

Standard Terms & Conditions For Supply of Services

21 February 2015. Version 3.

These are the terms and conditions for the Supply of Services by Iain's IT Solutions Ltd in relation to the provision of Software Development Services. These terms shall be deemed accepted by our customers upon their placing an order with us:

1. DEFINITIONS

In this document the following words shall have the following meanings:

- 1.1 "Agreement" means these Terms and Conditions together with the terms of any applicable Quotation or Estimate;
- 1.2 "Customer" means the organisation or person who purchases services from the Supplier;
- 1.3 "Intellectual Property Rights" means all patents, registered and unregistered designs, copyright, trademarks, know-how and all other forms of intellectual property wherever in the world enforceable;
- 1.4 "Estimate" means a rough estimation of the length of time a piece of work will take.
- 1.5 "Quotation" means a quote or a statement of work or other similar document describing the services to be provided by the Supplier;
- 1.6 "Supplier" means

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- 1.7 "Confidential Information" means the following information regardless of how it is communicated:
 - 1.7.1 the pricing of any services performed or to be performed under this Agreement;
 - 1.7.2 trade secrets or know-how;
 - 1.7.3 technical data or specifications or commercial information or data or ideas belonging to the person who has communicated the information (or someone with whom it has a business relationship) or relating to its/their business or affairs, the release of which could either be damaging to any of them or be advantageous to its/their rivals or to others; and
 - 1.7.4 any other information which the person receiving it should realise is confidential when considered in the context of the industry in which the person who has communicated the information is involved
- 1.8 "Work Diary" means a log of all work carried out by the Supplier for the Customer. The Work Diary will include the date the work was done and the length of time taken to carry out the work and details of the work done. Unless otherwise agreed by the Customer and Supplier the Work Diary will serve as the basis of any invoices drawn up by the Supplier and sent to the Customer. Where possible the Work Diary will be online and accessible read-only by the Customer and updated by the Supplier as the work is carried out.

2. GENERAL

- 2.1 These Terms and Conditions shall apply to all contracts for the supply of services by the Supplier to the Customer.
- 2.2 For a fixed price piece of work and before the commencement of the services the Supplier shall submit to the Customer a Quotation which shall specify the services to be performed and the fees payable. The Customer shall notify the Supplier immediately if the Customer does not agree with the contents of the Quotation. All Quotation documents shall be subject to these Terms and Conditions.
- 2.3 For services subject to an hourly rate and before the commencement of the services the details of the services to be carried out will - if requested by the Customer - be set out in the Estimate. The details of all work done will be recorded in the Work Diary.
- 2.4 The Customer shall notify the Supplier immediately if the Customer does not agree with the contents of the Estimate. All Estimate documents shall be subject to these Terms and Conditions.

2.5 The Supplier shall use all reasonable endeavours to complete the services within estimated time frames but time shall not be of the essence in the performance of any services.

3. FEES AND PAYMENT

3.1 All work carried out will be subject to either a fixed price or an hourly rate.

3.2 If required an hourly rate will be agreed between the Supplier and the Customer. This hourly rate will be multiplied by 8 to give a daily rate.

3.3 All time is calculated in 15 minute increments minimum.

3.4 For a fixed price piece of work the fees for the performance of the services are as set out in the Quotation. The Supplier shall invoice the Customer for the services as detailed therein.

3.5 For work subject to an hourly rate the details of the work to be carried out will - if requested by the Customer - be set out in the Estimate. The details of all work done will be recorded in the Work Diary. As agreed between the Supplier and Customer the Supplier shall invoice the Customer periodically for all work detailed in the Work diary.

3.6 Periodic recurring fees such as but not limited to subscriptions and hosting shall be invoiced at scheduled dates as specified by the Supplier. These fees may not subject either a Quotation or Estimate.

3.7 Invoiced amounts shall be due and payable as detailed within the invoice. The Supplier shall be entitled to charge interest daily on overdue invoices from the date when payment becomes due until the date of payment at a rate of 8% per annum above the base rate of the Bank of England. In addition each overdue invoice will attract a late payment compensation fee of £45. In the event that the Customer's procedures require that an invoice be submitted against a purchase order to payment the Customer shall be responsible for issuing such purchase order before the services are rendered.

