



## Terms of Engagement

### 1. DEFINITIONS

In this document (available on the website) the following words and terms shall have the meanings as set out below when they are used in these General Terms and Conditions and shall be considered to be incorporated into the Freelance Consultant Contract & Client Agreement ["The Contract"] or set by email or other means of communication:

- 1.1 "Agreement" means these General Terms and Conditions together with the terms of The Contract.
- 1.2 Reference herein to "The Client" shall be to a company, a business partnership, individual or sole trade to which HR-ER Tailored Consultancy directly provides its materials and Service(s) and where it is the recipient of any invoice from HR-ER Tailored Consultancy.
- 1.3 A copyright trademark, knowledge and all other forms of intellectual property wherever in the UK enforceable.
- 1.4 "Service(s)" means Service(s) to be provided by The Consultant to The Client, as agreed by both parties verbally, via email exchange or other similar method or defined in The Contract but always subject to these Terms and Conditions.

### 2. GENERAL

- 2.1 The Client agrees to give a full and clear brief to The Consultant and ensure all the facts regarding the project requirements, deliverables, objectives and Service(s) to be provided are accurate and clear, including who is authorised to give instructions to The Consultant throughout the duration of the Service(s).
- 2.2 Office Hours are UK time, Monday to Friday, 10.00-16:00 (the days to be worked will be discussed with The Client and detailed in The Contract) excluding bank holidays. Notification will be given on The Consultant's website and/or voicemail of any change to these dates and times. Work will be processed during this time only and outside by prior arrangement.
- 2.3 Before the commencement of the Service(s), The Consultant shall submit The Contract to The Client which shall specify the Service(s) to be supplied and the total price payable. The Client shall notify The Consultant immediately if they do not agree with the contents of The Contract.
- 2.4 The Consultant shall use all reasonable endeavours to complete the Service(s) within the estimated timeframe.
- 2.5 The Client acknowledges that The Consultant is providing Service(s) to The Client on a non-exclusive basis and that The Consultant may provide Service(s) of the same or a similar nature as the Service(s) to any other party, unless expressly agreed within both parties.

### 3. PRICE AND PAYMENT

- 3.1 The total price for the supply of Service(s) will be set out in The Contract as specified in Section 1, and are based on The Consultant's current costs, in addition to office stationery, agreed incurred expenses including mileage at HM Revenue & Customs current rates, unless otherwise agreed, and all are subject to amendment on or at any time after acceptance to meet any rise or fall in such costs.
- 3.2 As detailed on the website the prices are defined as an hourly rate, not as a day or half day rate unless this has been otherwise agreed between The Client and The Consultant. All sums due

will be subject to any applicable UK taxation, including where relevant, VAT. All invoices must be paid without any deduction or withholding on account of taxes or other charges.

- 3.3 Prices shall be quoted to The Client in Sterling (GBP). The Consultant will provide The Contract before commencing the Service(s). The Consultant shall invoice The Client either a) in advance of the Service(s) b) on completion of the Service(s) or c) part invoice as agreed. Payment should be paid into the bank account mentioned on the invoice.
- 3.4 The Consultant may require payment in advance, or a deposit of at least 50% of the price quoted on The Contract prior to instigating the work, particularly but not limited to the following situations: new clients, large, lengthy or complex projects. Where a deposit is required, the balance shall be due upon completion of the work, unless otherwise agreed in writing in advance.
- 3.5 The prices quoted are based on the information provided by The Client, including and is limited to, detail on the structure, scope and functionality required for providing the Service(s). This will be subject to change should The Client's requirements change at any time during the course of the Service(s).
- 3.6 Except where previously agreed in writing, all work completed after project inception will be billed as it is completed at the end of every calendar month at Work In Progress (WIP) until the conclusion of the Service(s).
- 3.7 Invoiced amounts shall be due and payable within 14 days of date of invoice, or as negotiable between The Consultant & The Client, as certain Service(s) may require different terms which will be agreed in advance between both parties.
- 3.8 Except in the event of a bona fide dispute, The Consultant shall be entitled to charge interest on overdue invoices from the date when payment becomes due from day to day until the date of payment at a rate of 4% per annum above the base rate of the Bank of England.
- 3.9 In the event any amount remains unpaid after the overdue date as specified on the invoice, The Consultant reserves the right (in addition to its right to claim for payment) to discontinue, withhold or suspend Service(s) to The Client without notice and without prejudice to any other legal remedy until due payment has been made. Furthermore, any work started but not completed may be suspended and payment therefore become immediately due and payable, notwithstanding anything expressed therein, and any monies in respect of.

