

Robin Ball Associates Ltd Services Terms and Conditions

Parties:

(1) **The Company:** Robin Ball Associates Limited (registered in England number 03666011)

(2) **The Customer:** The party to whom the Proposal is addressed and whose address is set out in the Proposal

1. Definitions and Interpretation

1.1. In this Agreement unless the context otherwise requires:

- 1.1.1. **"The Proposal"** means the detailed description of Services as agreed, verbally or written between, The Company and the Customer.
- 1.1.2. **"Services"** means the services as laid out in the Proposal.
- 1.1.3. **"Documentation"** means any information supplied under the terms of this agreement.
- 1.1.4. **"Intellectual Property Rights"** means the know-how which comprises the knowledge and expertise of The Company which is not in the public domain and which relates to the Services; and all The Company's copyright, material or other intellectual property rights in the Services and any third party rights in the same.
- 1.1.5. **"the Commencement Date"** means the date specified as such in the Proposal or as agreed thereafter.
- 1.1.6. **"the Charges"** means the fees for Services as laid out in the Proposal.
- 1.1.7. **"the Term"** means the period specified in the Proposal calculated from the Commencement Date.
- 1.1.8. **"Working Hours"** means 8.30 am to 5.30 pm Monday to Friday excluding all bank and public holidays and any other non-working days notified to the Customer in advance.
- 1.2. Words in the singular shall include the plural and vice versa
- 1.3. References to writing shall include any modes of reproducing words in a legible and non-transitory form
- 1.4. The Proposal forms part of this Agreement and has the same force and effect as if expressly set out in the body of this Agreement and any reference to this Agreement shall include the Proposal
- 1.5. References to statutes or statutory provisions includes the same as amended modified consolidated or re-enacted whether before or after the date of the Agreement
- 1.6. The headings to the clauses of this Agreement are for ease of reference only and shall not affect the interpretation or construction of this Agreement. Any reference to a clause is unless otherwise stated to a clause in this Agreement.

2. Duration

- 2.1. This Agreement shall come into force and the Services shall be provided from the Commencement Date and shall continue for the Term.
- 2.2. The Agreement shall continue in force and shall be renewed thereafter for further periods unless or until terminated in accordance with clause 10.

3. The Company's Obligations

- 3.1. In consideration of the Charges The Company shall provide such Services and Documentation at the charging rates specified in the Proposal.
- 3.2. This Agreement shall be entered into without prejudice to any other agreements entered into by The Company and his other customers in respect of the provision of services.
- 3.3. The Company shall use his reasonable endeavours to notify the Customer of any delay in the delivery of Services. Time is therefore not of the essence in this Agreement.
- 3.4. If agreed in writing by the parties, The Company shall render progress reports to the Customer at agreed intervals and progress meetings will be arranged to an agreed schedule.

4. The Customer's Obligations

- 4.1. The Customer shall be responsible for ensuring the accuracy of all information supplied to The Company in connection with this Agreement
- 4.2. In no circumstances shall The Company be liable for any loss cost or liability suffered or incurred by the Customer resulting from a failure to comply with the foregoing obligation.
- 4.3. Any changes to the Proposal requested by the Customer shall be notified to The Company in writing. The Customer agrees that it will be responsible for any resulting increase in costs.
- 4.4. No order which has been accepted by The Company may be cancelled by the Customer except with the agreement in writing of The Company and on terms that the Customer shall indemnify The Company in full against all loss including loss of profit, costs including the cost of all labour and any materials used, damages, charges and expenses incurred by The Company as a result of cancellation.
- 4.5. The Customer agrees that it shall:
 - 4.5.1. not assign, charge or otherwise deal with this Agreement without the prior written consent of The Company;
 - 4.5.2. arrange appropriate insurance in respect of any equipment or material belonging to the Customer which is sited on The Company's premises;
 - 4.5.3. indemnify and keep indemnified The Company against any and all claims, demands, loss, damage or liability (whether criminal or civil), legal fees and costs incurred as a result of material provided by the Customer to The Company in respect of the Services.