3.8 The Supplier shall not refund any payment unless the amount received exceeds that which is owed to the Supplier at the time of payment, in which case the difference shall be refunded as soon as practicably possible.

4. CUSTOMER'S OBLIGATIONS

4.1 To enable the Supplier to perform its obligations under this Agreement the Customer shall:

4.1.1 co-operate with the Supplier;

4.1.2 provide the Supplier with any information reasonably required by the Supplier;

4.1.3 obtain all necessary permissions and consents which may be required before the commencement of the services; and

4.1.4 comply with such other requirements as may be set out in the Quotation, Estimate or otherwise agreed between the parties.

4.2 The Customer shall be liable to compensate the Supplier for any expenses incurred by the Supplier as a result of the Customer's failure to comply with Clause 4.1.

4.3 Without prejudice to any other rights to which the Supplier may be entitled, in the event that the Customer unlawfully terminates or cancels the services agreed to in the Quotation, the Customer shall be required to pay to the Supplier as agreed damages and not as a penalty the full amount as set out in the Quotation, and the Customer agrees this is a genuine pre-estimate of the Supplier's losses in such a case. For the avoidance of doubt, the Customer's failure to comply with any obligations under Clause 4.1 shall be deemed to be a cancellation of the services and subject to the payment of the damages set out in this Clause.

4.4 In the event that the Customer or any third party, not being a sub-contractor of the Supplier, shall omit or commit anything which prevents or delays the Supplier from undertaking or complying with any of its obligations under this Agreement, then the Supplier shall notify the Customer as soon as possible and:

4.4.1 the Supplier shall have no liability in respect of any delay to the completion of any project;

4.4.2 if applicable, the timetable for the project will be modified accordingly;

4.4.3 the Supplier shall notify the Customer at the same time if it intends to make any claim for additional costs.

5. ALTERATIONS TO THE QUOTATION In instances where a Quotation has been provided:

5.1 the parties may at any time mutually agree upon and execute a new Quotation. Any alterations in the scope of services to be provided under this Agreement shall be set out in the Quotation which shall reflect the changed services and fees and any other terms agreed between the parties.

- 5.2 the Customer may at any time request alterations to the Quotation by notice in writing to the Supplier. On receipt of the request for alterations the Supplier shall, within 5 working days or such other period as may be agreed between the parties, advise the Customer by notice in writing of the effect of such alterations, if any, on the fees and any other terms already agreed between the parties.
- 5.3 where the Supplier gives written notice to the Customer agreeing to perform any alterations on terms different to those already agreed between the parties, the Customer shall, within 5 working days of receipt of such notice or such other period as may be agreed between the parties, advise the Supplier by notice in writing whether or not it wishes the alterations to proceed.
- 5.4 where the Supplier gives written notice to the Customer agreeing to perform alterations on terms different to those already agreed between the parties, and the Customer confirms in writing that it wishes the alterations to proceed on those terms, the Quotation shall be amended to reflect such alterations and thereafter the Supplier shall perform this Agreement upon the basis of such amended terms.

6. CONFIDENTIAL INFORMATION

- 6.1 Both the Supplier and the Customer shall maintain the confidentiality of the other parties Confidential Information and shall not use or disclose any of it without the other parties prior written consent except as referred to in clause 6.2 or where it is necessary for the other party to fulfil its obligations under this Agreement or where it is required to by law.
- 6.2 The Supplier and the Customer will only disclose the other parties Confidential Information to the their group companies and to those officers, staff and professional advisors of their company who need it in order to fulfil this Agreement or to give professional advice.
- 6.3 Clauses 6.1 and 6.2 will still apply after this Agreement ends, except to information which has lost its necessary quality of confidence other than as a result of a breach of clauses 6.1 or 6.2 or a disclosure made by someone else in breach of any other obligation of confidence.

7. WARRANTY

- 7.1 The Supplier warrants that the services performed under this Agreement shall be performed using reasonable skill and care, and of a quality conforming to generally accepted industry standards and practices.
- 7.2 Without prejudice to Clause 7.1, and except as expressly stated in this Agreement, all warranties whether express or implied, by operation of law or otherwise, are hereby excluded in relation to the services to be provided by the Supplier.

