

Box09 Limited - TERMS & CONDITIONS

1 DEFINITIONS

- 1.1 The definitions and rules of interpretation in this clause apply in these terms and conditions ("Conditions").
- 1.2 "Additional Deliverables" means any Goods, Services or other work provided by Box09 under a Contract in addition to the Deliverables;
- 1.3 "Customer" means the person, firm or company who purchases Goods and/or Services from Box09;
- 1.4 "Customer's Equipment" means any equipment, systems, cabling or facilities provided by the Customer and used in the supply of the Deliverables;
- 1.5 "Contract" means any contract between Box09 and the Customer created in accordance with condition 2.2 subject to these Conditions;
- 1.6 "Deliverables" means any Goods and/or Services (or either of them as the context requires) to be provided by Box09 under a Contract and, where applicable, includes goods and services described in a Work Schedule;
- 1.7 "Goods" means any goods (including hardware or software) agreed in the Work Schedule, Proposal or the Contract to be supplied to the Customer by Box09 (including any part or parts of them);
- 1.8 "Box09" means Box09 Limited, a company registered in England number: 08754655;
- 1.9 "Price" means the aggregate of the charges to be made by Box09 for the Deliverables calculated in accordance with the provisions set out in condition 6;
- 1.10 "Proposal" means any proposal, quotation or similar document issued by Box09 in connection with the provision of the Deliverables;
- 1.11 "Services" means any services to be provided under the Contract as set out in the Work Schedule, Proposal or the Contract;
- 1.12 "Work Schedule" means any document prepared by Box09 describing the Services (other than a Proposal) and, where appropriate, their intended use and any pre-set timings for supply.
- 1.3 Condition and paragraph headings shall not affect the interpretation of these conditions.
- 1.4 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 Where the words "include(s)", "including" or "in particular" are used in these terms and conditions, they are deemed to have the words without limitation following them and where the context permits, the words other and otherwise are illustrative and shall not limit the sense of the words preceding them.

2 APPLICATION OF CONDITIONS

- 2.1 These Conditions shall apply to and be incorporated into the Contract (and any subsequent contract for the supply of Deliverables by Box09 to the Customer) and shall prevail over any inconsistent terms or conditions contained, or referred to, in the Customer's purchase order, confirmation of order, acceptance of a quotation or specification, or implied by law, trade custom, practice or course of dealing.
- 2.2 The Customer's purchase order, or the Customer's acceptance of a Proposal or signature of a Work Schedule in relation to the supply of the Deliverables by Box09, constitutes an offer by the Customer to purchase the Deliverables specified in it on these Conditions. No such offer placed by the Customer shall be accepted by Box09 other than by Box09 issuing an order acknowledgement or, (if earlier) by Box09 starting to provide the Deliverables when a contract for the supply and purchase of those Deliverables on these Conditions will be established (the "Contract"). The Customer's standard terms and conditions (if any) attached to, enclosed with or referred to in any purchase order or other document shall not govern the Contract.
- 2.3 Immediately upon each of Box09 and the Customers having signed a Work Schedule, that Work Schedule shall become a schedule to, and shall be subject to, these Conditions and by signing the Work Schedule the Customer warrants and confirms that the contents of the Work Schedule is complete and accurate in all respects.
- 2.4 All Proposals are given by Box09 on the basis that no Contract shall come into existence except in accordance with condition 2.2. Contracts may not be amended except by agreement between the Parties in writing.
- 2.5 All samples, descriptive matter, specifications and advertising issued by Box09 and any descriptions or illustrations contained in Box09's catalogues or brochures are issued or published for illustrative purposes and they do not form part of the Contract and, any advice or recommendation given by Box09 or its employees, contractors or agents about the storage, application or use of the Goods which is not confirmed in writing by an authorised officer of Box09 is followed or acted upon entirely at the Customer's risk.

