



cleverbox

General Services Terms & Conditions

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General Terms and Conditions for Services

These General Terms and Conditions are to be read in conjunction with, and shall be deemed to form part of the relevant Service Agreement, which, together, shall form the Contract between Cleverbox and Client for the delivery of Services.

Definitions

1. In this Contract, the following words are defined:

“Cleverbox” shall mean Cleverbox UK Limited, a company incorporated under the laws of England and Wales (Company No. 03887275) with its registered office at 40 Hackamore, Benfleet, Essex, SS7 3DU.

“Client” shall mean the party identified within the relevant Service Agreement.

“Confidential Information” shall mean, in relation to either party, any information (whether or not stated to be confidential or marked as such) which that party discloses to the other, or which the other party obtains from any information disclosed to it by that party, either orally or in writing or by any other means, under or in connection with this Contract.

“Contract” shall mean these General Terms and Conditions, together with the relevant Service Agreement (as defined below) including any schedules.

“Deliverables” shall mean all documents, items, plans, products, goods and materials supplied by Cleverbox, including any methodologies, ideas, designs, computer programs, data, disks, tapes and reports, in whatever form which are developed, created, written, prepared, devised or discovered by Cleverbox or its agents, sub-contractors, consultants and employees in relation to the Services.

“Intellectual Property Rights” shall mean any invention, patent, utility model right, copyright and related right, registered design, unregistered design right, trade mark, trade name, internet domain name, design right, design, service mark, database rights, topography rights, rights in get-up, rights in goodwill or to sue for passing off and any other rights of a similar nature or other industrial or intellectual property rights in any part of the world whether or not any of the same is registered (or capable of registration), including applications and the right to apply for and be granted, extensions or renewals of, and rights to claim priority from such rights and all equivalent or similar rights or protections which subsist now or will subsist in the future.

“Service Agreement” shall mean the document, incorporating these General Terms and Conditions by reference, executed between Cleverbox and the Client for the provision of Services.

“Services” shall mean the services which are set out in the relevant Service Agreement, together with any other services which Cleverbox provides or agrees to provide to the Client through any change control procedure (“Change Control”).

“Service Charges” shall mean the charges for the Services, which are set out in the relevant Service Agreement.

“Specification” shall mean the description or specification for the Services as set out in the relevant Service Agreement or as otherwise agreed between the parties through Change Control.

“Working Day” shall mean any day other than a Saturday, Sunday or declared public holiday in England and Wales.

2. In this Contract, unless the context requires a different interpretation:-

- (a) the singular includes the plural and vice versa;

- (b) a reference to a person shall include firms, companies, government entities, trusts and partnerships;
- (c) "including" is understood to mean "including without limitation";
- (d) reference to any statutory provision includes an modification or subsequent amendment to it;
- (e) the headings and sub-headings do not form part of this Contract;
- (f) "writing" or "written" will include fax and / or e-mail unless otherwise stated.

Provision of Services

3. Cleverbox shall provide the Services to the Client on the terms and conditions of the Contract from the Effective Date as set out within the relevant Service Agreement and the Contract shall continue indefinitely, subject to the termination provisions contained within Clause 38 or the relevant Service Agreement.
4. Cleverbox shall provide the Services (including any Deliverables) in accordance with the relevant Specifications. Cleverbox shall use reasonable endeavours to ensure that the Services are provided in accordance with the timetable(s) set out in the relevant Service Agreement. Notwithstanding any provision of the Contract to the contrary, Cleverbox shall have no liability whatsoever to Client for any delay in performance or completion of the Services and Client shall have no right to damages, whether special, general, liquidated or otherwise from any such delay whether under contract, tort or otherwise at law.
5. Cleverbox shall perform the Services with reasonable care and skill, in accordance with: (a) generally recognised commercial practices and standards in the applicable industry; and (b) all laws and regulations applicable to the Services, including all laws and regulations related to (i) anti-bribery and corruption, and (ii) data protection. For the avoidance of doubt, Cleverbox may elect to sub-contract part or the whole of the Services.
6. Cleverbox shall use reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirements that may apply at the Client's premises and that have been communicated to Cleverbox.
7. Cleverbox shall warrant the provision of the Services as set out within the relevant Service Agreement. Notwithstanding any other provision of the Contract, the warranties expressly provided within the relevant Service Agreement are granted in lieu of any other warranty of materials or workmanship and all other warranties, whether express or implied by contract, tort or otherwise at law, are hereby excluded.