5. The Company's Warranties and Liability

- 5.1. The Company warrants that it will provide the Services with reasonable skill and care.
- 5.2. Except as stated above The Company offers no further warranty of any kind either express or implied including but not limited to warranties of satisfactory quality fitness for purpose title or non-infringement Provided Always that nothing herein shall exclude or limit The Company's liability for death or personal injury
- 5.3. In entering into this Agreement the Customer acknowledges that is has had adequate opportunity to evaluate the capabilities and references of The Company.
- 5.4. The Services are supplied by The Company on the basis that they are for the sole use of the Customer for the agreed purposes as set out in the Proposal. If the Customer divulges any information provided as part of the Services to any third party, the Customer indemnifies The Company against any loss and liabilities whatsoever which The Company may incur either at common law or by statute in respect of any loss or damage suffered by that third party by reason of any such information.
- 5.5. With the exception of death or personal injury caused by his negligence The Company will not be liable for any of the following losses which may arise by reason of any breach of the express terms of this Agreement or (to the extent that they have not been excluded above) any implied warranty condition or other term any representation or any duty of any kind imposed on The Company by operation of law:
 - 5.5.1. Any loss of anticipated profits or expected future business;
 - 5.5.2. Damage to reputation or goodwill;
 - 5.5.3. Any damages costs or expenses payable by the Customer to any third party;
 - 5.5.4. Loss of any order or contract;
 - 5.5.5. Any consequential loss of any kind.
- 5.6. Unless otherwise provided in this Agreement the liability of The Company in respect of a breach of any express or implied term of this Agreement or any other duty of any kind imposed on The Company by law arising out of or in relation to this Agreement shall be limited to the reasonable cost of remedying any matter constituting such breach and in no circumstances shall The Company's liability exceed the total amount paid by the Customer to The Company pursuant to the terms of this Agreement.

6. Indemnity

- 6.1. The Customer shall fully and effectively indemnify and hold harmless The Company against all damages costs liabilities and any other sums incurred arising from a third party claim or threat of claim against The Company for loss injury or damage arising from the Customer's use of the Services or the Documentation or in any way connected with a breach by the Customer of any of Customer's legal obligations or obligations under this Agreement.

7. Fees and Payment Terms

- 7.1. The Customer shall pay to The Company the Charges in accordance with the Proposal (plus any VAT payable thereon) either by automated direct debit or by cheque within 14 days from the date of invoice.
- 7.2. The Customer shall pay all sums due under this Agreement in full without any discount deduction set off or abatement on any grounds.
- 7.3. If the Customer fails to make any payment on the due date then without prejudice to any other right or remedy The Company shall be entitled to charge the Customer compound interest on the amount unpaid at the rate of 8% per month above Lloyds TSB Bank base rate from time to time accruing from day to day until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest)
- 7.4. The Company reserves the right on giving not less than 3 months' notice to change the fees for Services with effect from any time after 6 months from the Commencement Date.

8. Intellectual Property Rights

- 8.1. The Intellectual Property Rights in the Documentation and the Services shall vest solely in and remain with The Company. The Company grants to the Customer a non-exclusive perpetual licence worldwide in respect of such Intellectual Property Rights.
- 8.2. The Customer undertakes that it will not:
 - 8.2.1. itself supply to a third party any part of the Documentation, provided to the Customer by The Company pursuant to this Agreement; or
 - 8.2.2. make any copies of the Documentation other than for internal use unless The Company has given its prior consent in writing to such supply or copying. The Customer will, however, be entitled to make such copies of the Documentation, as it requires for internal use only.
- 8.3. Each Party shall promptly and fully notify the other of:
 - 8.3.1. any actual, threatened or suspected infringement of the Intellectual Property Rights as described in clauses 8.1 and 8.2 which comes to its notice; and
 - 8.3.2. any claim by any third party coming to its notice that the promotion or licensing of the Services or the documentation infringes the right of any other person; and each party shall at the request and expense of the other do all such things as may be reasonably required to assist the other in taking or resisting any proceedings in relation to any infringement or claim referred to in this clause.

