

## **Terms and Conditions**

### **1. IT IS AGREED AS FOLLOWS**

The Client shall engage the Consultant on tasks on an as and when required basis and, where a task is accepted, the Consultant shall provide the Services (as defined in the Schedule) on the terms of this Agreement (the Engagement). There shall be no obligation on the Consultant to accept the work offered by the Client and the Client is under no obligation to offer work to the Consultant.

Once the Agreement has commenced, it shall continue subject to the remaining terms of this Agreement until it is terminated with immediate effect by either party giving written notice to the other.

### **2. WHAT WE EXPECT**

During the Engagement the Consultant shall:

- (a) provide the Services with all due care, skill and ability and use his best endeavours to promote the interests of the Client;
- (b) promptly give to the Client all such information and reports as it may reasonably require in connection with matters relating to the provision of the Services or the business of the Client.

If the Consultant is unable to provide the Services due to illness or injury, he shall advise the Client of that fact as soon as reasonably practicable. For the avoidance of doubt, no fee shall be payable in accordance with clause 3 in respect of any period during which the Services are not provided.

The Consultant shall provide such assistance or information as the Client may reasonably require.

Unless he has been specifically authorised to do so by the Client in writing, the Consultant shall not:

- (a) have any authority to incur any expenditure in the name of or for the account of the Client; or
- (b) hold himself out as having authority to bind the Client.

The Consultant shall comply with all reasonable standards of safety and comply with the Client's health and safety procedures from time to time in force at the premises where the Services are provided and report to the Client any unsafe working conditions or practices.

The Consultant shall comply with the Client's policies which are applicable to self-employed contractors.

The Consultant may use a third party to perform any administrative, clerical or secretarial functions which are reasonably incidental to the provision of the Services provided that:

- (a) the Client will not be liable to bear the cost of such functions; and
- (b) at the Client's request the third party shall be required to enter into direct undertakings with the Client, including with regard to confidentiality.

The Consultant shall:

- (a) comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010.
- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- (c) promptly report to the Client any request or demand for any undue financial or other advantage of any kind received by the Consultant in connection with the performance of this agreement;
- (d) ensure that all persons associated with the Consultant or other persons who are performing services or providing goods in connection with this Agreement comply with this clause.

Breach of this clause shall be deemed a material breach of this Agreement.

### **3. HOW WE PAY AND WHEN WE PAY IT**

Unless otherwise stated, the Fees shall be exclusive of VAT and any VAT payable in respect of the Fees shall be payable in addition thereto.

The Client shall calculate the provisional Fees due to the Consultant and a draft invoice will be available for the Consultant's approval on the first day of each calendar month for the duration of the Agreement. The Client shall then pay to the Consultant the Fees due for Services performed in the preceding month within 14 days of the Consultant's approval of that draft invoice by bank transfer.

The Client shall be entitled to deduct from the Fees (and any other sums) due to the Consultant any sums that the Consultant may owe to the Client at any time.

Payment in full or in part of the Fees claimed or any expenses claimed shall be without prejudice to any claims or rights of the Client against the Consultant in respect of the provision of the Services.

### **4. TERMINATION**

Notwithstanding the provisions of clause 2, the Client may terminate the Engagement with immediate effect with no liability to make any further payment to the Consultant (other than in respect of amounts accrued before the termination date) if at any time the Consultant:

- (a) commits any gross misconduct affecting the business of the Client;

- (b) commits any serious or repeated breach or non-observance of any of the provisions of this Agreement or refuses or neglects to comply with any reasonable and lawful directions of the Client;
- (c) is convicted of any criminal offence (other than an offence under any road traffic legislation in the United Kingdom or elsewhere for which a fine or non-custodial penalty is imposed);
- (d) is in the reasonable opinion of the Client negligent or incompetent in the performance of the Services;
- (e) is declared bankrupt or makes any arrangement with or for the benefit of his creditors or has a county court administration order made against him under the County Court Act 1984;
- (f) is incapacitated (including by reason of illness or accident) from providing the Services for a continuous period of 30 days or for an aggregate period of 90 days in any 52-week consecutive period;
- (g) commits any fraud or dishonesty or acts in any manner which in the opinion of the Client brings or is likely to bring the Consultant or the Client into disrepute or is materially adverse to the interests of the Client;
- (h) commits any breach of the Client's policies and procedures; or
- (i) commits any offence under the Bribery Act 2010.

The rights of the Client under this clause are without prejudice to any other rights that it might have at law to terminate the Engagement or to accept any breach of this agreement on the part of the Consultant as having brought the agreement to an end. Any delay by the Client in exercising its rights to terminate shall not constitute a waiver of these rights.