Client's Obligations

8. The Client shall:-
 - (a) co-operate with Cleverbox in all matters relating to the Services and as may be more specifically set out in the Service Agreement
 - (b) provide, in a timely manner, any materials, information and / or any software as Cleverbox may reasonably require and shall ensure that all such items shall be provided to Cleverbox is accurate in all material respects;
 - (c) obtain, maintain and, where required, pay for all necessary licenses and consents in relation to any materials, information and / or software provided to Cleverbox in relation to the Services;
 - (d) warrants that all materials, information and / or software to be provided to Cleverbox shall be free from malicious software and shall not infringe the Intellectual Property Rights or other legal rights of any person and that they do not breach the provisions of any law, statute or regulation, in any jurisdiction or under any applicable law.
9. The Client hereby grants to Cleverbox a non-exclusive licence to copy, reproduce, store, distribute, publish, export, adapt, edit and translate any materials, information and / or software to the extent reasonably required by Cleverbox in order to perform the Services, including the right to sub-licence such rights.

10. Cleverbox reserves the right to refuse to accept any materials, information and / or software provided by the Client under Clause 8 unless adequate proof is provided to Cleverbox confirming that the Client holds the necessary permissions and / or rights to utilise such materials, information and / or software.

Charges, Payment and Time Records

11. In consideration of the provision of the Services by Cleverbox, the Client shall pay the Service Charges as specified within the relevant Service Agreement which shall state whether the Service Charges are on a time and materials basis, a fixed price basis, a combination of both or another pricing model. Time is of the essence for the payment of Service Charges.
12. All Service Charges are, unless stated otherwise, exclusive of any applicable value added taxes which shall be added to the Service Charge at the appropriate rate.
13. Where appropriate, the Client shall reimburse Cleverbox in relation to any third-party expenses incurred in relation to the provision of the Services. Such third-party expenses shall be invoiced by Cleverbox to the Customer at cost (including applicable VAT) together with the handling charge detailed within the relevant Service Agreement.
14. The Client shall pay each invoice submitted by Cleverbox in full and in cleared funds within thirty (30) days of the invoice date to a bank account nominated in writing by Cleverbox (the "Due Date").
15. Without prejudice to any other right or remedy it may have, if the Client fails to pay Cleverbox by the Due Date, Cleverbox shall have the right to:-
 - (a) charge interest on the overdue amount at a rate of four percent (4%) per month above the Bank of England base rate at the relevant time. Such interest shall accrue on a daily basis from the Due Date until the actual payment of the overdue amount. The Client shall pay the interest together with the overdue amount; and / or
 - (b) Cleverbox may suspend the performance of the Services until payment has been made.
16. Notwithstanding any provision to the contrary, all sums due to Cleverbox under the Contract shall become due immediately upon its termination.
17. The Client shall pay all amounts due under the Contract in full without any deduction except as required by law and the Client shall not be entitled to assert any credit, set-off or counterclaim against the other in order to justify withholding payment of any amount due, in whole or in part.
18. In relation to certain projects, the Client may be required to pay a deposit as set out in the relevant Service Agreement. If the Client does not pay the deposit in accordance with the relevant Service Agreement, Cleverbox shall have the right to suspend provision of the Services until such point as the deposit is paid or may terminate the Contract. The deposit shall be non-refundable unless Cleverbox fails to provide the Services and is at fault for such failure (where the failure is not the fault of Cleverbox, no refund shall be made).
19. Final Service Charges may differ from originally priced quotations provided by Cleverbox for a number of reasons. Where applicable, Cleverbox shall advise the Client of any increases or decreases from originally priced quotations prior to submission of invoices.

Indemnities, Liabilities and Insurance

20. The Client agrees to indemnify, release, defend, save and hold harmless Cleverbox from any and all damages, liabilities, costs, losses or expenses arising out of any claim, demand or action by a third party arising out of any breach of the Client's responsibilities or obligations, representations or warranties under this Contract.
21. Nothing in the Contract limits or excludes either party's liability for:-

- (a) Death or personal injury caused by its negligence; and / or
 - (b) Fraud or fraudulent misrepresentation; and / or
 - (c) Breach of the terms implied by Section 2 of the Supply of Goods and Services Act 1982; and / or
 - (d) Any other liability which cannot be limited or excluded by applicable law.
22. Subject to Clause 20 and 21 but notwithstanding any other provision to the contrary, the Client shall save, indemnify, defend and hold harmless Cleverbox from Client's own Consequential Loss and Cleverbox shall save, indemnify, defend and hold harmless Client from Cleverbox's own Consequential Loss.