8. INDEMNIFICATION

- 8.1 The Customer shall indemnify the Supplier against all claims, costs and expenses which the Supplier may incur and which arise, directly or indirectly, from the Customer's breach of any of its obligations under this Agreement, including any claims brought against the Supplier alleging that any services provided by the Supplier in accordance with the Quotation or the Estimate infringes a patent, copyright or trade secret or other similar right of a third party.

9. LIMITATION OF LIABILITY

- 9.1 Except in respect of death or personal injury due to negligence for which no limit applies, the entire liability of the Supplier to the Customer in respect of any claim whatsoever or breach of this Agreement, whether or not arising out of negligence, shall be limited to the fees paid by the Customer to which the claim relates.
- 9.2 In no event shall the Supplier be liable to the Customer for any loss of business, loss of opportunity or loss of profits or for any other indirect or consequential loss or damage whatsoever. This shall apply even where such a loss was reasonably foreseeable or the Supplier had been made aware of the possibility of the Customer incurring such a loss.
- 9.3 Nothing in these Terms and Conditions shall exclude or limit the Supplier's liability for death or personal injury resulting from the Supplier's negligence or that of its employees, agents or sub-contractors.

10. TERMINATION Either party may terminate this Agreement forthwith by notice in writing to the other if:

- 10.1 the other party commits a material breach of this Agreement and, in the case of a breach capable of being remedied, fails to remedy it within 30 calendar days of being given written notice from the other party to do so;
- 10.2 the other party commits a material breach of this Agreement which cannot be remedied under any circumstances;
- 10.3 the other party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect;
- 10.4 the other party ceases to carry on its business or substantially the whole of its business; or
- 10.5 the other party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets.

11. INTELLECTUAL PROPERTY RIGHTS

- 11.1 In cases where a Quotation has been drawn up, all Intellectual Property Rights produced from or arising as a result of the performance of this Agreement will vest in the Supplier until all monies specified in the Quotation are received by the Supplier. The Supplier will then, unless otherwise stated in the Quotation, assign all Intellectual Property Rights to the Customer, and will execute any appropriate documents required to complete such assignment.
- 11.2 In cases where no Quotation has been drawn up, all Intellectual Property Rights produced from or arising as a result of the performance of this Agreement will vest in the Supplier until a stage in the project agreed by both the Supplier and the Customer has been reached and all monies owed by the Customer are received by the Supplier. The Supplier will then, assign all Intellectual Property Rights to the Customer, and will execute any appropriate documents required to complete such assignment.

12. FORCE MAJEURE

Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, the act or omission of government, highway authorities or any telecommunications carrier, operator or administration or other competent authority, or the delay or failure in manufacture, production, or supply by third parties of equipment or services, and the party shall be entitled to a reasonable extension of its obligations after notifying the other party of the nature and extent of such events.

13. INDEPENDENT CONTRACTORS

The Supplier and the Customer are contractors independent of each other, and neither has the authority to bind the other to any third party or act in any way as the representative of the other, unless otherwise expressly agreed to in writing by both parties. The Supplier may, in addition to its own employees, engage sub-contractors to provide all or part of the services being provided to the Customer and such engagement shall not relieve the Supplier of its obligations under this Agreement.

14. ASSIGNMENT

The Customer shall not be entitled to assign its rights or obligations or delegate its duties under this Agreement without the prior written consent of the Supplier.

15. SEVERABILITY

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction such provision shall be severed and the remainder of the provisions herein shall continue in full force and effect as if this Agreement had been agreed with the invalid illegal or unenforceable provision eliminated.

16. WAIVER

The failure by either party to enforce at any time or for any period any one or more of the Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all Terms and Conditions of this Agreement.

17. NOTICES

Any notice to be given by either party to the other may be served by email, fax, personal service or by post to the address of the other party or such other address as such party may from time to time have communicated to the other in writing, and if sent by email shall, unless the contrary is proved, be deemed to be received on the day it was sent, if sent by fax shall be deemed to be served on receipt of an error free transmission report, if given by letter shall be deemed to have been served at the time at which the letter was delivered personally or if sent by post shall be deemed to have been delivered in the ordinary course of post.

18. ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written. Unless expressly provided elsewhere in this Agreement, this Agreement may be varied only by a document signed by both parties.

19. NO THIRD PARTIES

Nothing in this Agreement is intended to, nor shall it confer any rights on a third party.

20. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with the law of England and Wales