

# Terms of Business of Acteon Consultancy LLP



## 1 APPLICATION OF TERMS

- 1.1 Subject to clause 1.3, these Terms shall govern the Contract to the entire exclusion of all other terms or conditions whether express or implied, Written or verbal.
- 1.2 Subject to clause 1.3, no terms or conditions endorsed upon, delivered with or referred to elsewhere in any Written or verbal communications between Acteon and the Customer (including without limitation any standard terms of business of the Customer) will form part of the Contract and the Customer waives any right which it otherwise might have to rely on such terms or conditions.
- 1.3 In the event of a conflict between any express Written terms of the Contract and these Terms, the Written terms of the Contract shall prevail.

## 2 APPOINTMENT

- 2.1 Acteon shall deliver, and the Customer shall accept, the Goods and/or the Services in accordance with and subject to these Terms.
- 2.2 The Goods and Services are personal to the Customer and all Written reports or other communications shall only be for the benefit of the Customer and not passed to any third party.

## 3 CUSTOMER'S OBLIGATIONS

- 3.1 The Customer shall promptly do all such things that the Contract provides are to be done by the Customer or which Acteon shall reasonably require in order to assist Acteon in delivering the Goods and/or performing the Services.
- 3.2 Acteon shall not be liable for any failure to perform its obligations under the Contract caused by any failure by the Customer to perform its obligations under clause 3.1.

## 4 TIME FOR PERFORMANCE

- 4.1 Acteon shall use reasonable endeavours to deliver the Goods and/or perform the Services by the time specified in the Contract or if no such time is agreed, then by the time as may be agreed from time to time by Acteon and the Customer in Writing. However, time shall not be of the essence in respect of any such time. If no time is so specified, Acteon shall deliver the Goods or perform the Services within a reasonable time.
- 4.2 Acteon shall not be liable for the consequences of any delay in delivering the Goods or performing the Services.

## 5 PRICE

- 5.1 The price for the Goods and/or Services ("the Price") shall be as stated in the Contract or as agreed later by Acteon and the Customer in Writing. The Price is based upon the current costs of providing the Services and may be varied by Acteon providing Written notice to the Customer at any time prior to delivery or performance to meet any rise in such costs. If Acteon and the Customer do not specify a price in the Contract and subsequently fail to agree on one, Acteon shall be entitled to charge a fair price for the Goods and/or Services, based on its daily rates where appropriate and any special factors relating to the Contract.
- 5.2 The Price shall be exclusive of value added tax which shall, where applicable, be charged to and payable by the Customer in addition.
- 5.3 Where the Customer requires Acteon to carry out any preliminary work or work additional to that provided for in the Contract, Acteon shall be entitled to charge for such additional work at such sum as the parties shall agree in Writing, or, in default of agreement, at Acteon's standard daily rates.
- 5.4 In the event that delivery of the Goods or performance of the Services is delayed or disrupted by factors beyond the control of Acteon, Acteon shall be entitled to a fair and reasonable adjustment to its fee in proportion to extra time and expenditure incurred.
- 5.5 Following confirmation by Acteon in Writing of the Contract, any cancellation or postponement of the Contract by the Customer shall entitle Acteon to charge a reasonable cancellation or postponement fee which the Customer acknowledges is a fair reflection of the sums required to recover any costs incurred and compensate for the anticipated time the Contract with the Customer was to take and which Acteon has planned to allocate to the Customer.

## 6 ACCEPTANCE

- 6.1 All Goods will be subject to acceptance by the Customer. The Customer shall have a period from the date of implementation (as defined in the Contract) to evaluate and (where appropriate) accept all the Goods against the Specification. The length of the Acceptance Period will be as agreed between the parties. If not agreed, it will be 30 days.

- 6.2 The purpose of the evaluation is to ensure that the Goods comply with the relevant section of the Specification or agreed Contract.
- 6.3 Within 2 Working Days of the completion of the Acceptance Period the Customer in Writing shall either:
- (a) notify Acteon that the Goods concerned are accepted; or
  - (b) notify Acteon that the Goods concerned are not accepted, giving valid reasons and providing Acteon with details of any relevant non-compliance with the Specification.

If the Customer fails to do either, the Customer will be treated as accepting the Goods concerned.