3 BOX09'S OBLIGATIONS

- 3.1 Box09 shall use reasonable endeavors to provide the Deliverables to the Customer in all material respects in accordance with any relevant Work Schedule or Proposal.
- 3.2 Box09 shall use all reasonable endeavors to meet any performance dates (in the case of Services) and any delivery dates (in the case of Goods) specified in the Work Schedule, Proposal or the Contract, but any such dates shall be estimates only and time of delivery or supply shall not be of the essence of the Contract. The quantity and description of the Goods shall be as set out in the Proposal.

4 CUSTOMER'S OBLIGATIONS

- 4.1 The Customer shall, in order to assist Box09 in the provision of Deliverables:
- 4.1.1 co-operate with Box09 in all matters relating to the Services;
- 4.1.2 provide, for Box09, its agents, sub-contractors and employees, in a timely manner and at no charge, access to the Customer's premises, office accommodation, data and other facilities as reasonably requested by Box09;
- 4.1.3 provide, in a timely manner, such in-put material and other information as Box09 may reasonably request and ensure that it is accurate in all material respects;
- 4.1.4 inform Box09 of all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer's premises; and
- 4.1.5 ensure that all Customers' Equipment is in good working order and suitable for the purposes for which it is used in relation to the services and conforms to all relevant United Kingdom standards or requirements.
- 4.2 If Box09's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, sub-contractors or employees, Box09 shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.
- 4.3 The Customer shall be liable to pay to Box09, on demand, all reasonable costs, charges or losses sustained or incurred by Box09 (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract.

5 CHARGES AND PAYMENT

- 5.1 Unless otherwise stated in the Proposal, Work Schedule or acknowledgement of order issued by Box09, the price of the Goods shall be Box09's list price for the Goods prevailing on the date of delivery or deemed delivery.
- 5.2 The total price for the provision of the Services shall be calculated on the basis set out in the Contract or the Work Schedule or Proposal (or if no basis is specified the price payable for the Services shall be calculated in accordance with Box09's standard daily fee rates from time to time). The total Price shall be paid to the Supplier (without deduction or set-off) as set out in the Work Schedule, Proposal or Contract (or otherwise when the Services have been completed). The Supplier shall invoice the Customer for the Price which is then payable (including the cost in relation to any Additional Services), together with expenses, the costs of materials and VAT, where appropriate.
- 5.3 The price payable for any Additional Deliverables shall be the price agreed in writing between the parties, or if no price is specified, shall be the list price for the Goods prevailing on the date of delivery or deemed delivery in the case of Goods and, in the case of Services, calculated in accordance with Box09's standard daily fee rates from time to time.
- 5.4 Unless otherwise agreed in the Proposal or Work Schedule, any Price or daily rate excludes overtime and the cost of hotel, subsistence, traveling and any other ancillary expenses reasonably incurred by the individuals whom Box09 engages in connection with the Services, the cost of any materials and the cost of Services reasonably and properly provided by third parties and required by Box09 for the supply of the Services. Such expenses, materials and third party services shall be invoiced by Box09 (and Box09 resumes the right to require any such costs to be paid by the Customer in advance); and VAT, which Box09 shall add to its invoices at the appropriate rate.
- 5.5 The Customer shall pay each invoice submitted to it by Box09, in full and in cleared funds, without counterclaim, deduction or set off at the time specified in the Work Schedule of the Contract and, if not specified, within 30 days of receipt. Time for payment shall be of the essence of the Contract.
- 5.6 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay Box09 on the due date, Box09 may (at Box09's sole discretion) (1) charge interest on such sum from the due date for payment at the annual rate of 8% above the base lending rate from time to time of the Yorkshire Bank plc, accruing on a daily basis and being compounded quarterly until payment is made; (2) immediately suspend all Services until payment has been made in full; or (3) immediately terminate the Contract without liability to the Customer.
- 5.7 All sums payable to Box09 under the Contract shall become due immediately on its termination, despite any other provision. This condition 5.7 is without prejudice to any right to claim for interest under the law, or any such right under the Contract.
- 5.8 Box09 may, without prejudice to any other rights it may have, set off any liability of the Customer to Box09 against any liability of Box09 to the Supplier.

