

Kelly Chandler Consulting Limited's Terms and Conditions

THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 8 (LIMITATION OF LIABILITY)

1. Interpretation

1.1 The following definitions and rules of interpretation apply in these Conditions.

1.2 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 Client for the supply of the Services in accordance with clause 5 (Charges and payment).

"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 11.5.

"Contract" the contract between Kelly Chandler and the Client for the supply of Services in accordance with these Conditions.

"Client" the person or firm who purchases Services from Kelly Chandler.

"Client Default" has the meaning set out in clause 4.2.

"Data Protection Legislation" all legislation and regulatory requirements in force from time to time relating to the use of personal data and the privacy of electronic communications, including, without limitation (i) any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation, as well as (ii) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to data protection and privacy (for so long as and to the extent that the law of the European Union has legal effect in the UK).

"Deliverables" The deliverables set out in the Specification.

"Intellectual Property Rights" patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, 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.

"Kelly Chandler" Kelly Chandler Consulting Limited registered in England and Wales with company number 11303394.

"Order" the Client's order for Services as set out in an online order made through Kelly Chandler's website or by an order set out in an email from the Client to Kelly Chandler.

"Services" the services, including the Deliverables, supplied by Kelly Chandler to the Client as set out in the Specification.

"Specification" the description of the Services provided in writing by Kelly Chandler to the Client.

1.3 Interpretation:

1.3.1 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

1.3.2 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.

1.3.3 A reference to writing or written includes email but not fax.

2. Basis of contract

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

2.2 The Order shall only be deemed to be accepted when Kelly Chandler issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 Any samples, drawings, descriptive matter or advertising issued by Kelly Chandler, and any descriptions or illustrations contained in Kelly Chandler's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.5 Any quotation given by Kelly Chandler shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

3. Supply of Services

3.1 Kelly Chandler shall supply the Services to the Client in accordance with the Specification in all material respects.

3.2 Kelly Chandler shall use all reasonable endeavours to meet any performance dates specified in the Specification, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

3.3 Kelly Chandler 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 Kelly Chandler shall notify the Client in any such event.

3.4 Kelly Chandler warrants to the Client that the Services will be provided using reasonable care and skill.

4. Client's obligations

4.1 The Client shall:

4.1.1 ensure that the terms of the Order and any information it provides to be included in the Specification are complete and accurate;

4.1.2 co-operate with Kelly Chandler in all matters relating to the Services;

4.1.3 provide Kelly Chandler with such information and materials as Kelly Chandler may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;

4.1.4 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;

4.1.5 comply with all applicable laws, including health and safety laws; and

4.1.6 comply with any additional obligations as set out in the Specification.

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

- 4.2.1 without limiting or affecting any other right or remedy available to it, Kelly Chandler shall have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations in each case to the extent the Client Default prevents or delays Kelly Chandler's performance of any of its obligations;
- 4.2.2 Kelly Chandler shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from Kelly Chandler's failure or delay to perform any of its obligations as set out in this clause 4.2; and
- 4.2.3 the Client shall reimburse Kelly Chandler on written demand for any costs or losses sustained or incurred by Kelly Chandler arising directly or indirectly from the Client Default.

5. Charges and payment

- 5.1 The Charges shall be as agreed between the parties in writing. In addition, Kelly Chandler shall be entitled to charge the Client for any expenses reasonably incurred by the individuals whom Kelly Chandler engages to provide all or any part of the Services and/or engages in connection with the Services. Such expenses include (but are not limited to) travelling expenses, hotel costs, subsistence and any other associated expenses relating to the Services, and for the cost of services provided by third parties and those costs and/or expenses required to be paid by Kelly Chandler for the performance of the Services, and for the cost of any materials.
- 5.2 The Client shall pay the Charges and any other fees, charges, costs or expenses of Kelly Chandler within 3 days of the day on which the Contract is formed or if the 3 day period aforementioned has passed, within 30 days of an invoice issued by Kelly Chandler being provided to the Client in full and clear funds to a bank account nominated in writing by Kelly Chandler. Time for payment shall be of the essence under the Contract.
- 5.3 All amounts payable by the Client 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 Kelly Chandler to the Client, the Client shall, on receipt of a valid VAT invoice from Kelly Chandler, pay to Kelly Chandler 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.
- 5.4 If the Client fails to make a payment due to Kelly Chandler under the Contract by the due date, then, without limiting Kelly Chandler's remedies under clause 9, the Client 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 5.4 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 5.5 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).

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 Client) shall be owned by Kelly Chandler.

