

# Future Consulting UK – General Terms of Trading

## 1 DEFINITIONS

- 1.1 "Contract" means any order for Products placed by you which is accepted by us.
- 1.2 "Products" means goods or services including but not limited to computer hardware and software items, consultancy and labour to be provided by us to you in accordance with these terms but shall not include services provided by us to you pursuant to a contract expressed to be governed by separate terms and conditions (including but not limited to facilities management or web design services).
- 1.3 "Third Party Software" means all software owned by or licensed to you by a third party (whether or not supplied by us) and which comprises part of the Products.
- "Us" or "We" means Future Consulting UK
- "You" means the person who places an order with us or to whom Products are supplied.

## 2 ORDER ACCEPTANCE

- 2.1 All orders placed with us by you for Products shall constitute an offer to us, under these terms, subject to availability of the Products and to acceptance of the order by our authorised representative.
- 2.2 Any orders for Products accepted by us are accepted and Products supplied subject to these express terms only.
- 2.3 By placing an order for Products with us, you irrevocably accept and agree to these terms in relation to the supply of such Products, to the exclusion of any and all other terms or conditions save as agreed by our authorised representative in writing.
- 2.4 Our employees and agents are not authorised to make any representations concerning Products unless:
- 2.4.1 that employee or agent is authorised by us to do so; and
  - 2.4.2 the representation is in writing and expressly states that you may rely on it when entering into the Contract.

In entering into the Contract you confirm that you do not rely on any representations other than any which conform with the description set out above and, subject to clause 2.5 below, you irrevocably waive any right you may have to claim damages for or to rescind the Contract as a result of any misrepresentation.

- 2.5 Nothing in these terms affects or limits our liability for fraudulent misrepresentation.

## 3 INDEPENDENT CONTRACTOR

We act as your independent contractor. There is no partnership or agency relationship between you and us and neither you nor we have any authority to make any contract or any obligation expressly or impliedly in the name of the other, without the other's prior written consent for express purposes connected with the performance of the Contract.

## 4 DESPATCH

- 4.1 Any time or date quoted for despatch is to be treated as an estimate only and time shall not be of the essence in this regard. Despatch may be postponed because of conditions beyond our reasonable control, and in no event shall we be liable for any damages or penalty for delay in despatch or delivery.
- 4.2 Risk of loss or damage to the Products shall pass to you at the time the Products are despatched by us. We will accept no liability for any loss or damage caused by the carrier of the Products.
- 4.3 You must inspect the Products on delivery. If any Products are damaged (or not delivered) you must notify us within five working days of delivery (or the expected delivery time). If proof of delivery is required, this must be requested within 14 days of the date of the invoice.
- 4.4 We may deliver the Products in instalments. Each instalment is treated as a separate delivery.

If you do not take delivery of any Products then, without prejudice to any other right or remedy available to us, we may:-

- 4.5.1 store the Products until actual delivery is made and charge you for any costs (including insurance) of storage; and/or
- 4.5.2 sell or supply the Products in or to a third party;

and in either case shall be entitled to charge interest from the estimated delivery date to the date of actual delivery in accordance with clause 7.1.

## 5 CANCELLATION AND RESCHEDULING

Unless otherwise agreed in writing, we shall not be obliged to consider any request by you for cancellation of any order or for the rescheduling of any delivery made less than 24 hours before despatch of the Products, and any such request shall be subject to acceptance at our sole discretion, and subject to our reasonable administration charges. You hereby agree to indemnify us against all losses, costs, (including the cost of labour and materials used and overheads incurred), damages, charges and expenses arising out of any such order and its cancellation or rescheduling.

## 6 PRICING

6.1 Catalogues, price lists and other advertising literature or material as used by us are intended only as an indication as to the price and range of Products offered and no prices, descriptions or other particulars contained in them shall be binding on us nor constitute an offer.

6.2 All prices quoted by us are on an ex-works basis and you are liable to pay for all transport, packing and insurance costs.

