

Jeremy Benn Associates Limited

Terms and Conditions of Business

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JBA
consulting

1. Definitions and Structure

1.1 In this agreement:

- (a) "Client" means the person, company, partnership or undertaking to whom these terms and conditions are sent.
- (b) "JBA" means Jeremy Benn Associates Limited (a company registered in England under number 3246693) whose registered office is at South Barn, Broughton Hall, Skipton, North Yorkshire, BD23 3AE.
- (c) "Intellectual Property Rights" means all rights in the nature of patents, designs, copyright, trade marks, utility models and all other rights of a similar nature (whether registered or unregistered and whether capable of registration or not) arising out of the performance of the Services.
- (d) "Services" means the work and services to be performed by JBA for the Client.
- (e) "Project" means the commission or terms of reference/ specification.

2. Formation of contract

2.1 These terms and conditions shall be deemed incorporated in all orders placed by Clients for technical services. To constitute a contract, an order must be accepted in writing by JBA.

3. Law

3.1 This agreement shall be construed in accordance with the Laws of England and the parties hereby agree to the non-exclusive jurisdiction of the English courts.

4. Payment

4.1 The price to be charged by JBA for the Services shall be in accordance with JBA's written quotation. Where there is no quotation, the price shall be as reasonably determined by JBA. Any quotation is valid for ninety (90) days from the date of issue.

4.2 The price to be charged by JBA may be fixed or calculable at a rate according to the number of man days or man hours, as indicated on JBA's quotation. Where it is so calculable then:

- (a) any indication by JBA as to the number of man days or man hours required by JBA to undertake the whole or any part of the Services shall be taken as an estimate only and shall not be binding on JBA;
- (b) the daily or hourly charges can be substantiated by timesheet summaries if required; and
- (c) time spent travelling is also charged for at the daily or hourly rates indicated by JBA. Where there is no quotation, the charges shall be calculable at JBA's charges per man hour from time to time prevailing and the provisions of clauses 4.2 (a) to 4.2 (c) above shall apply.

4.3 The prices quoted by JBA do not include the cost of value added tax and like taxes which shall be payable in addition by the Client.

4.4 JBA shall be entitled to increase the prices quoted on account of any interruptions or delays in the provision of the Services caused by the Client and any overtime or unusual hours or any additional services provided by JBA as a result of any act or omission on the part of the Client.

4.5 Where JBA undertakes any variation or modification to the Services upon the request of the Client, then JBA shall be entitled to increase the price accordingly.

4.6 All travel, accommodation and subsistence expenses are charged in addition to the price quoted at cost plus a 10% handling charge unless the quotation states otherwise.

- 4.7 Payment for services will be at monthly intervals in accordance to the work completed to date. Payment of invoices is due within twenty-eight (28) days of the date of issue.
- 4.8 If the Client fails to pay any monies on the due date then, without prejudice to any other right or remedy available to JBA, JBA shall be entitled to:
- (a) suspend the supply of any Services; and/or
 - (b) charge the Client interest calculated on a daily basis (after as well as before any judgement) on the outstanding monies at a rate equal to two per cent above the Barclays Bank plc base rate from time to time prevailing.
- 4.9 The Client may not claim to be entitled to exercise any set-off, counterclaim or lien over or against the monies due to JBA under this agreement.

5. Supply of Information

- 5.1 The Client shall promptly provide JBA with all information and assistance (including without limitation where JBA attends at the Client's site provision of electricity telephones and other consumables and access to storage, workspace, and car parking) that JBA may reasonably require.
- 5.2 Any descriptions and illustrations of the Services contained in JBA's literature and other advertisement material are intended merely to present a general idea of JBA's services and no representation contained in that material shall form part of this agreement.
- 5.3 JBA and the Client will agree suitable methods of information transfer.