7. Data protection and data processing

- 7.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 7 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. In this clause 7, Applicable Laws means (for so long as and to the extent that they apply to Kelly Chandler) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and Domestic UK Law means any Data Protection Legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation.
- 7.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the data controller and Kelly Chandler is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation).
- 7.3 Without prejudice to the generality of clause 7.1, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data (as defined in the Data Protection Legislation) to Kelly Chandler for the duration and purposes of the Contract.
- 7.4 Without prejudice to the generality of clause 7.1, Kelly Chandler shall, in relation to any Personal Data processed in connection with the performance by Kelly Chandler of its obligations under the Contract:

- 7.4.1 process that Personal Data only on the written instructions of the Client unless Kelly Chandler is required by Applicable Laws to otherwise process that Personal Data. Where Kelly Chandler is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, Kelly Chandler shall promptly notify the Client of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Kelly Chandler from so notifying the Client;
- 7.4.2 ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- 7.4.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- 7.4.4 not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:
 - (a) the Client or Kelly Chandler has provided appropriate safeguards in relation to the transfer;
 - (b) the Data Subject (as defined in the Data Protection Legislation) has enforceable rights and effective legal remedies;
 - (c) Kelly Chandler complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (d) Kelly Chandler complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;
- 7.4.5 assist the Client, at the Client's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 7.4.6 notify the Client without undue delay on becoming aware of a Personal Data breach;
- 7.4.7 at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the agreement unless required by Applicable Law to store the Personal Data; and
- 7.4.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 7.

8. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

- 8.1 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:
 - 8.1.1 death or personal injury caused by negligence;
 - 8.1.2 fraud or fraudulent misrepresentation; and
 - 8.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 8.2 Subject to clause 8.1, Kelly Chandler's total liability to the Client shall not exceed the total aggregate Charges payable by the Client for the Services supplied by Kelly Chandler under a Contract. Kelly Chandler's total liability includes liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract.
- 8.3 This clause 8.3 sets out specific heads of excluded loss and exceptions from them:
 - 8.3.1 Subject to clause 8.1, the types of loss listed in clause 8.3.2 are wholly excluded by the parties.
 - 8.3.2 The following types of loss are wholly excluded:

- (a) Loss of profits.
- (b) Loss of anticipated savings.
- (c) Loss of sales or business.
- (d) Loss of agreements or contracts.
- (e) Loss of anticipated savings.
- (f) Loss of use or corruption of software, data or information.
- (g) Loss of or damage to goodwill.
- (h) Indirect or consequential loss.

8.4 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and 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.

8.5 Unless the Client notifies Kelly Chandler that it intends to make a claim in respect of an event within the notice period, Kelly Chandler shall have no liability for that event. The notice period for an event shall start on the day on which the Client became, or ought reasonably to have become, aware of the event having occurred and shall expire 2 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

8.6 This clause 8 shall survive termination of the Contract.

9. Termination

9.1 Subject to clause 9.2, without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party 3 months' written notice.

9.2 If the Client wishes to cancel the Contract within 3 months of the date on which a training session provided by Kelly Chandler is to take place it may do so by providing notice in writing, but the Client shall not be entitled to any refund whatsoever of the Charges or other fees, charges, costs or expenses paid prior to the date of cancellation.

9.3 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:

9.3.1 the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;

9.3.2 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), 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;

9.3.3 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

9.3.4 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.

9.4 Without affecting any other right or remedy available to it, Kelly Chandler may terminate the Contract with immediate effect by giving written notice to the Client if:

9.4.1 the Client fails to pay any amount due under the Contract on the due date for payment; or

9.4.2 there is a change of control of the Client.

9.5 Without affecting any other right or remedy available to it, Kelly Chandler may suspend the supply of Services under the Contract or any other contract between the Client and Kelly Chandler if the Client fails to pay any amount due under the Contract on the due date for payment, the Client becomes subject to any of the events listed in clause 9.3.2 to clause 9.3.4, or Kelly Chandler reasonably believes that the Client is about to become subject to any of them.

10. Consequences of termination

10.1 On termination of the Contract the Client shall immediately pay to Kelly Chandler all of Kelly Chandler's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Kelly Chandler shall submit an invoice, which shall be payable by the Client immediately on receipt.

10.2 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.

10.3 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.

11. General

11.1 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.

11.2 Assignment and other dealings.

11.2.1 Kelly Chandler 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.

11.2.2 The Client 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 without the prior written consent of Kelly Chandler.

11.3 Confidentiality.

11.3.1 Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.3.2.

11.3.2 Each party may disclose the other party's confidential information:

(a) to its employees, officers, representatives, 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, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11.3; and

(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

11.3.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

11.4 Entire agreement.

11.4.1 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.

11.4.2 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 or negligent misstatement based on any statement in the Contract.

11.4.3 Nothing in this clause shall limit or exclude any liability for fraud.

11.5 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).

- 11.6 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.
- 11.7 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 11.8 Notices.
- 11.8.1 Any notice or other communication 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 last known address of the other party.
- 11.8.2 Any notice or communication shall be deemed to have been received:
- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and
 - (b) 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 at the time recorded by the delivery service; and
 - (c) 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 (c), 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.
- 11.8.3 This clause 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.
- 11.9 Third party rights.
- 11.9.1 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.
- 11.9.2 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 11.10 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.
- 11.11 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.