#### **4. OBLIGATIONS**

To enable The Consultant to perform its obligations under this Agreement The Client shall:

- 4.1 Co-operate reasonably with The Consultant and provide The Consultant with any information reasonably required by The Consultant to start the Service(s) and obtain all necessary permissions and consents which may be required before the commencement of the Service(s).
- 4.2 Comply with such other reasonable requirements as may be set out in the Agreement or otherwise agreed between the parties.
- 4.3 The Client shall be liable to compensate The Consultant for any reasonable expenses directly incurred by The Consultant as a result of The Client's failure to comply with Clause 4.1
- 4.4 Without prejudice to any other rights to which The Consultant may be entitled, in the event that The Client unlawfully terminates or cancels any Service(s) agreed to in The Contract, The Client shall be required to pay to The Consultant as agreed damages, and not as a penalty the full amount of any third party costs to which The Consultant has committed, provided that The Client has been advised in writing by The Consultant, the detail and value of such commitments to third parties, and The Client agrees this is a genuine pre-estimate of The Consultant's losses in such a case.

For the avoidance of doubt, The Client's failure to comply with any obligations under Clause 4.1 shall be deemed to be a cancellation of the Service(s) and subject to the payment of the damages set out in this Clause.

- 4.5 Except in an event of Force Majeure as described in Clause 11 of this Agreement in the event that The Client or any third party, not being a subcontractor of The Consultant, shall omit or commit anything which prevents or delays The Consultant from undertaking or complying with any of its obligations under this Agreement, then The Consultant shall notify The Client as soon as possible and,
- 4.6 The Consultant shall have no liability in respect of any delay to the completion of any project and, reserves the right to sub-contract a project or any part thereof.
- 4.7 The Consultant shall notify The Client at the same time if it intends to make any claim for additional costs. The Consultant may, at its sole discretion, a) accept the claim and continue with the revised project schedule, b) open a negotiation with The Consultant to modify such claim or c) terminate the Agreement forthwith and only be liable to The Consultant for costs necessarily expended to the date of Termination together with any third party costs to which The Consultant has committed, provided that The Client has been advised in writing by The Consultant the detail and value of such commitments to third parties.
- 4.8 The Client's property and property supplied to The Consultant on behalf of The Client, while it is in the possession of The Consultant or in transit to or from The Client, will be deemed to be at The Client's risk unless otherwise agreed and The Client should insure accordingly.
- 4.9 The Consultant shall not be required to use, print, upload or hold any matter which in its opinion is or may be of an illegal or libellous nature or an infringement of the proprietary or other rights of a third party.

## **5. ALTERATIONS TO THE CONTRACT**

- 5.1 The Client may at any time request alterations to The Contract by notice in writing to The Consultant. On receipt of the request for alterations The Consultant shall, within 5 working days or such other period as may be agreed between the parties, advise The Client by notice in writing of the effect of such alterations, if any, on the price and any other terms already agreed between the parties.
- 5.2 Where The Consultant gives written notice to The Client agreeing to perform any alterations on terms different from those already agreed between the parties, The Client shall, within 5 working days of receipt of such notice or such other period as may be agreed between the parties, advise The Consultant by notice in writing whether or not it wishes because of the alterations to proceed.
- 5.3 Where The Consultant gives written notice to The Client agreeing to perform alterations on terms different from those already agreed between the parties, and The Client confirms in writing that it wishes the alterations to proceed on those terms, the Contract shall be amended to reflect such alterations and there after The Consultant shall perform this Agreement upon the basis of such amended terms.

## **6. WARRANTIES & INDEMNITIES**

- 6.1 The Consultant warrants that they, and any of its personnel working on the Service(s) are and shall be competent and suitable, whether as to qualifications, experience or otherwise, to perform the Service(s). The Consultant provides information, advice and Service(s) in good faith based upon information available and provided by The Client at that time. It is for The Client to decide whether or not to accept the advice in making his/her own management decisions, and advice that the data critical to a decision should be independently verified prior to being acted upon. The Consultant accepts no liability for the consequences of its information, opinions or advice, whether direct or indirect.

- 6.2 Should The Consultant or its employees sustain any loss of liability, costs (including legal costs) or damage as a result of The Client's breach of this Agreement, The Client shall indemnify the other, subject to the provisions of Clause 8.
- 6.3 The Client warrants the best of its knowledge, information and belief all account information supplied to The Consultant before and during the term will be accurate and not in any way contrary to any law.
- 6.4 Any claims against The Consultant arising as a result of a damage, delay or loss of any materials in transit must be submitted in writing to The Consultant and the carrier so as to reach The Consultant and the carrier within three working days of delivery and claims for non-delivery within twenty-eight days of despatch of the materials. All other claims must be made within ten days of delivery.

