

Terms of Business (Clients) of Systems Application Consulting Ltd for the supply of Consultants

1. Definitions

1.1. Expressions used in these Terms have the meanings assigned to them in any Contract Confirmation letter, or Contract Schedule.

1.2. 'Contract' means a contract between us.

'Business Day' means any weekday during the Contract Period which is not a statutory or bank holiday in the Location.

2. Services

2.1. We will provide you with the Services at the Location, during the Service Hours, together with such Excess Hours (if any) as you and the Consultant mutually agree, commencing on the Start Date for the Contract Period (unless terminated sooner). The Services will be performed by the Consultant (or by such substitute as we may from time to time agree).

2.2. It is the Consultant's responsibility to

- comply with your reasonable requests, within the scope of the Services.
- comply with such Health and Safety policies and security policies as are relevant and of which the Consultant has been advised by you.
- comply with the provisions of the European Council Directive 93/104/EC (the Working Time Directive) and the Working Time Regulations 1998, and any other relevant legislative requirements; you will cooperate with the Consultant to the extent reasonably necessary to enable compliance with those provisions.

2.3. You will

- where appropriate, provide the Consultant with suitable workspace and with all necessary administrative and technical support.
- ensure the Consultant has immediate access to any relevant Health and Safety at Work policies and security policies.
- comply in all respects with all relevant legal requirements (save those requiring any payment to the Consultant) which may relate to the Consultant's placement with you and provide us with such information as we may reasonably request to enable us to do likewise.

2.4. We may accept your named Client Contact as having authority to bind you on minor matters relating to this Contract. You may change this Client Contact at any time by written notice to us.

2.5. We may from time to time propose substitute Consultants, if we do so, we acknowledge that whether you accept or reject any such proposed substitute is a matter for your sole discretion.

3. Payment

3.1. You will pay us at the Charge Rate for the Service Hours and at the Excess Hours Rate for any Excess Hours, and you will pay the Permitted Expenses incurred by the Consultant. All charges are subject to VAT, where applicable.

If you have any cause to be dissatisfied with the Consultant's Services you will promptly advise us, and you will note such accordingly. You will not refuse full or delay to pay without proper cause.

3.2. We will invoice you every Invoicing Period and you will pay our invoices in the currency stated in the Charge Rate, and in accordance with the Payment Terms.

3.3. So far as payment of our invoices is concerned, time is of the essence, and if you do not pay any sum due to us within the Payment Terms then, without prejudice to any other remedy:

- we may withhold or suspend further services in respect of any Contract; and
- all sums owing by you to us on any account shall become due and payable immediately; and
- you will pay interest on all sums due from date of invoice to date of payment both before and after any judgment at the rate of 2% per calendar month (or at the maximum rate permitted under any applicable law, if less), calculated on a daily bases and compounded monthly; and
- you will indemnify us from and against any and all loss damage costs or expenses (including legal expenses on the indemnity basis) which we may incur as a result of your failure to pay our accounts on time or in taking steps to effect recovery of sums due from you; and
- we may terminate any Contract; if we do so, our respective rights and liabilities under such Contract(s) shall be as if such Contract(s) had been lawfully terminated by us for breach thereof by you.

3.4. You may not make deductions or deferrals in respect of any disputes with or claims against us, until and unless the same have been agreed.

4. Termination

4.1. A Contract may be terminated by

- you giving us written notice of the Client Notice Period
- us giving you written notice of the Agency Notice Period, if such a period is provided for in the Schedule

4.2. A Contract may be terminated at any time by you by written notice with immediate effect on any of the following grounds, provided you give us full written details, and such further cooperation as we may reasonably require, namely:

- If the Consultant fails to provide the Services in a professional manner and with all proper skill and care, or is in material breach of any of the items expressed in a Contract as the Consultant's responsibility
- if the Consultant is absent from work without prior arrangement for more than 5 Business Days in any consecutive period of 20 Business days

4.3. A Contract may be terminated by either party by written notice with immediate effect:

- if the other is in material breach of contract, or is in breach of contract and fails to remedy the breach within seven days of being required in writing to do so
- if any distress or execution (in Scotland, diligence) is levied against the other, or if the other makes or seeks to make any composition or arrangement with its creditors, or if the other ceases to carry on business, or if any preliminary step is taken by or in respect of the other party towards the other's liquidation winding up receivership or administration (other than for the purposes of a *bona fide* reconstruction or amalgamation).

4.4. A Contract may be terminated by us on the same date as the contract under which we have engaged the Consultant's services terminates.

