

## CONTENTS

---

### CLAUSE

2.	Application of conditions.....	3
3.	Commencement and duration .....	4
4.	Supplier's obligations.....	4
5.	Customer's obligations .....	4
6.	Change control .....	6
7.	Charges and payment .....	7
8.	Intellectual property rights .....	9
9.	Confidentiality and the Supplier's property.....	9
10.	LIMITATION OF LIABILITY-THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF THIS CONDITION .....	10
11.	Data protection .....	11
12.	Termination.....	11
13.	Force majeure .....	13
14.	Variation .....	13
15.	Waiver .....	13
16.	Severance .....	14
17.	Status of pre-contractual statements .....	14
18.	Assignment.....	14
19.	No partnership or agency .....	14
20.	Rights of third parties .....	15
21.	Notices.....	15
22.	Governing law and jurisdiction .....	15

## **BACKGROUND**

### **Interpretation**

- 1.1 The definitions and rules of interpretation in this clause apply in these terms and conditions (**Conditions**).

**Contract:** the Customer's Order Form and the Supplier's acceptance of it.

**Customer:** the person, firm or company who purchases Services from the Supplier.

**Customer's Equipment:** any equipment, systems, cabling or facilities provided by the Customer and used directly or indirectly in the supply of the Services.

**Customer's Manager:** the Customer's manager for the Services, appointed in accordance with condition 5.1.

**Deliverables:** all Documents, products and materials developed by the Supplier in relation to the Services in any form, including computer programs, data, reports and specifications (including drafts).

**Document:** includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

**Input Material:** all Documents, information and materials provided by the Customer relating to the Services including, computer programs, data, reports and specifications.

**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Order Form:** the order form specifying the product required by the Customer.

**Pre-existing Materials:** all Documents, information and materials provided by the Supplier relating to the Services which existed prior to the commencement of this Contract.

**Product:** the ISOKIT specified in the Order Form.

**Services:** the services to be provided by the Supplier under this agreement as set out in the Order Form together with any other services which the Supplier provides or agrees to provide to the Customer.

**Supplier:** High Edge Consulting Limited registered office The Mills, Canal Street Derby Derbyshire DE1 2RJ Company No. 04530358.

**Supplier's Equipment:** any equipment, including tools, systems, cabling or facilities, provided by the Supplier or its subcontractors and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the parties under which title passes to the Customer.

**Supplier's Manager:** the Supplier's manager for the Services appointed under condition **Error! Reference source not found..**

**VAT:** value added tax chargeable under English law for the time being and any similar additional tax.

- 1.2 Condition, schedule and paragraph headings shall not affect the interpretation of these conditions.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- 1.4 The schedules and background form part of this Contract and shall have effect as if set out in full in the body of these Conditions and any reference to this Contract includes any schedules and background.
- 1.5 Words in the singular shall include the plural and vice versa.
- 1.6 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

- 1.7 A reference to **writing** or **written** includes faxes and electronic communications.
- 1.8 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.
- 1.9 Any obligation in this Contract on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.
- 1.10 References to conditions and schedules are to the conditions and schedules (if any) of this Contract.

## 2. **Application of conditions**

- 2.1 These Conditions shall:
- (a) apply to and be incorporated into the Contract; and
  - (b) prevail over any inconsistent terms or conditions contained or referred to in the Customer's Order Form, 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 Order Form, or the Customer's acceptance of a quotation for Services by the Supplier, constitutes an offer by the Customer to purchase the Services specified in it on these Conditions. No offer placed by the Customer shall be accepted by the Supplier other than:
- (a) by a written acknowledgement issued and executed by the Supplier; or
  - (b) (if earlier) by the Supplier starting to provide the Services,
- when a contract for the supply and purchase of those Services on these Conditions will be established. 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 this Contract.
- 2.3 Quotations are given by the Supplier on the basis that no Contract shall come into existence except in accordance with condition 2.2. Any

quotation is valid for a period of 30 days from its date, provided that the Supplier has not previously withdrawn it.