6 COMPLIANCE

- 6.1 It shall be the sole responsibility of the Customer to ensure that the Deliverables comply with all local laws (whether consumer, public or civil), regulations and codes in all countries in which use is intended as stated in the Contract. It shall also be the Customer's responsibility to ensure that the Deliverables carry appropriate disclaimers, warnings and public information. Accordingly the Customer agrees to indemnify and hold harmless Box09 and Box09's agents and employees from any liability, cost, loss, damages award, sum payable by way of settlement or other expense of any kind, including reasonable legal fees) arising from any claim, demand or action alleging that the Deliverables or use of them are contrary to any law, code or regulation in any country.
- 6.2 The Customer shall be responsible for procuring all and any licenses or permissions which are required in connection with the use of the Deliverables on the Customer's systems and the Customer shall indemnify Box09 and hold Box09 harmless from and against any costs, losses, expenses, fines or similar penalties in connection with the Customer's failure to obtain any such licenses or permissions.

7 DELIVERY

- 7.1 The delivery of any Goods shall be deemed as occurring when either two business days have elapsed following the day the Customer has been informed that the Goods are awaiting collection or, in cases where the Deliverables include delivery of the goods to the Customer, on the day of delivery to the Customer.
- 7.2 If the Customer is unable to collect or take delivery of the Goods in accordance with the provisions of condition 7.1 above, then Box09 shall be entitled to arrange storage and/or transportation for the goods on the Customer's behalf at the Customer's expense. All charges for such storage, transport and any insurance shall be payable by the Customer forthwith on request.
- 7.3 The Customer shall inspect and check the Goods immediately on delivery and shall give Box09 notice in writing by e-mail, fax or post within 3 working days after the day of delivery as to any alleged defect together with details of the alleged defect. The Customer will permit Box09 to inspect any allegedly defective Goods. Failing such notice, the Goods shall be deemed to be in accordance with the Contract and the Customer shall be deemed to have accepted the Goods and to be liable to pay the Price for those Goods.
- 7.4 Box09 may deliver the Goods by separate installments. Each separate installment shall be invoiced and paid for in accordance with the provisions of the Contract. Each installment shall be a separate Contract and no cancellation or termination of any one Contract relating to an installment shall entitle the Customer to repudiate or cancel any other Contract or installment.
- 7.5 Goods which have been supplied in accordance with the Contract may not be returned to Box09 without Box09's prior written consent. If Box09 consents to the return of any Goods, the Customer is responsible for the cost of returning such goods to Box09's premises and shall pay to Box09 a re-stocking fee equal to 15% of the invoiced Price of such Goods.
- 7.6 Any consent by Box09 to accept the return of Goods under condition 7.5 is conditional upon (1) software packages being unopened and unused and in as-new condition; and (2) hardware and other equipment being in the same condition as when supplied by Box09 and in its original packaging.

8 TITLE AND RISK

- 8.1 The Goods are at the risk of the Customer at the time of delivery or deemed delivery.
- 8.2 Ownership of the Goods shall not pass to the Customer until Box09 has received in full (in cash or cleared funds) all sums due to it in respect of (1) the Goods; and (2) all other sums which are or which become due to Box09 from the Customer on any account.
- 8.3 Until ownership of the Goods has passed to the Customer, the Customer shall (1) hold the Goods on a fiduciary basis as Box09's bailee; (2) store the Goods (at no cost to Box09) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as Box09's property; (3) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and (4) maintain the Goods in satisfactory condition.
- 8.4 The Customer may resell the Goods before ownership has passed to it solely on the condition that (1) any sale shall be effected in the ordinary course of the Customer's business at full market value; and (2) any such sale shall be a sale of the Box09's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale.
- 8.5 The Customer's remedies are immediately limited if (1) the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or (2) if the Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between Box09 and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade.
- 8.6 Box09 shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from Box09.
- 8.7 The Customer grants Box09 an irrevocable license at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has ended, to recover them.
- 8.8 On termination of the Contract, howsoever caused, Box09's rights contained in this condition 8 shall remain in effect.