6. Intellectual Property Rights

- 6.1 The Intellectual Property Rights shall remain the property of JBA. Upon payment of all fees due under the terms of the letter of appointment/acceptance, JBA grants a non-exclusive licence to the Client to use the Intellectual Property Rights in any goods or software supplied by JBA but only in so far as the Client may require in order to use the goods or software supplied by JBA for the purpose for which that supply was envisaged by JBA. Without limitation the Client shall not, save as may be permitted by law, copy or reproduce the goods or the process as used by JBA to the extent that the same is protected by JBA's intellectual property rights.
- 6.2 The copyright in the specifications, drawings, descriptions and documentation submitted by JBA pursuant to this agreement shall remain the property of JBA and the Client shall not, save as may be permitted by law, copy or reproduce the same.
- 6.3 Where any software (including without limitation any bespoke software) is provided under this agreement:
- (a) the copyright in the same shall remain the property of JBA and the Client shall use the same only as provided in JBA's software licence to be entered into by the Client upon demand;
 - (b) the Client shall not copy, translate or adapt the software for the purpose of error correction; and
 - (c) the information necessary to achieve the interoperability of an independent program which can be operated with the software may be requested in writing from JBA by the Client.

7. Warranty

- 7.1 JBA agrees to perform its services with a reasonable standard of care, skill, and diligence.
- 7.2 Where a defect appears in the Services:
- (a) within a period of six months after the provision of the Services; and
 - (b) the defect arises solely from the faulty design of JBA; and
 - (c) the Client promptly brings such defect to the attention of JBA;

then JBA shall re-perform the Services so affected, provided always that (upon request from JBA) relevant documentation is returned to JBA at the cost of the Client if so required. JBA shall not be obliged to attend at the Client's site for the purposes of any such re-performance.

- 7.3 JBA's charges to the Client are determined on the basis of the following limitations and exclusions of liability. The Client expressly agrees that these limitations are reasonable because, among other considerations, it is possible that any damages awardable to the Client for a breach by JBA of this agreement may otherwise be disproportionately greater than the price.
- 7.4 The following provisions set out JBA's entire liability to the Client (including any liability for the acts and omissions of its employees, agents or sub-contractors) in respect of:
- (a) any breach of contractual obligations;
 - (b) any tortious act or omission;
 - (c) any action arising out of misrepresentation; arising out of or in connection with this agreement.
- 7.5 To the maximum extent permissible in law all conditions and warranties which are to be implied by statute or common law or otherwise into this agreement or relating to any reports or software supplied by JBA pursuant to the Services and the Services are hereby excluded.
- 7.6 JBA shall not be liable in contract or tort or otherwise to the extent that such liability arises as a result of any of the following:
- (a) Inaccuracies or omissions in any data, drawings, calculations, specifications, information (including any misleading items therein) supplied to JBA by the Client or by a third party (other than a third party which is a subcontractor of JBA) for the purposes of enabling it to perform the Services;
 - (b) any errors or omissions in instructions given by the Client, its agents, consultants or sub-contractors in connection with the Services.
- 7.7 JBA's aggregate liability for all claims arising out of this agreement in total shall not in any event exceed four times the total of net fees paid.
- 7.8 Neither party shall bear any liability to the other for loss of production, loss of profits, loss of business, or any like form of consequential loss.
- 7.9 Nothing in this agreement shall limit JBA's liability to the Client for:-
- (a) death or personal injury caused by the negligence of JBA, its employees, agents or sub-contractors; or
 - (b) damage suffered by the Client as a result of any breach by JBA of the condition as to title or the warranty as to quiet possession implied by Section 2 of the Supply of Goods and Services Act 1982.
- 7.10 Nothing in this clause 7 shall confer any right or remedy upon the Client to which it would not otherwise be entitled. The provisions of this clause 7 shall survive any termination of this agreement.

8. Force Majeure

A party shall not be liable for any delay in or failure of performance by either party of any obligation (other than an obligation to pay monies) to the extent that the delay or failure is caused by circumstances beyond the control of that party and which, by exercise of reasonable diligence, that party is unable to prevent, mitigate, or remove; including but not limited to: acts of God, floods, acts of war or a public enemy, riots, rebellion, sabotage or strikes, lockouts and other forms of industrial action (including where that industrial action is by the work force of that party).

9. Indemnity

- 9.1 Where the Client uses the results of the Services in the manufacture, supply or distribution of any goods; or in the provision of a service; then the Client shall indemnify and hold harmless JBA from and against all loss, damages, costs and expenses awarded against or incurred by JBA in respect of such use by the Client or arising out of the manufacture, supply or distribution of those goods or the provision of that service.