**3. Commencement and duration**

3.1 The Services supplied under the Contract shall be provided by the Supplier to the Customer from the date of acceptance by the Supplier of the Customer's offer or condition 2.2 if the Supplier has started to provide the Services by that date.

**4. Supplier's obligations**

4.1 The Supplier shall use reasonable endeavours to provide the Services, and to deliver the Deliverables to the Customer, in accordance in all material respects with the Order Form.

4.2 Time shall not be of the essence of the Contract.

4.3 The Supplier shall use all reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises and that have been communicated to it under condition 5.1(e), provided that it shall not be liable under the Contract if, as a result of such observation, it is in breach of any of its obligations under the Contract.

**5. Customer's obligations**

5.1 The Customer shall if required to do so by the Supplier:

- (a) co-operate with the Supplier in all matters relating to the Services and appoint the Customer's Manager in relation to the Services who shall have the authority contractually to bind the Customer on matters relating to the Services;
- (b) provide, for the Supplier, 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 requested by the Supplier;
- (c) provide, in a timely manner, such Input Material and other information as the Supplier may request and ensure that it is accurate in all material respects;
- (d) be responsible (at its own cost) for preparing and maintaining the relevant premises for the supply of the Services, including

identifying, monitoring, removing and disposing of any hazardous materials from any of its premises in accordance with all applicable laws, before and during the supply of the Services at those premises, and informing the Supplier of all of its obligations and actions under this condition 5.1(d);

- (e) inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises;
- (f) ensure that all Customer's Equipment is in good working order and suitable for the purposes for which it is used and conforms to all relevant United Kingdom standards or requirements;
- (g) obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, the installation and use of the Supplier's Equipment, the use of Input Material and the use of the Customer's Equipment in relation to the Supplier's Equipment insofar as such licences, consents and legislation relate to the Customer's business, premises, staff and equipment in all cases before the date on which the Services are to start; and
- (h) indemnify the Supplier against any losses costs liabilities and losses of profit whether direct indirect or consequential incurred by reason of the Customer's breaches of this clause.

5.2 If the Supplier'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, the Supplier 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.

5.3 The Customer shall be liable to pay to the Supplier, on demand, all reasonable costs, charges or losses sustained or incurred by the Supplier (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, subject to the

Supplier confirming such costs, charges and losses to the Customer in writing.

5.4 In the event that the Customer cancels or reschedules all or any part of the Services the Supplier expressly reserves the right to invoice the Customer for such sum as would have reasonably been charged by it for the Services which would have been provided but for the cancellation or rescheduling. If notice of cancellation or rescheduling is given less than 24 hours before the Services are to be provided, the whole of such estimated charge is payable. If more than 24 hours notice is given the Supplier may at its discretion apply a reduction to the estimated charge. Any disbursements incurred by the Supplier are payable in full.

5.5 The Customer shall not, without the prior written consent of the Supplier, at any time from the date of the Contract to the expiry of 4 years after the last date of supply of the Services or the termination of the Contract solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of the Supplier in the provision of the Services.

5.6 Any consent given by the Supplier in accordance with condition 5.5 shall be subject to the Customer paying to the Supplier a sum equivalent to 20% of the then current annual remuneration of the Supplier's employee or sub-contractor or, if higher, 20% of the annual remuneration to be paid by the Customer to that employee or sub-contractor.

## 6. **Change control**

6.1 The Customer's Manager and the Supplier's representative shall meet when required to do so by the Supplier to discuss matters relating to the Services. If either party wishes to change the scope or execution of the Services, it shall submit details of the requested change to the other in writing.

6.2 If either party requests a change to the scope or execution of the Services, the Supplier shall, within a reasonable time, provide a written estimate to the Customer of:

- (a) the likely time required to implement the change;
- (b) any variations to the Supplier's charges arising from the change;
- (c) the likely effect of the change on the Services; and

(d) any other impact of the change on the terms of the Contract.