6.3 We reserve the right, by giving notice to you at any time before delivery, to increase the price of the Products to reflect any increase in costs to us which is due to any factor beyond our control, any change in delivery dates, quantities or specifications for the Products which is requested by you or any delay caused by your instructions.

6.4 All prices are exclusive of Value Added Tax and any similar taxes. All such taxes are payable by you and will be levied in accordance with UK legislation in force at the taxpoint date.

## 7 PAYMENT TERMS

7.1 Invoices will be raised and dated by us on the date of despatch of the Products. Unless otherwise specifically requested and agreed (and subject to clauses 7.2 and 7.3), invoices will be payable by you within 30 days after the date of invoice. If you do not pay us in full by the due date you must pay us interest at the rate equivalent to that set for the purposes of s6 of the Late Payment of Commercial Debts (Interest) Act 1998, calculated (on a daily basis) from the date of invoice until payment, such interest to be compounded on the first day of each calendar month and payable both before and after any judgment (unless the Court orders otherwise).

7.2 Where a Contract or our acceptance thereof is marked 'payment in advance', invoices in respect of that Contract are payable upon despatch of the Product to which it relates, and we shall not despatch such Products until such payment has been made.

7.3 Where a Contract or our acceptance thereof is marked 'cash on delivery', invoices in respect of that Contract are payable in cleared funds upon delivery, and we may withhold or refuse delivery in the absence of such payment.

7.4 You must notify us in writing within seven days of the date of our invoice of any errors (for example incorrect prices) in that invoice. If you do not, we may treat you as accepting the accuracy of that invoice.

7.5 If you have a credit account with us, we may withdraw it or reduce the credit limit or bring forward the due date for payment without notice.

7.6 You do not have the right to set off any money you may claim from us against any sums that you may owe us and all such rights arising in your favour at law are excluded.

7.7 If you owe money to us, we may set off against such debt any money we owe you, and/or claim a lien on any of your property in our possession.

7.8 Until you pay all debts owed to us:

7.8.1 all Products supplied to you will remain our property;

7.8.2 all Products delivered to you must be stored so that they are clearly identifiable as our property;

7.8.3 you must insure all such Products (against the risks for which a prudent owner would insure them) and hold the policy on trust for us; and produce a copy of your insurance policy upon request;

7.8.4 you may use such Products in the ordinary course of your business, but not if;

(a) we revoke that right (by informing you in writing);or

(b) you become insolvent as defined in clause 13.2 of these terms and conditions.

- 7.9 You must inform us (in writing) immediately if you become insolvent.
- 7.10 If your right to use the Products ends you must allow us to remove them.
- 7.11 We have your permission to enter any premises where Products which have not been paid for in full may be stored.
- 7.11.1 at any time, to inspect them; and
- 7.11.2 to remove them, using reasonable force if necessary, after your right to use them has ended.
- 7.12 Despite our retention of title to the Products, we have the right to take legal proceedings to recover the price of Products supplied should you not pay us in full by the due date.
- 7.13 All payments shall be applied to invoices and to Products listed in such invoices in the order determined in its discretion by the Seller.
- 7.14 You are not entitled to pledge (or in any way charge by way of security for any indebtedness) any of the Products which remain our property but if you do so all monies owing by you to us shall (without prejudice to any other of our rights or remedies) immediately become due and payable.
- 7.15 We reserve the right to stop supplying Products to you at any time.

## **8 SPECIFICATION OF PRODUCTS**

- 8.1 Unless otherwise agreed, the Products are supplied in accordance with the manufacturer's standard specifications or as these may be improved, substituted or modified by or on behalf of the manufacturer.
- 8.2 We reserve the right to increase our quoted or listed prices, or to charge accordingly in respect of any orders accepted for Products of non-standard specification and in no circumstance will we be obliged to consider cancellation of such order or the return of such orders.
- 8.3 You shall give all necessary access to us for the purpose of installing the Products, shall undertake any preparatory work reasonably specified by us and shall compensate us for any additional costs which we incur by reason of your failure properly to undertake any such preparatory work.
- 8.4 We shall procure that our employees who install the Products comply with all reasonable safety, security and other regulations which are in force or apply at your premises and are notified to us and you shall indemnify us against any loss which we may suffer or incur as a result of any injury to our employees or damage to or loss of our property whilst at your premises resulting from anything other than our negligence of the Seller or that of our employees.