## **5. CONFIDENTIALITY**

In this clause, Confidential Information shall mean information in whatever form (including without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the business, customers, products, affairs and finances of the Client or of the Client's customers for the time being confidential to the Client or its customers and trade secrets including, without limitation, technical data and know-how relating to the business of the Client or any or their suppliers, customers, agents, distributors, shareholders, management or business contacts, and including (but not limited to) information that the Consultant creates, develops, receives or obtains in connection with his Engagement, whether or not such information (if in anything other than oral form) is marked confidential, and anything brought to the attention of the Consultant on the basis that it is confidential.

The Consultant acknowledges that in the course of the Engagement he will have access to Confidential Information. The Consultant has therefore agreed to accept the restrictions in this clause.

The Consultant shall not (except in the proper course of his duties), either during the Engagement or at any time after the termination date, use or disclose to any third party (and shall use his best endeavours to prevent the publication or disclosure of) any Confidential Information. This restriction does not apply to:

- (a) any use or disclosure authorised by the Client or required by law; or
- (b) any information which is already in, or comes into, the public domain otherwise than through the Consultant's unauthorised disclosure.

At any stage during the Engagement, the Consultant will promptly on request return all and any Client Property in his possession to the Client.

## **6. COMPANY PROPERTY AND INFORMATION**

The Consultant shall, upon termination of the Agreement, deliver to the Client all records in any medium and documents and notes about the Client, its clients and customers and all software, websites and/or programmes produced as part of the Services and shall retain no copies thereof. As soon as audio files have been transcribed, the Consultant must delete these in their entirety from their computer system and email account, along with any other information they have been given access to. Audio or information pertaining to the audio must not be shared with any other person. If the Consultant breaches this clause, legal action will be taken.

Should the Consultant be made aware of the details (names, email addresses, etc.) of any other consultant of the Client it is against Client company policy for any contact to be made. Any contact made to the Consultant from another consultant must be reported to the Client at [transcripts@takenotetyping.com](mailto:transcripts@takenotetyping.com) as soon as this has occurred, with a copy of the relevant message attached. Any consultant of the Client found to be in breach of this will have their contract terminated.

## **7. PROTECTION OF BUSINESS**

In this clause, **Restricted Business** shall mean any business of the Client at the time of the termination of this Agreement with which the Consultant was involved to a material extent during the period of twelve (12) months ending immediately prior to the termination of this Agreement.

**Restricted Customer** shall mean any firm company or other person who during the period of twelve (12) months ending on the date of the termination of this Agreement was a customer of or in the habit of dealing with the Client and with whom the Consultant had dealings in the course of his Engagement during the period of twelve (12) months ending immediately prior to the termination of this Agreement.

For a period of six months after the termination of this Agreement, the Consultant shall not canvass, solicit or endeavour to take away from the Client the business or custom of a Restricted Customer of the Client with a view to providing goods or services to that Restricted Customer in competition with the Restricted Business.

## **8. CONTENT OF MATERIAL**

From time to time during the provision of Services, the Consultant may be exposed to extremely sensitive personal information and/or potentially disturbing content. Wherever possible, the Client will endeavour to warn the Consultant if the content could be of a sensitive nature. If the Consultant feels uncomfortable transcribing the material at any point, they agree it is their responsibility to notify a member of the Client and cease to continue with the Services in question.

## **9. OTHER INTERESTS**

Nothing in this Agreement shall prevent the Consultant from being engaged, concerned or having any financial interest in any capacity in any other business, trade, profession or occupation during the Engagement provided that:

- (a) such activity does not cause a breach of any of the Consultant's obligations under this agreement;
- (b) the Consultant shall not engage in any such activity if it relates to a business which is similar to or in any way competitive with the business of the Client without the prior written consent of the Client; and
- (c) the Consultant shall give priority to the provision of the Services to the Client over any other business activities undertaken by the Consultant during the course of the Engagement.

## **10. SCOPE & STATUS**

The relationship of the Consultant to the Client will be that of independent contractor and nothing in this agreement shall render him an employee, worker, agent or partner of the Client and the Consultant shall not hold himself out as such.

This Agreement constitutes a contract for the provision of services and not a contract of employment and accordingly the Consultant shall be fully responsible for and shall indemnify the Client for and in respect of:

- (a) any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the performance of the Services, where the recovery is not prohibited by law. The Consultant shall further indemnify the Client against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Client in connection with or in consequence of any such liability, deduction, contribution, assessment or claim other than where the latter arise out of the Client's negligence or wilful default;
- (b) any liability arising from any employment-related claim or allegation or any claim or allegation based on worker status (including reasonable costs and expenses) brought by the Consultant against the Client arising out of or in connection with the provision of the Services.

The Client may at its option satisfy such indemnity (in whole or in part) by way of deduction from any payments due to the Consultant.