- 6.3 The Supplier may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services.
- 6.4 If the Customer wishes the Supplier to proceed with the change, the Supplier has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its charges, the Order Form and any other relevant terms of the Contract to take account of the change.
- 6.5 The Supplier may charge for its time spent in assessing a request for change from the Customer on a time and materials basis in accordance with condition 7.

7. **Charges and payment**

- 7.1 Condition 7.2 shall apply if the Supplier provides any part of the Services on a time and materials basis. Condition 7.3 shall apply if the Supplier provides the Services for a fixed price. The remainder of this condition 7 shall apply in either case.
- 7.2 Where the Services are provided on a time and materials basis:
- (a) the charges payable for the Services shall be calculated in accordance with the Supplier's standard daily fee rates, as amended from time to time by the Supplier giving not less than 28 days written notice to the Customer;
  - (b) the Supplier's standard daily fee rates for each individual person are calculated on the basis of an six hour day spent on site or part thereof, worked between 8.00 am and 5.00 pm on weekdays (excluding public holidays);
  - (c) all charges quoted to the Customer shall be exclusive of VAT which the Supplier shall add to its invoices at the appropriate rate;
  - (d) the Supplier shall invoice the Customer for its charges for time, expenses and materials (together with VAT where appropriate), calculated as provided in this condition 7.2 at the times specified

in the Order Form. The Supplier reserves the right to require payment of such sum as it deems appropriate on account of its charges to be paid to it prior to the provision of the Services.

7.3 Where the Services are provided for a fixed price, the total price for the Services shall be the amount set out in the Order Form is payable prior to the Services being performed by the Supplier (subject always to any part of the Services being performed on a time and materials basis in which event any further charges shall be paid by the Customer in accordance with clause 7.2).

7.4 Any daily rate excludes:

(a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom the Supplier 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 the Supplier for the supply of the Services. Such expenses, materials and third party services shall be invoiced by the Supplier; and

(b) VAT, which the Supplier shall add to its invoices at the appropriate rate.

7.5 The Customer shall pay each invoice submitted to it by the Supplier in full and in cleared funds within 28 days unless otherwise agreed

7.6 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier on the due date, the Supplier may:

(a) charge interest on such sum from the due date for payment at the annual rate of 10% above the base lending rate from time to time of National Westminster Bank, accruing on a daily basis and being compounded monthly until payment is made, whether before or after any judgment and the Supplier may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and

(b) suspend all Services until payment has been made in full.

7.7 Time for payment shall be of the essence of the Contract.

7.8 All sums payable to the Supplier under the Contract shall become due immediately on its termination, despite any other provision. This condition 7.8 is without prejudice to any right to claim for interest under the law, or any such right under the Contract.

7.9 The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer.

## 8. **Intellectual property rights**

8.1 As between the Customer and the Supplier, all Intellectual Property Rights and all other rights in the Deliverables and the Pre-existing Materials shall be owned by the Supplier. Subject to condition 8.2, the Supplier licenses all such rights to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services. The Customer is permitted to copy reproduce or distribute the Deliverables and the Pre-existing Materials only to the extent necessary to make reasonable use of the Deliverables and the Services. If the Supplier terminates the Contract under condition 12.2 the Supplier may elect to terminate this licence forthwith by written notice to the Customer in which case the Customer will return the Deliverables and the Pre-existing Materials and any copies of them to the Supplier forthwith.

8.2 The Customer acknowledges that, where the Supplier does not own any Pre-existing Materials, the Customer's use of rights in Pre-existing Materials is conditional on the Supplier obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle the Supplier to license such rights to the Customer.

## 9. **Confidentiality and the Supplier's property**

9.1 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 the Supplier, its employees, agents or sub-contractors and any other confidential information concerning the Supplier'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 the Supplier, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Customer.

9.2 All materials, equipment and tools, drawings, specifications and data supplied by the Supplier to the Customer (including Pre-existing Materials and the Supplier's Equipment) shall, at all times, be and remain as between the Supplier and the Customer the exclusive property of the Supplier, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Supplier, and shall not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation.