- 6.4 In the event that the Customer notifies Acteon in accordance with clause 7.3 that any of the Goods do not comply with the relevant section of the Specification or agreed Contract, and Acteon agrees in Writing, Acteon shall correct such non-compliance within a reasonable time of such notification. The Customer shall then repeat the acceptance tests and the provisions of clauses 6.1, 6.2 and 6.3 shall apply to such repeated customer acceptance until compliance has been attained.
- 6.5 If the parties disagree on whether any Goods so comply, the matter shall be referred to an independent expert selected by the parties who:-
- (a) shall act as an expert and not an arbitrator; and
  - (b) whose costs shall be paid for by the parties in equal shares.

Such expert's decision shall be binding on the parties.

## **7 PAYMENT**

- 7.1 The Customer shall pay the price for the Goods and/or the Services within 28 days of the date of the invoice or according to the payment terms specified in the Contract in respect of the payment schedule agreed in the Contract ('the Due Date').
- 7.2 If a payment schedule has not been agreed, payment for the work performed in each calendar month shall become due at the end of that month and shall be charged to the Customer at Acteon's standard daily rates.
- 7.3 The Customer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by Acteon to the Customer.
- 7.4 If payment is not made by the Due Date, then the Customer shall pay interest to Acteon on such sum due from time to time for payment at the annual rate of 4 % above the base lending rate from time to time of The Co-operative Bank accruing on a daily basis until payment is made, whether before or after any judgment. In the event of late payment other than in connection with a genuine dispute, Acteon may also, if the Customer has failed to make payment in full within 20 working days of being given notice by Acteon asking for it to be paid, suspend all further provision of the Services without liability to the Customer until payment in full, including interest accrued as aforesaid.

## **8 TITLE/RISK**

- 8.1 Title in the Goods (and intellectual property rights assigned under clause 9.1) supplied to the Customer under the terms of the Contract shall not pass to the Customer until Acteon has received in full (in cash or cleared funds):
- 8.1.1 the Price; and
  - 8.1.2 all other sums which are or which become due to Acteon from the Customer in respect of the Contract or otherwise.

## **9 INTELLECTUAL PROPERTY RIGHTS**

- 9.1 In consideration for the receipt by Acteon of all monies payable to Acteon by the Customer, Acteon assigns all intellectual property rights in the Bespoke Material to the Customer. Nothing shall preclude Acteon, whether before or after the Contract, from supplying goods and services similar to the Goods and Services to other customers provided that in doing so Acteon does not use the Bespoke Material.
- 9.2 All intellectual property rights in the Customer Material will belong to and remain vested in the Customer subject to a worldwide, royalty-free, non-exclusive, non-transferable licence for Acteon to use it to the extent necessary to deliver the Goods or perform the Services.
- 9.3 The Customer warrants that it owns the intellectual property rights in the Customer Material and that it has the right to grant the licence in clause 9.2 and the Customer shall indemnify Acteon if Acteon incurs any liability due to a breach of this warranty.
- 9.4 The intellectual property rights in everything except for the Bespoke Material and the Customer Material will remain vested in Acteon or its licensors.

9.5 Acteon grants to the Customer a worldwide, royalty-free, non-exclusive, non-transferable licence (with no right to sub-license) for the Customer to use the Generic Software owned by Acteon for the purpose of operating, maintaining and developing the Software created by Acteon for the Customer only. Generic Software owned by third parties is licensed under clause 10.

9.6 The licence in clause 9.5 above shall terminate if:

9.6.1 any term of these Terms is breached by the Customer; or

9.6.2 the Customer enters into any compromise or arrangement with its creditors, commits any act of bankruptcy or if an order is made or an effective resolution is passed for its winding up (except for the purposes of amalgamation or reconstruction as a solvent company) or if a petition is presented to court, or if a receiver and/or manager, receiver, administrative receiver is appointed in respect of the whole or any part of the Customer's undertaking or assets.

9.7 Unless otherwise agreed, Acteon's legal costs in preparing any agreement with the Customer in connection with the disposal of intellectual property rights under this clause and clause 10 shall be borne by the Customer.

9.8 All computer files created by Acteon and its suppliers during production of the Bespoke Material remain the property of Acteon and its suppliers. On request, Acteon will provide the Customer with copies of relevant constituent files to enable the client to amend the Bespoke Material. Such copies will be for the use of the Customer only and may not be sold or assigned, whether in their original or amended form, to any other individual or organisation.

