

# TERMS & CONDITIONS



## general terms and conditions

These terms and conditions cover the supply of consultancy, software design, graphical design, and related services.

### 1. General Terms

- 1.1. "We" and "us" means bit10 ltd. trading at 1 Innovation Village, Cheetah Road, Coventry CV1 2TL.
- 1.2. "You" means the person (which includes a company or other business) contracting to obtain goods, software licences or services from us.
- 1.3. Where "you" means more than one person, each one of you is responsible, individually, for each of the obligations of all of you under this agreement.
- 1.4. We agree to supply you with the goods, software licences or services (as appropriate) set out in the quotation for the price set out on the quotation and subject to the terms set out in it, in this agreement and in the other documents referred to in this agreement and the quotation (as appropriate).
- 1.5. In this agreement, "staff" includes employees and sub-contractors.

### 2. The Agreement

- 2.1. These terms and conditions (including documents specifically referred to in it) are the whole of the terms and conditions governing the agreement between us, unless we both agree to any amendments in writing.
- 2.2. "this agreement" means (in reverse order of precedence):
  - 2.2.1. these terms and conditions;
  - 2.2.2. terms and conditions referred to in this agreement;
  - 2.2.3. documents explicitly referred to in the quotation;
  - 2.2.4. the quotation; and
  - 2.2.5. amendments to the agreement agreed in writing.
- 2.3. Where there is any conflict between different parts of the agreement, the item having the higher order of precedence referred to in clause 2.2 above shall prevail.
- 2.4. You confirm that you have told us everything you know or suspect which may make the goods or services significantly more difficult for us to make or carry out.
- 2.5. You confirm that you have checked the specifications set out in and attached to the quotation and that they are correct.
- 2.6. We cannot be held responsible for any statements we have not expressly confirmed in writing. *(Customers who have been given quotations by sales staff from different companies have become mistaken as to which sales person from which company said what. If in doubt, ask us and we will respond in writing).* If the quotation contains that statement, or explicitly refers to the document containing it, then it becomes part of the contract and we will accept responsibility for it (subject to these terms and conditions).

### 3. Definitions

- 3.1. Any rule of interpretation that is contrary to common sense does not apply to this agreement. Any part of these terms and conditions, or any terms and conditions referred to in it which is in italics (*like this*) is not part of it, but is simply a comment.
- 3.2. Paragraph headings are merely a guide and are not intended to be a part of this agreement.

### 4. Quotations

- 4.1. A quotation does not amount to a contractual offer and is an indication that we may be willing to supply at a particular price.
- 4.2. In any event, no quotation is valid after 30 days of its issue.
- 4.3. No price specified in the quotation or elsewhere includes VAT or other applicable taxes or duties unless specifically stated.

### 5. Amendments to Specifications and Cancellation

- 5.1. We may alter the specifications of goods, software or services from time to time so long as the alteration does not make the goods, software or services substantially any worse. If you ask us to alter the specification after the order has been placed we may consider doing so (at our discretion) but you are warned that this may entail an increase in the price. A variation to the specification (including the price) (as opposed to a variation to the contract) is only valid where signed by one of our authorised sales staff.
- 5.2. If, after you have placed an order, you wish to cancel it, we may consider doing so (at our discretion) if we agree, subject to you paying us our anticipated loss on cancellation (including loss of reasonable profit).

### 6. Rights of others and Permissions

- 6.1. If we have agreed that we are to do anything under this agreement on your instructions, and as a result we are in breach of any rights of anyone else (or anyone else threatens us with proceedings for breach of their rights) you agree to indemnify us against any loss we may suffer, including legal costs, in defending or resisting the proceedings or claim, or settling the proceedings or claim on legal advice. Your obligations under this clause will remain after the rest of this agreement has terminated whatever the reason for termination.
- 6.2. If you come across any circumstances which may lead to a claim under clause 6.1 above, you agree to tell us about them as soon as possible.
- 6.3. If, as a result of such a claim or threat, we decide that it is no longer commercially sensible to proceed with your order, we may cancel the order in accordance with the provision set out below.