## **7. LIMIT OF LIABILITY**

- 7.1 Except in respect of death or personal injury due to negligence or fraudulent misrepresentation for which no limit shall apply, the entire liability of each party to each other party in respect of any claim whatsoever or breach of this Agreement, whether it arises out of negligence or not, shall be limited to the price paid by The Client to which the claim relates.
- 7.2 The Consultant will not be liable under this Agreement for any loss of actual or anticipated income or profits, loss of contracts or for any special, indirect or consequential loss or damage of any kind whatsoever arising and whether caused by tort (including negligence), breach of contract or otherwise, whether or not such loss of damage is foreseeable, foreseen or known.
- 7.3 This Agreement states the full extent of The Consultant's obligations and liabilities in respect of the performance of the Service(s). The parties agree that any condition, warranty representation or other term concerning the performance of the Service(s), which might otherwise be implied into or incorporated in this Agreement, whether by statute, common law or otherwise, is excluded to the maximum extent permitted by law.

## **8. CONFIDENTIAL INFORMATION & DATA PROTECTION**

- 8.1 The Consultant confirms that the Privacy Policy on its website conforms and applies under this Agreement.
- 8.2 The Client warrants that it has all the necessary consents and authority to allow it to transfer personal data to The Consultant for the purpose of this Agreement and ensure that people processing the data are subject to a duty of confidence, and
- 8.3 Take appropriate measures to ensure the security of processing, only engage a sub-processor with the prior consent of the data controller and with a written contract in place.
- 8.4 The Client agreed to hold all information about The Consultant's proposal(s), fee structures, fees and personnel in the strictest of confidence.
- 8.5 Nothing within this Agreement relieves The Consultant of its own direct responsibilities and liabilities under this clause.

## **9. TERMINATION**

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

- 9.1 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.
- 9.2 The other party commits a material breach of this Agreement which cannot be remedied under any circumstances.

- 9.3 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 takes an order to that effect.
- 9.4 The other party ceases to execute its business or substantially the whole of its business; or
- 9.5 The other party is declared insolvent 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.
- 9.6 The Client may also terminate the Contract on giving at least thirty (30) days notice prior to renewal.
- 9.7 Unless the said notice is received by The Consultant at least thirty (30) before the Contract expires, The Client will be deemed automatically to have renewed the Contract for the same duration as the previous one.

## **10. INTELLECTUAL PROPERTY RIGHTS**

All intellectual property rights produced from or arising as a result of the performance of the Contract shall, as far as not already vested, become the absolute property of The Consultant and The Client shall do all that is reasonably necessary to ensure that such rights vest in The Consultant by the execution of appropriate instruments or the making of agreements with third parties. The Client shall have the full right and licence to use copies of materials The Consultant creates for The Client for the particular purpose for which they were prepared. However, all copyright and other intellectual property rights in all documents, report, written or electronic advice or other material provided by The Consultant remains the absolute property of The Consultant. If The Client wished to use copies of the materials for purposes other than those for which they were prepared, The Client will require written permission from The Consultant.

## **11. FORCE MAJEURE**

The Consultant shall not be liable for any delay, costs or failure to perform any of its obligations if the delay, costs or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, diseases effecting key individuals, epidemics or pandemics, quarantine restrictions, accidents, war, fire, the act or omission of government, highway authorities or any telecommunications carrier, operator or administration or other competent authority, 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. In the event that such event of Force Majeure continues for a period of 60 days, either party may terminate the Agreement.

## **12. INDEPENDENT CONTRACTORS**

The Consultant and The Client 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 Consultant may, in addition to its own employees, engage sub-contractors to provide all or part of the Service(s) being provided to The Client and such engagement shall not relieve The Consultant of its obligations under this Agreement or any applicable Contract.

## **13. ASSIGNMENT**

Neither party shall be entitled to assign its rights or obligations or delegate its duties under this Agreement without the prior written consent of the other party, such agreement which will not be unreasonably withheld or delayed.

## **14. 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.

**15. WAIVER**

The failure by The Consultant at any time or for any period to enforce any one or more of these Terms and Conditions herein shall not be a waiver of them or a waiver of the right to enforce such Terms and Conditions of this Agreement, on a future occasion.

**16. NOTICES**

Any notice to be given by either party to the other may be served by email, fax, personally delivered or by post to the address of the other party given in The Contract 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, with a proof of postage provided.

**17. 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 the Contract, this Agreement may be varied only by a document signed by both parties.

**18. NO THIRD PARTIES**

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

**21. GOVERNING LAW AND JURISDICTION**

All contracts between The Client and The Consultant shall be governed by and construed in accordance with the law of England and the parties hereby submit to the exclusive jurisdiction of the English courts.