For the purposes of this Clause 22, "Consequential Loss" shall mean:-

- (a) Consequential or indirect loss under applicable law; and
 - (b) Loss of product, loss of use, loss of revenue, profit or anticipated profit (if any), loss of agreements or contracts, loss of or damage to goodwill, loss of use or corruption of software, data or information in each case whether direct or indirect to the extent that these are not included in (a), and whether or not foreseeable at the Effective Date of the Contract.
23. Subject to Clause 21, Cleverbox's total cumulative liability to the Client arising out of, or related to, the performance of the Contract shall be limited to the fifty percent (50%) of the total Service Charges payable by the Client to Cleverbox under the Contract.
24. The terms implied by Sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
25. Any exclusions and / or limitations of liability under the Contract shall exclude or limit such liability not only in contract but also in tort (including negligence) or otherwise at law.
26. During the term of the Contract, each party shall maintain in force with reputable insurance companies, insurance sufficient to indemnify the risks for which they may be responsible, including for their respective sub-contractors, agents and employees, in connection with the Services.

Confidentiality

27. Each party shall only utilise Confidential Information to perform its obligations under the Contract and shall not cause or allow such Confidential Information to be disclosed to any other party except:-
- (a) Where required by law, court order or any governmental or regulatory body;
 - (b) To any of its employees, officers, sub-contractors, representatives or advisers who need to know the Confidential Information in order to discharge its obligations under the Agreement and agree only to use the Confidential Information for that purpose and not to cause or allow disclosure of the Confidential Information to another party;
 - (c) Where the Confidential Information is generally available to the public (other than as a result of disclosure in breach of the Contract by a party or any of its employees, officers, sub-contractors, representatives or advisers);
 - (d) Where the information was available or known to it on a non-confidential basis prior to being disclosed under the Contract; or
 - (e) Where the Confidential Information was developed by or for it independently of the Contract and is received by persons who are not the disclosing party.

Intellectual Property Rights

28. Subject to Clause 29 Cleverbox reserves and retains all Intellectual Property Rights (if any) which may subsist in any of the Deliverables, or are created or arise out of the provision of the Services.

29. Upon full payment of the Service Charges, Cleverbox shall license all such Intellectual Property Rights to the Client free of charge and on a non-exclusive, worldwide basis to the extent as is necessary to allow the Client to make reasonable use of the Deliverables and the Services. This license shall automatically terminate upon termination of the Contract.

Data Protection

30. Cleverbox confirms that all information held concerning the Client shall be held and processed in accordance with relevant Data Protection Laws. For the purposes of the Contract, "Data Protection Laws" means any applicable law relating to the processing of personal data, as applicable to the Services, including (i) the Directive 95/46/EC (Data Protection Directive) or the General Data Protection Regulation (EU) 2016/679 ("GDPR"); (ii) any laws which implement those directives and regulations stated in (i) and any subsequent laws which replace, re-enact, consolidate or amend any of those laws or the implementation laws; (iii) all guidance, codes of practice and codes of conduct issued by any relevant data protection supervisory authority relating to such Data Protection Laws (whether legally binding or not).
31. Full details of Cleverbox's Data Protection policies and processes are available upon request.

Anti-Bribery

32. Cleverbox and its agents, sub-contractors, consultants and / or employees shall:-
- (a) Comply with all applicable laws, regulations, statutes, and codes relating to anti-bribery and anti-corruption including, but not limited to, the Bribery Act 2010 ("Bribery Laws") and any relevant industry codes relating to anti-bribery ("Bribery Policies");
 - (b) Shall have, maintain, and enforce throughout the term of the Contract its own policies and procedures to ensure compliance with the Bribery Laws and Bribery Policies;
 - (c) Report to the Client any request or demand for any undue financial or other advantage of any kind received by the Client in connection with the performance of the Contract.

Non-Solicitation

33. The Client shall not, without the prior written consent of Cleverbox, at any time from the Effective Date of the Contract, to the expiry of twelve (12) months after the last date of supply of the Services or termination of the Contract (whichever is latest), solicit or entice away from Cleverbox or employ or attempt to employ any person who has been engaged as an employee or consultant of Cleverbox in the provision of the Services.

Circumstances Beyond the Control of Either Party

34. Neither party shall be liable to the other for any failure or delay in performing their obligations under the Contract where such failure or delay arises due to any cause that is beyond the reasonable control (a "Force Majeure Incident" of the affected party).
35. Such causes of a Force Majeure Incident shall include, but are not limited to: power failure, internet service provider failure, acts of God, epidemic, pandemic, civil unrest, fire, flood, droughts, storms, earthquakes, collapse of buildings, explosion or accident, acts of terrorism, acts of war, governmental action, any law or any action taken by a government or public authority, including imposing an export or import restriction, quota or prohibition, or any other event that is beyond the control of the affected party.
36. The party affected by a circumstance beyond its control shall use reasonable endeavours to mitigate the effect of the Force Majeure Incident upon the performance of its obligations. The corresponding obligations of the other party shall be suspended to the same extent as those of the affected party.
37. In the event that the Force Majeure Incident continues for a period of ninety (90) consecutive days, either party may terminate the Contract.

