.1 At the Consultant's sole discretion delivery of the Goods shall take place when:
- (a) the Client takes possession of the Goods at the Client's address or other address nominated by the Client (in the event that the Goods are delivered by the Consultant or the Consultant's nominated carrier); or
- (b) the Client's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Client's agent.
- 5.2 The costs of delivery are included in the Price.
- 5.3 The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then the Consultant shall be entitled to charge a reasonable fee for redelivery.
- 5.4 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 5.5 The Consultant may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 5.6 The failure of the Consultant to deliver shall not entitle either party to treat this contract as repudiated.

- 5.7 The Consultant shall not be liable for any loss or damage whatever due to failure by the Consultant to deliver the Goods (or any of them) promptly or at all.

6. Risk

- 6.1 If the Consultant retains ownership of the Goods nonetheless, all risk for the Goods passes to the Client on delivery.
- 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Consultant is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Consultant is sufficient evidence of the Consultant's rights to receive the insurance proceeds without the need for any person dealing with the Consultant to make further enquiries.

7. Title

- 7.1 It is the intention of the Consultant and agreed by the Client that ownership of the Goods shall not pass until:
- (a) the Client has paid all amounts owing for the particular Goods; and
- (b) the Client has met all other obligations due by the Client to the Consultant in respect of all contracts between the Consultant and the Client.
- 7.2 Receipt by the Consultant of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Consultant's ownership or rights in respect of the Goods shall continue.
- 7.3 It is further agreed that:
- (a) where practicable the Goods shall be kept separate and identifiable until the Consultant shall have received payment and all other obligations of the Client are met; and
- (b) until such time as ownership of the Goods shall pass from the Consultant to the Client the Consultant may give notice in writing to the Client to return the Goods or any of them to the Consultant. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease; and
- (c) the Consultant shall have the right of stopping the Goods in transit whether or not delivery has been made; and
- (d) if the Client fails to return the Goods to the Consultant then the Consultant or the Consultant's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Goods are situated and take possession of the Goods; and
- (e) the Client is only a bailee of the Goods and until such time as the Consultant has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods on trust for the Consultant; and
- (f) the Client shall not deal with the money of the Consultant in any way which may be adverse to the Consultant; and
- (g) the Client shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Consultant; and
- (h) the Consultant can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Client; and
- (i) until such time that ownership in the Goods passes to the Client, if the Goods are converted into other products, the parties agree that the Consultant will be the owner of the end products.

8. Defects

- 8.1 The Client shall inspect the Goods on delivery and shall within seven (7) days notify the Consultant of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Consultant an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Consultant has agreed in writing that the Client is entitled to reject, the Consultant's liability is limited to either (at the Consultant's discretion) replacing the Goods or repairing the Goods.
- 8.2 No Goods shall be accepted for return except in accordance with 8.1 above.

9. Returns

- 9.1 The Consultant will not accept the return of non-defective Goods for credit.

10. Warranty

- 10.1 For Goods not manufactured by the Consultant, the warranty shall be the current warranty provided by the manufacturer of the Goods. Whilst the Consultant shall honour such warranty the Consultant shall not be bound by nor responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
- 10.2 To the extent permitted by statute, no warranty is given by the Consultant as to the quality or suitability of the Goods for any purpose and any implied warranty is expressly excluded. The Consultant shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

11. Sale of Goods Act 1979 and Supply of Goods and Services Act 1982

- 11.1 This agreement is subject to the provisions of the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982 (or any replacement or re-enactment thereof) in all cases except where the Client is contracting within the terms of a trade/business (which cases are specifically excluded).
- 11.2 Notwithstanding clause 11.1 nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982 or any laws or legislation governing the rights of consumers, except to the extent permitted by those Acts, laws or legislation.

12. Default & Consequences of Default

- 12.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment.
- 12.2 The Consultant may charge interest on overdue invoices in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 12.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify the Consultant from and against all costs and disbursements incurred by the Consultant in pursuing the debt including legal costs on a solicitor and own client basis and the Consultant's collection agency costs.
- 12.4 Without prejudice to any other remedies the Consultant may have, if at any time the Client is in breach of any obligation (including those relating to payment), the Consultant may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. The Consultant will not be liable to the Client for any loss or damage the Client suffers because the Consultant exercised its rights under this clause.

- 12.5 If any account remains overdue after thirty (30) days then an amount of £20.00 shall be levied as an administration fee and shall be levied for each month that the account remains overdue, which sums shall become immediately due and payable.

- 12.6 Without prejudice to the Consultant's other remedies at law the Consultant shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to the Consultant shall, whether or not due for payment, become immediately payable in the event that:

- (a) any money payable to the Consultant becomes overdue, or in the Consultant's opinion the Client will be unable to meet its payments as they fall due; or
- (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with its creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

13. Security And Charge

- 13.1 Despite anything to the contrary contained herein or any other rights which the Consultant may have howsoever:
- (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Consultant or the Consultant's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Client and/or the Guarantor acknowledge and agree that the Consultant (or the Consultant's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
- (b) should the Consultant elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify the Consultant from and against all the Consultant's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) The Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Consultant or the Consultant's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 13.1.

14. Cancellation

- 14.1 The Consultant may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. On giving such notice the Consultant shall repay to the Client any sums paid in respect of the Price. The Consultant shall not be liable for any loss or damage whatever arising from such cancellation.

15. General Data Protection Regulation

- 15.1 The Client and the Guarantor/s (if separate to the Client) authorises the Consultant to:
- (a) collect, retain and use any information about the Client, for the purpose of assessing the Client's creditworthiness or marketing products and services to the Client; and
- (b) to disclose information about the Client, whether collected by the Consultant from the Client directly or obtained by the Consultant from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or of listing a default by the Client on publicly accessible credit reporting databases.
- 15.2 The Consultant may also use information about the Client to monitor and analyse its business. In this connection the Client authorises the Consultant to disclose personal information to agents or third parties engaged by the Consultant.
- 15.3 The Client consents to the transfer of information outside of the European Economic Area for the purposes listed above.
16. Where the Client is an individual the authorities under (clause 15.1) are authorities or consents for the purposes of the General Data Protection Regulation
- 16.1 The Client shall have the right to request the Consultant for a copy of the information about the Client retained by the Consultant and the right to request the Consultant to correct any incorrect information about the Client held by the Consultant.

17. Limitation of Liability

- 17.1 The Consultant shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit or goodwill) suffered by the Client or any third party arising out of a breach by the Consultant of these terms and conditions.
- 17.2 In the event of any breach of this contract by the Consultant the remedies of the Client shall be limited to damages and the Consultant's liability (if any) whether in contract, tort or otherwise in respect of any defect in the Goods, or for any breach of these terms and conditions, or of any duty owed to the Client in connection with them shall be limited to the amount of the Price.
- 17.3 For the avoidance of doubt, nothing in these terms and conditions shall exclude or restrict the Consultant's liability to any person for death or personal injury to that person resulting from the Consultant's negligence.

18. Client's Disclaimer

- 18.1 The Client hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to the Client by the Consultant and the Client acknowledges that the Goods are bought relying solely upon the Client's skill and judgment.

19. General

- 19.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 19.2 These terms and conditions and any contract to which they apply shall be governed by the laws of England and Wales and are subject to the jurisdiction of the courts of England and Wales.
- 19.3 The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by the Consultant.
- 19.4 The Consultant may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 19.5 The Consultant reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Consultant notifies the Client of such change. Except where the Consultant supplies further Goods to the Client and the Client accepts such Goods, the Client shall be under no obligation to accept such changes.
- 19.6 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.