9.3 This condition 9 shall survive termination of the Contract, however arising.

10. **LIMITATION OF LIABILITY-THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF THIS CONDITION**

10.1 This condition 10 set out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

- (a) any breach of the Contract;
- (b) any use made by the Customer of the Services, the Deliverables or any part of them; and
- (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

10.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

10.3 Nothing in these Conditions limits or excludes the liability of the Supplier:

- (a) for death or personal injury resulting from negligence; or

- (b) for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by the Supplier; or

10.4 Subject to condition 10.2 and condition 10.3

- (a) the Supplier shall not be liable for:
  - (i) loss of profits; or
  - (ii) loss of business; or
  - (iii) depletion of goodwill and/or similar losses; or
  - (iv) loss of anticipated savings; or
  - (v) loss of goods; or
  - (vi) loss of contract; or
  - (vii) loss of use; or
  - (viii) loss of corruption of data or information; or
  - (ix) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- (b) the Supplier'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 for the Services.

11. **Data protection**

The Customer acknowledges and agrees that details of the Customer's name, address and payment record may be submitted to a credit reference agency, and personal data will be processed by and on behalf of the Supplier in connection with the Services.

12. **Termination**

- 12.1 Subject to condition 12.3, the Contract shall terminate automatically on completion of the Services.
- 12.2 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Contract immediately without liability to the other on giving written notice to the other if:

- (a) the other party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
- (b) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the other party; or
- (c) an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
- (d) a receiver is appointed of any of the other party's assets or undertaking, or circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or
- (e) the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or
- (f) the other party ceases, or threatens to cease, to trade; or
- (g) the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

12.3 On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;

- (b) the Customer shall return all of the Supplier's Equipment, Pre-existing Materials and Deliverables and copies thereof. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping; and
- (c) the accrued rights of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

13. **Force majeure**

The Supplier shall have no liability to the Customer under the Contract if it is prevented from or delayed in performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

14. **Variation**

Subject to condition 3 and condition 6, no variation of the Contract or these Conditions or of any of the documents referred to in them shall be valid unless it is in writing and signed by or on behalf of each of the parties.

15. **Waiver**

- 15.1 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.
- 15.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

16. **Severance**

- 16.1 If any provision (or part of a provision) of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force.
- 16.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, that provision will apply with whatever modification is necessary to make it valid, enforceable and legal.
- 16.3 The parties agree, in the circumstances referred to in condition 16.1 and if condition 16.2 does not apply, to attempt to substitute for any invalid, unenforceable or illegal provision a valid, enforceable and legal provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision. The obligations of the parties under any invalid or unenforceable provision of the Contract shall be suspended while an attempt at such substitution is made.

17. **Status of pre-contractual statements**

Each of the parties acknowledges and agrees that, in entering into the Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to these terms and conditions or not) relating to the subject matter of the Contract, other than as expressly set out in the Contract.

18. **Assignment**

- 18.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 18.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

19. **No partnership or agency**

Nothing in the Contract is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as

agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

20. **Rights of third parties**

The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else.

21. **Notices**

Notice given under the Contract shall be in writing, sent for the attention of the person, and to the address or fax number, given in the Contract (or such other address, fax number or person as the relevant party may notify to the other party) and shall be delivered personally, sent by fax or sent by pre-paid, first-class post or recorded delivery. A notice is deemed to have been received, if delivered personally, at the time of delivery, in the case of fax, at the time of transmission, in the case of pre-paid first class post or recorded delivery, 48 hours from the date of posting and, if deemed receipt under this condition 1 is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is a business day), at 9.00 am on the first business day following delivery. To prove service, it is sufficient to prove that the notice was transmitted by fax, to the fax number of the party or, in the case of post, that the envelope containing the notice was properly addressed and posted.

22. **Governing law and jurisdiction**

22.1 the Contract and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the law of England and Wales.

22.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter.

This agreement has been entered into on the date stated on the Order Form.