**Terms of Business (Clients) of Systems Application Consulting Ltd
for the supply of Consultants**

- 4.5. Subject to the foregoing, a Contract shall terminate at the end of the Contract Period unless extended by express mutual agreement, or unless the Contract Period is stated to be 'Rolling'.
- 4.6. If the Location is outside the United Kingdom and if as a result of termination of a Contract we become liable to the Consultant under any local law, you will indemnify us against any such liability, to the extent that it which exceeds any liability we may have under the express terms of our contract with the Consultant.
- 4.7. Save as expressly provided, termination shall not affect any accrued rights of either party, and any obligation of a continuing nature shall remain in force after termination.

5. Copyright and Intellectual Property Rights

- 5.1. Any copyright, patents and other intellectual property rights arising in the course of the Services shall become and remain your sole property, and we will cooperate in any formal steps required by you to vest such rights in you.
- 5.2. You will indemnify us against any liability we may incur as a result of any alleged infringement of any third party's intellectual property rights in the course of the Services, to the extent that any such infringement directly results from compliance with any Specifications issued by you.
- 5.3. The Consultant will sign any reasonable form of assurance of Intellectual Property Rights that may be required by you.

6. Confidentiality

- 6.1. We and you each recognise that information disclosed to the other in the course of the negotiation of and the performance of a Contract will contain and incorporate confidential information in which the other has an interest.
- 6.2. We and you agree with each other that we will keep such information confidential, and will neither use nor disclose to a third party any part or the whole of such information (or information gained from such disclosure), until or unless such information becomes public knowledge through no fault of the party using such information.
- 6.3. The Consultant will sign any reasonable form of non-disclosure, secrecy, or confidentiality agreement that may be required by you.

7. Liability

- 7.1. As regards apportionment of responsibility and liability between you and us (but not for any other purpose), you will accept the same level of responsibility for all acts, errors, and omissions of the Consultant, whether wilful, negligent, or otherwise, as if the Consultant were your employee.
- 7.2. Except to the extent that it is not lawful to exclude such liability, we shall not be liable to you or to anyone else for any loss or damage whatever or however caused (and whether or not caused by negligence) arising directly or indirectly in connection with a Contract, in excess of £100,000.
- 7.3. We shall not be liable to you for any loss or damage whatsoever or howsoever caused arising from any misrepresentation, whether innocent or negligent, except to the extent that such liability may not be lawfully excluded.
- 7.4. Notwithstanding the generality of the above, we expressly exclude liability for consequential loss or damage of any kind, or for loss of profit, business, revenue, goodwill or anticipated savings.
- 7.5. If any exclusion of liability herein shall be held to be invalid for any reason and we become liable for loss or damage that is capable of being limited in law, such liability shall be limited to £100,000. We shall not in any event be liable for any claims made against us unless they are notified to us within twelve months of the cause of action arising.
- 7.6. We do not exclude or limit liability for death or personal injury to the extent that it arises directly from negligence for which we are legally responsible.
- 7.7. You acknowledge that the Charge Rate is assessed on the basis that liability shall rest as provided by this clause, and that the provisions of this clause shall operate for our benefit and for the benefit of the Consultant.

8. Status of Consultant

- 8.1. A Contract under these terms is an agreement for Professional Consultancy Services as specified in a Contract Confirmation Letter or Contract Schedule; the Consultant will not be subject to control as to the nature of the Services, or the place, time or manner at and in which the Services are to be provided; the relationship governed by a Contract is neither that of agent-principal, nor that of employer-employee. Any Consultant whose Services are provided by us during a Contract is not employed by us and will not be employed by you.
- 8.2. So far as payment is concerned, your sole obligation is to make payments for the Services at the Rates provided for in a Contract Confirmation Letter or Contract Schedule, and you will not be responsible for making any payments for salary, sickness SSP and holiday pay, pensions, and other employee benefits.
- 8.3. We will keep you indemnified in respect of any claim or demand made by the proper authorities for all taxes, national insurance or social security contributions, and other liabilities, charges and dues in respect of the services performed by the Consultant under a Contract.
- 8.4. You will discuss any matters relating to a Contract (and in particular rates, duration, extensions, and termination) only with us and not with the Consultant.
- 8.5. If the Consultant has been employed by you within 6 months before the Start Date, you nevertheless consent to the Consultant being supplied to you by us.

9. Restriction

- 9.1. If during the time whilst a Consultant is supplied by us to you or within 12 months thereafter you enter any arrangement or agreement which would result in either
 - the employment of the Consultant by, or
 - the provision of services by the Consultant of the same or similar nature as the services provided under this Contract to, or
 - the provision of the services of any other person introduced to you by the Consultant toyou, other than through us, or if you enter such an arrangement in relation to a prospective Consultant introduced by us within 6 months of the introduction, then you will inform us straightaway, and will forthwith pay us a single introductory commission calculated at 13 times the weekly rate payable under the most recent Contract for the supply to you of that Consultant (or, if there has been no such Contract, of 26 times the weekly rate at which that Consultant was offered to you).
- 9.2. An offer of employment or an engagement by any of the following shall be deemed to be by you:

SA Consulting, XISTGroup and XIST 2 are divisions of System Application Consulting Ltd, is a company registered in England and Wales (Company number 05619486) whose registered office is at 1 Barn End, Weald Street, Bampton, Oxfordshire OX18 2HL

Terms of Business (Clients) of Systems Application Consulting Ltd for the supply of Consultants

- any Associated Company of yours within the meaning of section 416 of the Income and Corporation Taxes Act 1988
- any partnership or joint venture in which you are a partner or joint venture
- any subsidiary of yours
- any person, body, or organisation to whom the Consultant was introduced by you.