## **9 PROPRIETARY RIGHTS IN SOFTWARE PRODUCTS**

- 9.1 You hereby acknowledge that any proprietary rights in any Third Party Software supplied hereunder including, but not limited to, any title or ownership rights, patent rights, copyrights and trade secret rights shall at all times and for all purposes vest and remain vested in the owner of the Third Party Software.
- 9.2 It is your sole responsibility to comply with any terms and conditions of any licence attaching to Third Party Software comprised in the Products (including if so required the execution and return of a Third Party Software licence). You agree to indemnify us in respect of any costs, charges or expenses incurred by us as a result of any breach by you of a licence in respect of Third Party Software.
- 9.3 These terms do not constitute a licence to use any Third Party Software and no title or ownership of any software licensed to you pursuant to a Contract is transferred or assigned to you under any circumstances.

## **10 RETURNS**

- 10.1 We reserve the right to levy an administration charge in respect of the rotation of Products and any returns.
- 10.2 We shall be under no obligation to accept the return of any Product but where we agree to do so all returns are subject to the following:
- 10.2.1 prior authority having been obtained from us which will be given at our sole and absolute discretion;
- 10.2.2 the request for a return must be made prior to the earlier of 5 days after delivery and 14 days after the date of the invoice and the Products in issue must be returned within 14 days of our authority to return them;
- 10.2.3 our stock rotation policy;
- 10.2.4 the Products being properly packed;

- 10.2.5 the Products being in a saleable condition;
- 10.2.6 the Product being listed;
- 10.2.7 the Products continuing to be covered by warranty (see section 11).

- 10.3 We reserve the right to reject any Products which do not comply with the terms set out in clause 10.2 above.
- 10.4 If we agree to accept any Products returned which are not in a saleable condition, we may charge the cost to you of bringing them into a saleable condition.

## 11 **WARRANTY**

- 11.1 We warrant that we have good title to or valid licence to supply all Products to you.
- 11.2 In the event that hardware Products should prove defective in materials or workmanship under normal operation or service we give only such warranty as is equivalent to, and our responsibility to repair or replace the same shall extend only so far as any warranty cover or terms provided by the manufacturer of the Products to us PROVIDED THAT no unauthorised modifications to the Product or to the system of which the Product forms part have taken place. We are not responsible for the cost of labour or other expenses incurred in repairing defective or non-conforming parts.
- 11.3 We reserve the right to test Products returned as faulty and to return to you (at your expense) any Products found by us not to be faulty. In such case we may in addition charge you our reasonable costs of testing the Products.
- 11.4 All software Products are supplied "as is" and we shall not be liable for the negligence or breach of any third party. Our sole obligation in respect of the supply of software Products shall be to use our reasonable endeavours to supply a corrected version produced by the manufacturer concerned in the event that the software Product fails to conform to its product description provided that you have notified us of any such non-conformity within 90 days of the date of delivery of the software Product.
- 11.5 We do not accept any liability in relation to any losses, costs or expenses which arise out of delivery times only and you are referred to clause 4.1 in this respect.
- 11.6 We will only accept the return of Products under clauses 11.2 or 11.4 as provided in clause 10. We will not consider any claim for compensation indemnity or refund under liability unless it has been established or agreed with the manufacturer of the Product and, where applicable, the relevant insurance company.

Where services are supplied under the Contract we shall use reasonable skill and care.

- 11.7 Except as specifically set out in this clause 11, we disclaim and exclude all other warranties, whether express or implied, by statute or otherwise, including but not limited to the warranties of description, design, satisfactory quality and fitness for a particular purpose, or arising from any previous course of dealing, usage or trade practice.