Acteon makes no warranty about the structure or organisation of the files provided and shall have no liability to support the Customer in using the files, unless specifically agreed in the Contract or an additional contract. Acteon shall have no liability for the performance or effectiveness of the Bespoke Material if amendments have been made by the Customer to any of the constituent files.

Provision of files by Acteon implies no rights to third party software that was used to create the files. The Customer is responsible for obtaining appropriate licences to third party software in order to amend the files.

## 10 THIRD PARTY RIGHTS

10.1 Unless expressly agreed otherwise in the Contract, the Customer shall be responsible for obtaining clearances in respect of third party copyright works, trade marks, designs or other intellectual property supplied by the Customer to Acteon.

10.2 Unless expressly agreed otherwise in the Contract, Acteon shall be responsible for obtaining clearances in respect of third party copyright works, trade marks, designs or other intellectual property supplied by Acteon to the Customer under the Contract.

10.3 Each party shall indemnify the other and keep it indemnified against all costs and expenses incurred in dealing with, defending and/or settling any claims, and all damages and costs awarded by any court of competent jurisdiction, resulting from or arising out of the other's failure to comply with clauses 10.1 and 10.2 above.

## 11 WARRANTY AND LIMITATION OF LIABILITY

11.1 Acteon undertakes to use reasonable skill and care in delivering the Goods or performing the Services.

11.2 Acteon shall use reasonable endeavours to provide the Customer with a clear Specification of the proposed Goods and Services as interpreted by Acteon. However, any change or modification to this specification due to the Customer misunderstanding the proposed Specification or amendments caused by hindsight or user feedback will not be construed as an error and Acteon will therefore be entitled to charge a fair price for the Goods and/or Services, based on its daily rates. This will apply at any stage of development and following launch.

11.3 Acteon undertakes to minimise the possibility that the Goods or systems used to deliver the Services (eg. hosting servers) will be adversely affected by any viruses, Trojan horses or other destructive code that may affect its functionality. However, Acteon cannot guarantee absolute freedom from such elements and Acteon will not be liable for any virus or malicious code uploaded by or from the systems or computers operated by the Customer or any third party. For this reason Acteon relies on the Customer to ensure that its own systems and computers that may provide connection to the server remain free of such viruses, Trojan horses and other destructive code.

11.4 Apart from the foregoing, Acteon makes no representations or gives no warranties of any kind with respect to the Goods or the Services and all such warranties including those in Sales of Goods legislation are excluded to the fullest extent permissible by law.

- 11.5 Acteon shall not be liable in any way for any losses, damages, costs or expenses, or for any loss of revenue, profit, goodwill or any consequential or indirect or special loss or damage arising out of the provision of the Goods or Services, or of any error or defect therein, or of the delivery, delayed delivery or non-delivery of the Goods or the performance, delayed performance or non-performance of the Services. Any liability not excluded by the above (or any exclusion of liability which is held by a court of competent jurisdiction to be invalid or unreasonable) shall be limited to a maximum aggregate liability of 150% of the amount of the Price paid by the Customer in the twelve months before such liability arises. Nothing in this clause shall exclude liability for death or personal injury arising from the negligence of Acteon or its employees or agents, or any other liability which it is prohibited from excluding at law.
- 11.6 If Acteon agrees to act as an agent of the Customer, the Customer will fully indemnify Acteon if any losses or claims result.

## **12 DURATION**

The Contract shall come into effect on Acteon's confirmation in Writing to the Customer and shall (where applicable) continue in accordance with terms specified in the Contract, or until the Goods have been delivered or the Services have been performed, unless terminated earlier pursuant to clause 14.

## **13 TERMINATION**

- 13.1 Either party ("the terminating party") shall have the right at any time by giving notice in Writing to the other party to terminate the Contract forthwith if:
- 13.1.1 the other party commits a material breach of any of these Terms, and has failed to remedy it within 30 days of receipt of a notice from the terminating party requiring the other party to do so;
  - 13.1.2 any distress, execution or other process is levied upon any of the assets of the other party; or
  - 13.1.3 the other party enters into any compromise or arrangement with its creditors, commits any act of bankruptcy or if an order is made or an effective resolution is passed for its winding up (except for the purposes of amalgamation or reconstruction as a solvent company) or if a petition is presented to court, or if a receiver and/or manager, receiver, administrative receiver is appointed in respect of the whole or any part of the other party's undertaking or assets.
- 13.2 The termination of the Contract, however arising, will be without prejudice to the rights and duties of the parties accrued prior to termination. The clauses which expressly or impliedly have effect after termination (which include but are not limited to clauses 5, 6, 7, 8, 9, 10, 14, 15, 17 and 18) will continue to be enforceable notwithstanding termination.