10. Confidentiality

- 10.1 Each party agrees that it will not publish or disclose but shall maintain as confidential the proprietary information of the other party to any third party, and shall not use that proprietary information other than as expressly permitted in writing by the other party.
- 10.2 In this context, proprietary information includes (without limitation) all technical data and specifications supplied by JBA and in respect of software includes (without limitation) the source code, structure and algorithms of the software.
- 10.3 The above obligations shall not apply to a part of the proprietary information that is already or becomes commonly known to the public (except through a breach of the obligations imposed under this agreement).
- 10.4 This obligation of confidentiality shall survive any termination of this agreement.

11. Construction

- 11.1 In this agreement:-
- (a) the singular includes the plural;
 - (b) the use of one gender includes the use of the masculine and feminine and neuter gender.
 - (c) the headings are for convenience only and shall not affect the construction of this agreement.

12. Assignment and Agreement

- 12.1 The Client shall not assign this agreement in whole or in part save with the prior written consent of JBA (such consent not to be unreasonably withheld). JBA shall be free as it sees fit from time to time to assign the whole of this agreement, or to sub-contract the undertaking of the whole or any part of the Services.
- 12.2 Each party acknowledges that it has not been induced to enter into this agreement by any representation other than those representations (if any) that have been reduced to writing in this agreement.
- 12.3 No modification or amendment to this agreement shall be binding unless executed in writing by persons who hold themselves out as having full power and authority so to do. Nevertheless:-
- (a) the failure of either Party at any time to enforce any provision of this agreement shall not be deemed a waiver of any such provision or of any other provision hereof or of such party's right thereafter to enforce any provision hereof;
 - (b) where JBA undertakes any variation or modification at the Client's request then such variation or modification may be undertaken by JBA and shall be paid for by the Client as provided for in clause 4.5 above even where not agreed in writing.

13. Acts of Terrorism

- 13.1 JBA accepts no liability for costs or damages, howsoever incurred as a result of acts of terrorism.

14. Contracts (Rights of Third Parties) Act 1999

- 14.1 Nothing in this contract confers or purports to confer on any third party any benefit or any right to enforce any term of this contract pursuant to the Contracts (Rights of Third Parties) Act 1999.

15. Net Contribution

- 15.1 Without prejudice to any other exclusion or limitation of liability, damages, loss, expense or costs the liability of JBA for any claim or claims under this agreement shall be further limited to such sum as it would be just and equitable for JBA to pay having regard to the extent of JBA's responsibility for the loss or damage giving rise to such claim or claims ("the loss and damage") and on the assumptions that:
- (a) all other consultants, contractors, sub-contractors, project managers or advisers engaged in connection with the Project have provided contractual undertakings on terms no less onerous than those set out in Clause 7 to the Client in respect of the carrying out of their obligations; and
 - (b) there are no exclusions of or limitations of liability nor joint insurance or co-insurance provisions between the Client and any other party referred to in this clause and any such other party who is responsible to any extent for the loss and damage is contractually liable to the Client for the loss and damage; and
 - (c) all such other consultants, contractors, sub-contractors, project managers or advisers have paid to the Client such sum as it would be just and equitable for them to pay having regard to the extent of their responsibility for the loss and damage.

16. Liability not to exceed amount of Insurance (evaporation)

- 16.1 Further and notwithstanding anything to the contrary contained in this Contract and without prejudice to any provision in this Contract whereby liability is excluded or limited to a lesser amount, the liability of JBA under or in connection with this Contract whether in contract or in tort, in negligence, for breach of statutory duty or otherwise for any claim shall not exceed the amount, if any, recoverable by JBA by way of indemnity against the claim in question under professional indemnity insurance taken out by JBA and in force at the time that the claims or (if earlier) circumstances that may give rise to the claim is or are reported to the insurers in question. The limitation shall not apply if no such amount is recoverable due to JBA having been in breach of their obligations under the terms of any insurance maintained in accordance therewith or having failed to report any such claim or circumstances to the Insurers in question timeously.

17. Limitation Period

- 17.1 No actions or proceedings under or in respect of this Contract whether in contract or in tort in negligence or for breach of statutory duty or otherwise shall be commenced against JBA after the expiry of 6 years following completion of the services or such earlier date that may be prescribed by law.