- 6.4. We will use reasonable commercial efforts to ensure that nothing we do under this agreement will infringe the rights of others. If we do anything under this agreement which results in an actual or threatened infringement of the rights of anyone else (provided that it was something which was not done at your explicit direction or with your specific consent) ("a claim") we may at our option:
- 6.4.1. obtain a licence or settlement of the claim (at no cost to you);
  - 6.4.2. perform our obligation in a different way to avoid the claim;
  - 6.4.3. cancel the agreement under clause 10.

## 7. Intellectual Property

- 7.1. You acknowledge that material of any nature which we provide you with, either under this agreement or otherwise (for example, quotations or other pre-contractual material) may contain intellectual property which is either our property or licensed to us (including copyright, trade marks, registered and unregistered designs and patents). Nothing in this agreement is intended either
- 7.1.1. as a licence for you to use such intellectual property
  - 7.1.2. or as a transfer of such intellectual property unless explicitly stated in writing.

## 8. Sub Contracting

- 8.1. We may sub-contract any of the services we have agreed to provide under this contract at our discretion.
- 8.2. Where we have sub-contracted any services to a third party specified by you, we shall not be liable for any non-performance of that third party's obligations, and for the purposes of this agreement, any delay or hindrance caused by or attributable to that third party shall be considered to have been caused by you.

## 9. Third Party Recommendations and Statements

- 9.1. As part of carrying out our obligations under this agreement we may recommend or suggest that someone else carry out work, or supplies goods, software or services. By making this recommendation or suggestion, we do not guarantee that work or those goods, software or services. However, we accept responsibility for the recommendation or suggestion if, at the time we made it, a professional with our knowledge of the circumstances could not reasonably have made that recommendation or suggestion. In that case, we will accept liability as if we did the work or supplied the goods, software or services ourselves, and subject to these terms and conditions, provided that you let us have full conduct of any claim against the third party in question.
- 9.2. Where we provide goods or software originally manufactured or developed by others, we may pass on to you statements or representations about such software or goods. We pass this information on to you in good faith but we do not undertake to verify them or guarantee their accuracy, and exclude liability except to the extent that we may have been negligent in passing on such information to you.

## 10. Unusual Circumstances

- 10.1. If circumstances arise which are largely beyond our control, and which make it no longer commercially sensible for us to continue your order, we may cancel it on the terms set out below:
- 10.2. If we decide to cancel it
  - 10.2.1. we shall give you notice, and we shall not be responsible for any loss to you which arises because of that decision (although any other rights which you may have arising before we made that decision will still stand); and
  - 10.2.2. you will pay us a reasonable sum in relation to the proportion of your order which we have fulfilled.

## 11. Consequential Loss and Our Liability

- 11.1. Unless explicitly stated in the quotation in writing, we do not accept liability for any loss of any kind. Including but not limited to consequential loss. UNLESS STATED EXPLICITLY IN THE QUOTATION WE HAVE PRICED THIS CONTRACT ON THE BASIS THAT CONSEQUENTIAL LOSS AND ALL OTHER LOSSES OR LIABILITIES OF ANY NATURE HAS BEEN EXCLUDED: IF YOU WISH US TO BEAR LIABILITY FOR CONSEQUENTIAL LOSS OR ANY OTHER LOSS OR DAMAGE OR LIABILITY WE MAY CONSIDER DOING SO BUT ON THE BASIS THAT THE CONTRACT PRICE WILL HAVE TO BE INCREASED TO COVER THE INCREASED RISK, WHETHER OR NOT WE CHOOSE TO BEAR IT THROUGH OUR INSURANCE. Consequential loss includes (but is not limited to) loss of profits, loss of anticipated savings and costs of loss of staff time.
- 11.2. If we have not accepted a different level of liability or deemed to have liability under the contract then our entire liability under this Contract shall be limited to the value of the goods, software licences or services provided under it (or, in the case of a breach of any of the terms referred to in clause 16 below, the appropriate level of liability contained within those terms).
- 11.3. Nothing at all in this agreement (*which includes all documentation referred to in it*) is designed or intended to reduce or restrict our liability for the death of or personal injury to anyone caused by our negligence or the negligence of anyone for whom we are responsible (*which may include, for example, our employees, sub-contractors or agents*)
- 11.4. Where third party licence(s) are required as part of this agreement, we will act as an agent to purchase and accept these on your behalf (*e.g. you shall be the licensee*). We will make available upon request the terms and conditions relating to such licence(s). In all instances, we will provide information relating to any third party licence(s) required and any future expected costs.