## **14 ASSIGNMENT AND SUB-CONTRACTING**

- 14.1 The Customer shall not be entitled to assign or subcontract the Contract or any part of it without the prior written consent of Acteon.
- 14.2 Acteon may assign or sub-contract the Contract or any part of it to any person, firm or company and shall give Written notice to the Customer at the time of such assignment or sub-contract.

## **15 CONFIDENTIALITY**

- 15.1 Each party agrees and undertakes that it will keep confidential, and will not use for its own purposes nor without the prior written consent of the other, disclose to any third party, any information of a confidential nature (including trade secrets and information of commercial value) which may become known to such party from the other party and which relates to the other party unless (a) such information is public knowledge or already known to such party at the time of disclosure; or (b) subsequently becomes public knowledge other than by breach of these Terms; or (c) comes lawfully into the possession of such party from a third party; or (d) such party is required to disclose such information by law.
- 15.2 The provisions of this clause shall remain in force and effect notwithstanding any termination of the Contract.

## **16 PUBLICITY AND ACKNOWLEDGEMENTS**

- 16.1 Acteon shall be entitled to publicise its role in delivering the Goods and performing the Services. With the Customer's permission in Writing (not to be unreasonably withheld or delayed), Acteon shall be entitled to use the Bespoke Material for that purpose.
- 16.2 The Customer shall ensure that Acteon's contribution in performing the Contract and Acteon's copyright (if any) are properly acknowledged.
- 16.3 For the avoidance of doubt, Acteon's statutory right to be identified as the author of any copyrightable works created in undertaking the Contract under sections 77-79 of the Copyright, Designs and Patents Act 1988 or any amendment or re-enactment thereof is asserted.

## 17 FORCE MAJEURE

- 17.1 Acteon shall not be liable to the Customer if it is prevented from or delayed in the delivery of the Goods or performance of the Services due to circumstances beyond the reasonable control of Acteon including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, riot, civic commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

## 18 GENERAL

- 18.1 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 18.2 Failure or delay by either party in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of that party's rights under the Contract.
- 18.3 No person shall acquire any rights under the Contract by virtue of the Contracts (Rights of Third Parties) Act 1999, save that Acteon may assign or sub contract the Contract or any part of it to any person, firm or company.
- 18.4 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

## 19 FEEDBACK

- 19.1 Acteon welcomes feedback from its customers on all aspects of its work. Feedback can be given through the e-mail address "support@acteoncommunication.com" or through customers' known contacts at Acteon. Acteon's senior partners take an active role in reviewing all feedback and dealing directly with the issues raised.

## 20 INTERPRETATION

- 20.1 In these Terms the following words shall unless the context otherwise requires have the following meanings:

Word	Meaning
"Bespoke Material"	the graphics, icons, text, branding, and other graphical and audio material created by Acteon under these Terms;
"Customer Material"	all material (whether hard copy or electronic) provided by the Customer for Acteon to perform the Services;
"Generic Software"	the software, applications, navigation models, information architecture, database structures, content management systems, third party applications, software engineering, functionality and other generic components used to perform the Services;
"Acteon"	Acteon LLP (registered number OC301093) whose registered office is at Burleigh House, 15 Newmarket Road, Cambridge, CB5 8EG;
"the Contract"	the agreement between Acteon and the Customer for Acteon to perform the Services as provided in the licence agreement and/or the Specification to which these Terms shall apply;
"the Customer"	the person, firm or company who instructs Acteon to perform the Services;
"the Goods"	any goods agreed in the Contract to be delivered to the Customer by Acteon (including any part or parts of them);
"the Services"	any Services agreed in the Contract to be delivered to the Customer by Acteon (including any part or parts of them);
"the Specification"	a Written definition of the functionality of the solution contained in the Goods and/or Services. The Specification is likely not to be initially defined in its entirety and will evolve during a project life cycle;
"Writing"	post, facsimile or e-mail, and "Written" shall be construed accordingly.