9 REJECTION OR CANCELLATION

- 9.1 Unless a rejection fee has been agreed in advance, the Customer shall have no right to terminate the Contract, allege breach of Contract or seek any cancellation, reduction or repayment of the Price on the basis of style or composition of any of the Deliverables. Once the Contract is concluded as provided on these terms and conditions, any subsequent cancellation by the Customer will result in the Customer being liable for the full Price as if the cancellation had not taken place, excluding such committed third party expenses as Box09 is able to avoid liability for within its existing contractual commitments to suppliers.

10 QUALITY

- 10.1 The Customer acknowledges that Box09 does not manufacture or produce Goods and, accordingly, Box09 shall endeavour to transfer to the Customer the benefit of any warranty or guarantee given to Box09 but otherwise gives no warranty in connection with the Goods beyond those given by the manufacturer.
- 10.2 Box09 will provide the Services with reasonable skill and care and in accordance with generally recognised commercial practices and standards.
- 10.3 If, within 30 days of the provision of any Services, such Services are found to be in breach of the warranty contained in condition 10.2, Box09 will re-perform the Services. If Box09 complies with this condition 10.3 it shall have no further liability to the Customer for the breach of the warranty contained in condition 10.2 in respect of such Services.

11 LIABILITY

- 11.1 This condition 11 set out the entire financial liability of Box09 to the Customer in respect of (1) any breach of the Contract; (2) any use made by the Customer of the Deliverables or any part of them; and (3) any representation, statement or tortious act or omission (including negligence) rising under or in connection with the Contract.
- 11.2 Except as otherwise provided in the Contract, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 11.3 Nothing in these Conditions limits or excludes the liability of Box09 for (1) death or personal injury resulting from Box09's negligence; or (2) for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by Box09; or (3) for any matter which it would be illegal for Box09 to exclude or to attempt to exclude or limit its liability.
- 11.4 Subject to condition 11.2 and condition 11.3:
- 11.4.1 Box09 shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for loss of profits, loss of business, depletion of goodwill and/or similar losses, loss of anticipated savings, loss of goods, loss of contract, loss of use, loss or corruption of data or information or any other special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and
- 11.4.2 Box09's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Contract shall be limited to the Price paid under the Contract.

12 GENERAL

- 12.1 Box09 may at any time assign, charge, transfer, sub-contract or deal in any other manner with any or all of its rights or obligations under a Contract.
- 12.2 If any provision (or part of a provision) of the Contract is held to be invalid, illegal or unenforceable, that provision (or part) shall, to the extent required, be deemed not to form part of the Contract and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 12.3 The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by Box09, its employees, agents or sub-contractors and any other confidential information concerning Box09's business or its products which the Customer may obtain. The Customer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Customer's obligations to Box09. The provisions of this condition 12.2 shall continue in force in accordance with its terms, notwithstanding the termination of this Agreement for any reason.
- 12.4 Box09 shall not be liable for any breach of this Contract caused by matters beyond its reasonable control including acts of God, fire, lightning, explosion, war, disorder, flood, industrial disputes (whether or not involving Box09's employees), weather of exceptional severity or acts of local or central government or other authorities.
- 12.5 This Contract is the entire agreement between the parties on the subject matter contained herein and supersedes all representations, communications and prior agreements between the parties in that regard.
- 12.6 A person who is not a party to this Contract has no rights under the Contracts (Rights of Third Parties) Act of 1999 to enforce any term of this Contract, but this does not affect any other right or remedy of a third party.
- 12.7 The Contract shall be governed by and construed in accordance with the laws of England and Wales and both parties agree to submit to the non-exclusive jurisdiction of the courts of England and Wales in relation to any claim, dispute or difference which may arise hereunder or in relation to this Contract.