



TXM Consult - Terms & Conditions

Issue:3.0

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1. Interpretation

The following definitions and rules of interpretation apply in these Supplier Standard Terms and 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 10.5.

Consultant: means any person assigned (whether directly or indirectly) to provide any services to the Customer via (whether directly or indirectly) the Supplier.

Contract: the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions and the Proposal shall form part of this contract.

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

Conversion Fee: 30% of the Remuneration (where capable of being determined) or if the Remuneration is not capable of being determined or the engagement is not a Permanent Engagement a fee of £25,000 for each such relevant Subcontractor or Consultant (as applicable).

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

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

Customer's Group: means the Customer, any body corporate of which the Customer is a subsidiary (as defined in section 1159 of the Companies Act 2006), any other subsidiary of such body corporate and any subsidiary of the Customer.

Deemed Introduction: will occur where the Customer, any member of the Customer's Group or any client of the Customer with whom the Subcontractor and/or Consultant had material contact within the 12 months prior to any engagement of that Subcontractor and/or Consultant by such client (a "Customer Contact"), or any third party (including any client of the Customer or any employment business or other person) to whom the Customer introduces that Subcontractor and/or Consultant (a "Customer Third Party Contact"), directly or indirectly (other than through the Supplier):

- a) employs or otherwise engages that Subcontractor or Consultant (or substitute) to carry out the Services or services similar to or related to the Services; or
- b) otherwise makes arrangements (whether directly or indirectly) so that Subcontractor or Consultant (or substitute) provides services which are similar, identical or related to the Services for either the Customer, any member of the Customer's Group, a Customer Contact or a Customer Third Party Contact.

Deliverables: the deliverables set out in the Proposal.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), 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 Customer's acceptance (deemed or otherwise) of the Proposal.

Permanent Engagement: means the Customer's direct or indirect via any person other than the Supplier full-time engagement or permanent employment of the Subcontractor or Consultant.

Proposal: means the Supplier's written proposal for the Services.

Remuneration: means the salary payable to the Subcontractor or Consultant (as applicable) in respect of or referable to the first year of a Permanent Engagement, or which would have been paid if the Permanent Engagement had continued for a year.

Restricted Period: means during the term of the Contract and ending six months from the date on which the Subcontractor or Consultant (as applicable) last worked on delivering any services via (whether directly or indirectly) the Supplier for the Customer.

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

Specification: the description or specification of the Services provided in writing by the Supplier to the Customer.

Subcontractor: means any subcontractor engaged (whether directly or indirectly) to supply the services of the Consultant.

Supplier: TXM Consult Limited registered in England and Wales with company number 11102339.

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

1.2 Interpretation:

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.

d) A reference to a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

2. Basis of Contract:

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

2.2 The Order shall be deemed to be accepted when the Supplier commences the delivery of the Services 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.

2.4 Any quotation given by the Supplier shall not constitute an offer and is only valid for the period stated in the Proposal.

3. Supply of Services:

3.1 The Supplier shall supply the Services to the Customer in accordance with the Specification in all material respects.

3.2 The Supplier 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 the Supplier shall notify the Customer in any such event.

3.3 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

4. Customer's Obligations:

4.1 The Customer Shall:

- a) ensure that the terms of the Order and any information it provides in the Specification are complete and accurate.
- b) co-operate with the Supplier in all matters relating to the Services;
- c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier;
- d) provide the Supplier with such information and materials as the Supplier 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 the Supplier (Supplier Materials) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and
- g) comply with any additional obligations as set out in the Specification.