## 12. Payment of Price

- 12.1. You must pay us the price specified in the quotation, including any VAT which may apply in accordance with the terms and on the dates contained in it (if no terms or dates are referred to, the price is payable within 30 days of our completion of the order or incrementally during the period of the fulfilment of your order when invoiced if previously agreed).
- 12.2. If you fail to pay the whole or part of any sum you owe to us (whether because of this agreement or not) by the time it comes due for payment, all sums which you owe us (whether under this agreement or not) will become due for payment immediately, and we may issue court proceedings against you to recover them without giving you any further notice. Time is of the essence in respect of payments due to us.
- 12.3. You must pay us the whole of the amount due, and may not set off or deduct anything from this amount without our written permission.
- 12.4. Any sums which remain unpaid after they became due are subject to interest at a rate of 6% over the base rate of Nat West Bank plc averaged from time to time, compounded monthly, both before and after judgment.
- 12.5. We may assign the benefit of any debt owed to us by you to any third party at any time.

## 13. Guideline Definitions and Payment Terms

- 13.1. No terms specified: payment is due in full on acceptance of the order;
- 13.2. "30 days": payment is due on the 30th day after the date of our invoice;
- 13.3. "On installation": payment is due in full immediately upon practical completion (as defined below) of installation
- 13.4. "lease": means that
  - 13.4.1. (in the case of hardware) title to hardware does not pass to you (unless explicitly stated in, and subject to the terms of, the order);
  - 13.4.2. (in the case of software) the licence is a periodic licence and periodic fees are payable under the provisions of the licence agreement.
- 13.5. If we have undercharged you the VAT that should have been due on an order, you agree to pay us the outstanding VAT immediately. If we have overcharged you VAT, we shall refund you the amount that you have overpaid.
- 13.6. "Practical completion" means that software or installation has been completed to the extent that it is reasonably possible to use it for normal contemplated use, save only for any minor snagging items (which will usually be dealt with under the terms of our warranty).

## 14. Time for Performance

- 14.1. Whenever we agree to do anything by or on a particular time, we will try to do it on or at that time, but we shall not be liable for late performance
  - 14.1.1. if late performance is reasonably beyond our control (*it is due, for example, to the failure of our own suppliers to perform*); or

- 14.1.2. unless you have given us a notice allowing us a reasonable time to perform and we have failed to do so (in any event, clause 10 above applies).

## 15. Indemnity

- 15.1. Where we do anything for you on your premises (or premises under your control), you agree to indemnify us and keep us indemnified against any loss, damage claim or expense arising out of the physical injury of or death of any of our staff arising in any way from our performance of this agreement and arising by reason of the provision of defective equipment, your failure to provide a safe system of work or otherwise by reason of any negligent act or default on your part or on the part of your servants or agents or other person on your premises.

## 16. Incorporation of Other Terms

- 16.1. Depending upon what is supplied under this agreement, our following additional standard terms (in force at the time of this agreement) apply:
  - 16.1.1. Standard Terms for the Supply of Hardware
  - 16.1.2. Standard Terms for the Supply and Licensing of Software (for third-party software or standard software developed by us)
  - 16.1.3. Standard Terms for the Development of Software (for software developed or customised by us)
  - 16.1.4. Standard Terms for the Supply of Consultancy
  - 16.1.5. Standard Terms for the Supply of Hardware Maintenance
  - 16.1.6. Standard Terms for the Supply of Software Support
  - 16.1.7. Standard Terms for the Supply of Internet Services
- 16.2. Definitions in this agreement also apply to the additional standard terms.
- 16.3. In each case, copies of the above standard terms are available on request.

## 17. Assignment

- 17.1. Except as is specifically referred to in this agreement, neither of us may assign the benefit or the obligations of any part of this agreement without the written consent of the other.

## 18. Notices

- 18.1. Where any notice is required to be given under this agreement (where the word "notify" is used it means "to give notice"), it is validly given if it is in writing and sent by fax, email or prepaid first-class or airmail post to the correct fax number, email address or postal address of the relevant party as contained on the quotation or prior correspondence, or subsequently notified to the other party. Where sent by fax, the notice is deemed to have arrived immediately upon sending. If sent by email, the notice is deemed to have arrived 24 hours after it was sent (unless within those 24 hours the sender has been sent an email saying that the notice has not been delivered). If sent by post, the notice is deemed to have arrived on the third working day after the day on which it was sent (if sent to an address within the UK), the fifth working day (if sent to an address within the EEA) or on the seventh



working day (anywhere else in the world) (unless in each case within that period it was returned as undelivered).