9. Confidentiality

- 9.1. The Customer shall:
 - 9.1.1. keep confidential the Documentation, effect and maintain adequate security measures to safeguard the Documentation from access or use by any unauthorised person and in particular limit access to the same to those of its employees or agents who have a need to know; and
 - 9.1.2. without prejudice to the foregoing take all such other steps as shall from time to time be necessary to protect the confidential information and Intellectual Property Rights in the Services and the Documentation.
- 9.2. The Company undertakes the same obligations, mutatis mutandis, as are detailed in clause 9.1 in respect of such intellectual property rights as are vested in the Customer.
- 9.3. Each Party agrees to treat as confidential and not at any time for any reason to disclose or permit to be disclosed to any person or otherwise make use of or permit to be made use of any information and trade secrets relating to the other's business affairs or finances or any such information relating to the subsidiary, supplier, customer or client of the other except where knowledge or details of the information become public through no fault of that party.
- 9.4. The terms of this Agreement are confidential and each party agrees not to disclose the same to any third party other than its professional advisers or where disclosure is required by law.

10. Termination

- 10.1. The Company may terminate this Agreement forthwith on giving notice in writing to the Customer if:
 - 10.1.1. the Customer commits any material breach of any term of this Agreement and (in the case of a breach capable of being remedied) shall have failed within 30 days after the receipt of a request in writing from The Company so to do to remedy the breach (such request to contain a warning of The Company's intention to terminate)
 - 10.1.2. in the event of such termination the Customer shall pay the remainder of the Charges due under the Agreement.
- 10.2. Either party may terminate this Agreement at the end of the Term (or at the end of any renewal period) on giving the other party 3 month's prior notice
- 10.3. Within 30 days of the termination of this Agreement The Company shall provide the Customer with a final accounting statement and the sums detailed therein shall be payable within 7 days of the statement date.
- 10.4. Any termination of this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

11. Assignment

- 11.1. The Customer shall not be entitled to assign sub-license or otherwise transfer the Agreement or any rights hereunder whether in whole or in part without the prior written agreement of The Company.
- 11.2. The Company may assign or sub license the Agreement to any associated company as defined in the Companies Act.

12. General

- 12.1. The Company shall not be liable to the Customer for any delay or failure by The Company to perform its obligations under this Agreement or otherwise if such delay or failure arises from any unforeseen cause or causes beyond the reasonable control of The Company including but not limited to fire flood lightning explosion storm epidemic illness utility or communications failures strikes insurrection riots terrorism actions restrictions or orders of any government agency or public authority import or export restrictions impossibility of the use of transport or failure of power supplies.
- 12.2. The Customer hereby warrants to The Company that the Customer has not been induced to enter into this Agreement by any prior representations whether oral or in writing except as specifically contained in the Proposal and the Customer hereby waives any claim for breach of any such representations which are not so specifically mentioned.
- 12.3. Failure or neglect by The Company to enforce at any time any of these Conditions shall not be construed nor shall be deemed to be a waiver of The Company's rights hereunder nor in any way affect the validity of the whole or any part of these Conditions nor prejudice The Company's right to take subsequent action.
- 12.4. No forbearance delay or indulgence by either party in enforcing the provisions of this Agreement shall prejudice or restrict the rights of that party nor shall any waiver of its rights operate as a waiver of any subsequent breach.
- 12.5. This Agreement supersedes all prior agreements arrangements and understandings between the parties and constitutes the entire agreement between the parties relating to the subject matter hereof. No addition to or modification of any provision of this Agreement shall be binding upon the parties unless made by a written instrument signed by a duly authorised representative of each of the parties.
- 12.6. All notices to be given hereunder shall be in writing and shall be sent to the address of the recipient set out in this Agreement. Any such notice may be delivered by email or personally or by first class pre-paid letter or fax transmission and shall be deemed to have been served if by hand when delivered if by first class post 48 hours after posting and if by email or facsimile transmission when despatched.
- 12.7. If any provision of this Agreement is found by a court of competent jurisdiction to be void or unenforceable such provision shall be deemed to be deleted with effect from the date of the Agreement and insofar as they remain capable of having effect the remaining parts of the provision in question and the other provisions of the Agreement shall continue in full force and effect notwithstanding such deletion.
- 12.8. This Agreement shall be governed by and construed in accordance with the laws of England and any dispute which may arise between the parties shall be determined by the English Courts and the parties hereby submit to the exclusive jurisdiction of the English Courts.
- 12.9. The provisions of clauses 8 and 9 shall survive the expiry or termination of this Agreement howsoever caused and shall continue thereafter in full force and effect.