## **11. HEALTH & SAFETY**

The Consultant shall be responsible for setting up all equipment necessary for performing the Services in such a way as to prevent all unnecessary stress or injury being caused to the Consultant.

## **12. INSURANCES**

The Client strongly advises that the Consultant obtains sufficient Professional Indemnity (PI) insurance. To find out more about PI insurance, please view these pages:

<https://www.markeluk.com/articles/what-is-professional-indemnity-insurance>

<https://www.moneysupermarket.com/business-insurance/professional-indemnity/>

<https://www.simplybusiness.co.uk/insurance/professional-indemnity/>

The Consultant should have personal liability for and shall indemnify the Client for any loss, liability, costs (including reasonable legal costs), damages or expenses arising from any breach by the Consultant of the terms of this Agreement including any negligent or reckless act, omission or default in the provision of the Services and shall accordingly maintain in force during the Engagement full and comprehensive insurance policies.

The Consultant shall ensure that the insurance policies are taken out with a reputable insurer acceptable to the Client and that the level of cover and other terms of insurance are acceptable to and agreed by the Client.

The Consultant shall on request supply to the Client copies of such insurance policies and evidence that the relevant premiums have been paid.

The Consultant shall comply with all terms and conditions of the insurance policies at all times. If cover under the insurance policies shall lapse or not be renewed or be changed in any material way or if the Consultant is aware of any reason why the cover under the insurance policies may lapse or not be renewed or be changed in any material way, the Consultant shall notify the Client without delay.

## **13. DATA PROTECTION**

The Consultant consents to the Client holding and processing data relating to him for legal, personnel, administrative and management purposes and in particular to the processing of any 'sensitive personal data' (as defined in the Data Protection Act 1998) relating to the Consultant including, as appropriate:

- (a) information about the Consultant's physical or mental health or condition in order to monitor sickness absence;
- (b) the Consultant's racial or ethnic origin or religious or similar beliefs in order to monitor compliance with equal opportunities legislation; and
- (c) information relating to any criminal proceedings in which the Consultant has been involved, for insurance purposes and in order to comply with legal requirements and obligations to third parties.

The Consultant consents to the Client making such information available to those who provide products or services to the Client such as advisers, regulatory authorities, governmental or quasi-governmental organisations and potential purchasers of the Client or any part of its business.

The Consultant consents to the transfer of such information to the Client's business contacts outside the European Economic Area in order to further their business interests.

The Consultant shall comply with the Client's data protection policy and relevant obligations under the Data Protection Act 1998 and associated codes of practice when processing personal data relating to any employee, worker, customer, client, supplier or agent of the Client.

#### 14. INTELLECTUAL PROPERTY

In this clause, the following definitions shall apply:

**Intellectual Property Rights** shall mean patents, rights to inventions, copyright and related rights, moral rights, trademarks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world.

**Inventions** shall mean: any invention, idea, discovery, development, improvement or innovation made by the Consultant in the provision of the Services, whether or not patentable or capable of registration, and whether or not recorded in any medium.

**Works** shall mean: all records, reports, documents, papers, drawings, designs, transparencies, photos, graphics, logos, typographical arrangements, software, and all other materials in whatever form, including but not limited to hard copy and electronic form, prepared by the Consultant in the provision of the Services.

The Consultant hereby assigns to the Client all existing and future Intellectual Property Rights in the Works and the Inventions and all materials embodying these rights to the fullest extent permitted by law. Insofar as they do not vest automatically by operation of law or under this agreement, the Consultant holds legal title in these rights and inventions on trust for the Client.

The Consultant undertakes:

- (a) to notify to the Client in writing full details of any Inventions promptly on their creation;
- (b) to keep confidential details of all Inventions;
- (c) whenever requested to do so by the Client and in any event on the termination of the Engagement, promptly to deliver to the Client all correspondence, documents, papers and records on all media (and all copies or abstracts of them), recording or relating to any part of the Works and the process of their creation which are in his possession, custody or power;
- (d) not to register nor attempt to register any of the Intellectual Property Rights in the Works, nor any of the Inventions, unless requested to do so by the Client; and
- (e) to do all acts necessary to confirm that absolute title in all Intellectual Property Rights in the Works and the Inventions has passed, or will pass, to the Client.

The Consultant warrants to the Client that:

- (a) he has not given and will not give permission to any third party to use any of the Works or the Inventions, nor any of the Intellectual Property Rights in the Works;
- (b) he is unaware of any use by any third party of any of the Works or Intellectual Property Rights in the Works; and
- (c) the use of the Works or the Intellectual Property Rights in the Works by the Client will not infringe the rights of any third party.

## **15. GOVERNING LAW AND JURISDICTION**

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).