Termination

38. A party may terminate the Contract with immediate effect by giving written notice to the other party if that other party:-
- (a) Does not pay any sum due by it under the Contract within fifteen (15) days of the Due Date;
 - (b) Commits a material breach of the Contract which, if capable of remedy, it fails to remedy within thirty (30) days after being given written notice specifying the full particulars of the breach and requiring it to be remedied;
 - (c) Persistently breaches any term of the Contract;
 - (d) For any reason as set out in the relevant Service Agreement;
 - (e) Is dissolved, ceases to conduct substantially all of its business or becomes unable to pay its debts as they fall due;
 - (f) Is a company over any of whose assets or property a receiver is appointed;
 - (g) Makes any voluntary arrangement with its creditors or (if a company) becomes subject to an administration order (within the meaning of the Insolvency Act 1986);
 - (h) (if an individual or firm) has bankruptcy order made against it or (if a company) goes into liquidation;
 - (i) Undergoes a change of control (within the meaning of section 1124 of the Corporation Tax Act 2010); or
 - (j) (if an individual) dies or as a result of illness or incapacity becomes incapable of managing his or her affairs.
39. On termination or expiry of the Contract:-
- (a) The Client shall immediately pay to Cleverbox all of Cleverbox's outstanding, unpaid invoices and interest thereon (where applicable) and, in respect of Services supplied but for which no invoice has been submitted, Cleverbox may submit an invoice, which shall be payable immediately upon receipt; and
 - (b) The Client shall immediately pay to Cleverbox any termination fee as outlined within the relevant Service Agreement; and
 - (c) The Client shall, within a reasonable time, return all of Cleverbox's equipment and any relevant Deliverables which remain the property of Cleverbox. Until they have been returned or repossessed, the Client shall be solely responsible for their safe keeping.
40. Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.
41. Other than as set out in the Contract, neither party shall have any further obligation to the other under the Contract after its termination.

General

42. The Contract (comprising these General Terms and Conditions and the relevant Service Agreement) represent and contain the entire agreement between the parties relating to its subject matter and supersedes any and all prior discussions, arrangements or agreements that might have taken place in relation to the Contract. Nothing in this clause limits or excludes any liability for fraud or fraudulent misrepresentation.
43. No party may assign or transfer to any third party the benefit and / or the burden of the Contract without the prior written consent (not to be unreasonably withheld) of the other party.
44. No variation or amendment to the Contract will be valid or binding until it is recorded in writing and is signed by, or on behalf of, both parties.
45. The Contracts (Rights of Third Parties) Act 1999 does not apply to the Contract and no third party has any right to enforce or rely on any provision of the Contract.

46. Unless otherwise agreed, no delay, act or omission by a party in exercising any right or remedy contained in the Contract shall be deemed to be a waiver of that, or any other, right or remedy.
47. A provision which, by its intent or terms is meant to survive the termination of the Contract shall do so.
48. If any court or competent authority finds that any provision (or part) of the Contract is invalid, illegal or unenforceable, that provision (or part) will, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract will not be affected.
49. Unless specifically provided by the parties, nothing in the Contract, will establish any employment relationship, partnership or joint venture between the parties, or mean that one party becomes the agent of the other party, nor does the Contract authorise any party to enter into any commitments for or on behalf of the other party.
50. Any notice (other than in legal proceedings) to be delivered under the Contract must be in writing and delivered by pre-paid first class post to or left by hand delivery at the other party's registered address or place of business, or sent by e-mail to the other party's main business e-mail address as notified to the sending party. Notices:-
 - (a) Sent by post will be deemed to have been received, where posted from and to addresses in the United Kingdom, on the second Working Day and, where posted from or to addresses outside the United Kingdom, on the tenth Working Day, following the date of posting;
 - (b) Delivered by hand will be deemed to have been received at the time the notice is left at the proper address; and
 - (c) Sent by e-mail will be deemed to have been received on the next Working Day after sending.

Governing Law and Jurisdiction

51. This Contract shall be governed by and interpreted according to the law of England and Wales and all disputes arising under the Contract (including non-contractual disputes or claims) shall be subject to the exclusive jurisdiction of the English and Welsh courts.