4.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):

- a) without limiting or affecting any other right or remedy available to it, the Supplier 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 the Supplier's performance of any of its obligations;
- b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2; and
- c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

- 4.3 The Customer agrees that it will not either on their own account or in association with any person, firm, company or organisation and whether directly or indirectly, during the term of the Contract and for six months following its termination, solicit or entice away or attempt to entice away, employ or engage (in any capacity) any of the Supplier's employees.
- 4.4 If a Deemed Introduction occurs within the Restricted Period the Customer shall pay to the Supplier a Conversion Fee and the Conversion Fee shall be payable whether or not the provision of Services under this Contract has commenced when the Deemed Introduction occurs, and no refund of the Conversion Fee shall be payable if such employment, engagement or arrangement terminates.
- 4.5 If the Customer introduces the Sub-contractor and/or the Consultant to a third party who is not an employment business (including, without limitation, any member of the Customer's Group or any client of or supplier to the Customer's Group) and such third party employs or otherwise engages, directly or indirectly (other than via the Supplier), that Sub-contractor and/or Consultant and if that Sub-contractor and/or Consultant have/has at any time provided services to the Customer via the Supplier, within the Restricted Period, the Customer shall pay to the Supplier the Conversion Fee and no refund of the Conversion Fee shall be payable if any such employment or engagement terminates.

5. Charges and Payment:

- 5.1 The Charges and timings for invoicing for the Services shall be set out in the Proposal.
- 5.2 The Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier 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 the Supplier for the performance of the Services, and for the cost of any materials.
- 5.3 The Customer shall pay each invoice submitted by the Supplier:
- a) within 30 days of the date of the invoice; and
 - b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.
- 5.4 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 the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier 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.

- 5.5 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 8, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 5.5 will accrue each day at 8% a year above the Bank of England's base rate from time to time, but at 8% a year for any period when that base rate is below 0%
- 5.6 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).
- 5.7 The Supplier may increase the Charges with effect from 1 January and 1 July of each year in line with the percentage increase in the Retail Prices Index during the previous six months and shall be based on the latest available figure for the percentage increase in the Retail Prices Index.

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 the Supplier.

7. Limitation of Liability:

- 7.1 The maximum cumulative liability of the Supplier arising out of, or in connection with the supply of the Services shall not exceed the fees received (in cleared funds) by the Supplier for the delivery of such Services.
- 7.2 References to liability in this clause 7 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 7.3 Nothing in this clause 7 shall limit the Customer's payment obligations under the Contract.
- 7.4 Nothing in the Contract limits any liability which cannot legally be limited, including liability for death or personal injury caused by negligence.
- 7.5 Subject clause 7.3 (No limitation of customer's payment obligations) and clause 7.4 (Liabilities which cannot legally be limited), this clause 7.5 sets out the types of loss that 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.
- g) and indirect or consequential loss.

- 7.6 The Supplier 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.
- 7.7 Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire 1 month from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 7.8 This clause 7 shall survive termination of the Contract.

8. Termination:

- 8.1 The term of each Contract shall be stated in the Proposal.
- 8.2 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 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;
 - b) 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
 - c) 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.
- 8.3 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

8.4 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services under the Contract or any other contract between the Customer and the Supplier 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 8.2(b) or clause 8.2(c), or the Supplier reasonably believes that the Customer is about to become subject to any of them; and

c) the Supplier reasonably believes that the Customer is about to become subject to any of the events listed in clause 8.2(a).

9. Consequences of Termination:

9.1 On termination or expiry of the Contract:

a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;

b) the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

9.2 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.

9.3 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.

10. General:

10.1 **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.

10.2 Assignment and other **dealings.**

- a) The Supplier 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.

10.3 Confidentiality.

- a) Each party undertakes that it shall not at any time, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 10.3
- 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 10.3; 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.

10.4 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. Accordingly, the Contract shall be the sole agreement (to the exclusion of all and any terms that any member of the Customer's Group may subsequently submit to the Supplier) in respect of the provision of the Services.
- b) Each party hereby irrevocably and unconditionally waives any right to claim that any of the Services were provided under any other agreement, general purchase conditions or otherwise. 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 based on any statement in the Contract.

10.5 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).

10.6 Conflict. If there is an inconsistency between any of the provisions of these terms and conditions and the Proposal, the provisions of the Proposal shall prevail.

10.7 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.

10.8 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 10.8 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.

10.9 Notices.

a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be 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 sent by email to the address that sent (for the Supplier) and received (for the Customer) the Proposal.

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. In this clause 10.9(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

c) This clause 10.9 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.

- 10.10 **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.
- 10.11 **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.
- 10.12 **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.