## 12 **INDEMNITIES AND LIMITS OF LIABILITY**

- 12.1 We do not seek to exclude or limit our liability for death or personal injury resulting from our negligence or that of our employees acting within the course of their employment and the scope of their authority.
- 12.2 We shall be liable to you for direct damage to property other than death or personal injury caused solely by defects in any of the Products or which are caused solely by our negligence or that of our employees acting within the course of their employment and the scope of their authority up to a maximum of the lesser of the value of the relevant Contract and the sum of £50,000.
- 12.3 Except as stated in clauses 12.1 and 12.2 above, we disclaim and exclude all liability to you including that arising out of your use of the Products. In no event shall we be liable to you for special, indirect or consequential damage including, but not limited to, loss of profits arising from loss of data.
- 12.4 You shall indemnify and defend us and our employees in respect of any claims by third parties which arise from our performance or non-performance pursuant to the instructions given by you or your authorised representatives.

## 13 **TERMINATION FOR CAUSE**

A Contract may be terminated immediately by notice in writing:

- 13.1 by us if you fail to pay any sums due hereunder by the due date notwithstanding the provisions for late payment set out in clause 7.1 or if you become insolvent.
- 13.2 We may treat you as insolvent if:
  - 13.2.1 you are unable to pay your debts as they fall due; or

13.2.2 you (or any item of your property) become the subject of:

- (a) any formal insolvency procedure (examples of which include receivership, liquidation, administration, voluntary arrangements (including a moratorium) or bankruptcy);
- (b) any application or proposal for any formal insolvency procedure; or
- (c) any application, procedure or proposal in any jurisdiction having similar effect or purpose; or

13.2.3 distress is levied against any of your assets; or

13.2.4 we reasonably anticipate the happening of any of the matters set out in clauses 13.2.1 to 13.2.3 inclusive.

13.3 Any termination of a Contract under this clause 13 shall be without prejudice to any other rights or remedies a party may be entitled to and shall not affect any accrued rights or liabilities of either party.

#### 14 **EXPORT AND/OR RE-EXPORT LIMITATION**

Regardless of any disclosure made by you to us of an ultimate destination for any Products, you will not export or re-export any Products without first obtaining all such written consents or authorisations as may be required by any applicable government regulations.

#### 15 **CONTRACT**

15.1 The heading in these terms are for ease of reference only and shall not affect their interpretation or construction.

15.2 No forbearance, delay, indulgence by either party in enforcing its respective rights shall prejudice or restrict the rights of that party, and no waiver of any such right or of any breach of any contractual terms shall be deemed to be a waiver of any other right or any later breach.

15.3 You agree not to assign any of your contractual rights without our prior written consent.

15.4 If any of these terms are unenforceable as drafted it will not affect the enforceability of any other of these terms and if it would be enforceable if amended, it will be treated as so amended.

15.5 Neither party shall be liable to the other for any delay in the performance of or failure to perform its obligations hereunder (other than a payment of money) where such delay or failure results from force majeure including any act of God, fire, explosion, accident, industrial dispute or any cause beyond its reasonable control.

15.6 Any notice or written communication required or permitted to be served on or given to either party under the Contract shall be delivered by hand or sent by first class post to the other party at its address set out above or to such other address which it has previously notified to the sending party or sent by fax to such fax number as it has previously notified to the sending party or sent by electronic transmission to such domain or e-mail address as it has previously notified to the sending party and shall be deemed to have been given when actually received or, if sent by first class post, two full days after posting or, if sent by fax, upon receipt of the relevant fax confirmation sheet or, if sent by electronic transmission upon receipt of a reply, acknowledgment or read receipt.

15.7 These terms shall be construed in accordance with English Law and the English and Welsh courts shall have non-exclusive jurisdiction.

15.8 You are to indemnify us in full and hold us harmless from all expenses and liabilities we may incur (directly or indirectly and including finance costs and legal costs on a full indemnity basis) following any breach by you of any of the your obligations under these terms.

15.9 No Contract will create any right enforceable (by virtue of the Contracts (Rights of Third Parties) Act 1999) by any person not identified as the buyer or seller pursuant to that Contract.