9.3. You acknowledge that:

- our main business is the introduction and provision of services of qualified and experienced Consultants to Clients
- in effecting such introductions, we are disclosing confidential information in which we have an interest and which we are entitled to protect
- in the absence of the restrictions contained in this clause, you might be in a position to take unfair advantage of introductions effected by us and of our confidential information, and thereby cause harm to our business
- in all the circumstances the duration and the extent of the restrictions in this clause are no more than is reasonably necessary for the protection of our legitimate business interests.

10. Miscellaneous

10.1. Additional Services

The Consultant may also (but is not obliged to) provide additional advice and assistance outside the scope of the Services.

10.2. Your agreement

Where any matter under a Contract is specified to require or be subject to your agreement, the signature of your representative to a timesheet shall be sufficient evidence of your approval to all matters referred to therein.

10.3. Multiple Consultants

Where more than one person is named in a Contract Confirmation as the Consultant, there shall be a separate and severable Contract between you and us in respect of each such named Consultant.

10.4. Non-Assignment

A Contract is personal to you, and you may not without our written consent assign or dispose of any of your rights, or subcontract or otherwise delegate any of your obligations under a Contract.

10.5. Notices

All notices shall be in writing and shall be deemed to have been duly given when delivered by hand, posted by pre-paid first class post or sent by fax to the intended recipient. Notices sent by fax shall be deemed received the first Business day following such delivery or sending, and notices which have been posted as above shall be deemed received on the second Business day following posting.

10.6. Waiver

Failure or neglect by us at any time to enforce any of these Terms shall not be a waiver of our rights and shall not prejudice our rights to take action in respect of the same or any later breach.

10.7. Severability

If any Term of a Contract is held by any court or other competent authority to be wholly or partially void, invalid, or unenforceable such Term shall be severed from the body of these Terms (which shall continue to be valid and enforceable to the fullest extent permitted by Law).

10.8. Entire Agreement

- The supply by us of a Consultant is conditional upon acceptance by you of these Terms, which shall override all other inconsistent terms, whether express, implied or otherwise, and including (but not limited to) any terms, conditions or stipulations contained in your purchase order or otherwise stipulated by you and which are at variance with or additional to these Terms; any such additional terms shall not be binding upon us unless specifically accepted in writing and signed by us.
- In the absence of express written acceptance of these terms, your allowing the commencement of work by the Consultant shall be a sufficient act of acceptance of all these terms, and an acknowledgement that you have satisfied yourself as to the Consultant's skills and suitability for your requirements.
- These terms constitute the entire understanding between us, and each of us acknowledges that, in entering into a Contract, we do not do so on the basis of or rely on any representation, warranty or other provision except as expressly provided in writing, and accordingly all conditions, warranties or other terms implied by statute or common law are hereby excluded to the fullest extent permitted by law. Any liability or remedy for innocent or negligent misrepresentation is expressly excluded.

10.9. Force Majeure

- If either party to a Contract is prevented or delayed in the performance of any of its obligations by force majeure, then such party shall be excused performance for so long as such cause of prevention or delay shall continue
- 'force majeure' shall be deemed to be any cause affecting the performance of a Contract arising from or attributable to acts, events, omissions or accidents beyond the reasonable control of such party and including without limitation the following:
 - a) strikes, lockouts or other industrial action
 - b) civil commotion, riot, invasion, war threat or preparation for war
 - c) fire, explosion, storm, flood, earthquake, subsidence, epidemic, bad weather or other natural physical disaster
 - d) impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport
 - e) political interference with the normal operations of any party
 - f) illness of or accidental injury to a Consultant (whether or not caused or contributed to by his own negligence)
 - g) mechanical breakdown

10.10. Interpretation

- The headings in these Terms are for convenience only and are not intended to have any legal effect.
- References to Acts of Parliament, Statutory Instruments, or other subordinate legislation shall be construed as reference to such as were in force at the time a Contract was formed.

10.11. Law

- A Contract is governed by the laws of England and any questions arising shall be dealt with only by the Courts of England and Wales.
- Where these Terms of Business are also provided in a language other than English, whilst the translation is believed to be accurate, no warranty to that effect is given, and the English language version shall prevail.