## 19. Confidentiality and Poaching

- 19.1. You may have or obtain confidential information (which includes but is not limited to information relating to our products, planned products and details of our marketing, support and internal structures and similar information relating to our suppliers or related products). You agree that you will use confidential information solely for the purposes of this agreement and for evaluating future products or services supplied by us, and that you shall not disclose, whether directly or indirectly, to any person any confidential information unless the disclosure is required to carry out this agreement. Before you make any disclosure to another person, you must obtain from them a binding commitment to keep that information confidential. That commitment must be at least as effective as this obligation is on you.
- 19.2. The clause above shall not prevent you from disclosing or using any information
  - 19.2.1. which is public or becomes public through no fault of your own or of those to whom you have entrusted it;
  - 19.2.2. or to the extent permitted by law.
- 19.3. We agree to be bound by the obligations contained in the above clauses 19.1 and 19.2 likewise in relation to any confidential information which you may give us.
- 19.4. You agree not to approach or engage any of our staff (with whom you have had contact) directly or indirectly within at least six months after the termination of any contract between you and us.
- 19.5. You agree that for at least the six month period set out above you will not introduce or identify any of our staff to any other person with a view to that other person engaging our staff member.

## 20. Termination on Insolvency

- 20.1. If, in our reasonable opinion, it appears that you will be unable to meet the payment terms we have agreed we may terminate this agreement immediately without notice, in which case we shall no longer be under any obligation to do any work for you under it, and you immediately become liable to pay us all sums which you owe us (whether or not under this agreement and whether or not they have become due). In addition, you will be liable to pay us a reasonable sum representing the work we have done up to the date of termination, which shall be calculated to include the loss of anticipated profit for the whole of the contract.
- 20.2. For the avoidance of doubt, it shall be reasonable for us to terminate under clause 20.1 above if any of the following occurs:
  - 20.2.1. the presentation of a bankruptcy or winding-up petition against you;
  - 20.2.2. the appointment of a manager, receiver or administrator over all or any part of your assets;
  - 20.2.3. the commencement of any winding-up process (other than for the purposes of reconstruction or amalgamation);

- 20.2.4. the entry into or proposal of any form of arrangement or composition with your creditors; or
- 20.2.5. anything analogous to the above sub-sub-clauses in any jurisdiction.

## 21. Law

- 21.1. This agreement is subject in all respects to English Law

## 22. Waiver

- 22.1. If we fail to rely on our strict legal rights under this agreement, that shall not prevent us from relying on those rights at any time in the future.
- 22.2. If any Clause within this Agreement is deemed to be invalid then the particular offending clause in question shall be removed but the remainder of the Agreement shall stand.
- 22.3. The headings contained within this Agreement are for information purposes only and do not form part of the Agreement.
- 22.4. The Contracts (Rights of Third Parties) Act 1999 is expressly excluded from this Agreement.
- 22.5. These Terms and any documents specifically annexed thereto constitute the whole and binding agreement to the exclusion of any other document statement, warranty or representation.

## 23. Disputes

- 23.1. If any dispute or grievance arises between us out of this agreement, before taking any further action (such as requiring us to remedy an alleged fault within a specific time), we each agree that it will be discussed by staff members of each of us who are most closely involved with the running of the contract. If that does not produce a resolution, the problem will be escalated to the respective superiors of each staff member respectively, until the problem is dealt with. Only if the respective CEOs of each party cannot reach agreement on the dispute will the matter be taken to the next stage as set out below.
- 23.2. Should the escalation mechanism set out in 23.1 above fail to be effective, before taking any other action we each agree to submit in good faith to a mediation procedure administered by ADR Group of Bristol, or, failing that, such other similar organisation as the President for the time being of the Law Society of England and Wales shall nominate. Unless we agree otherwise, the costs of the mediation shall be borne equally by each of us.

## 24. FORCE MAJEURE

- 24.1. Neither party shall be deemed to be in breach of this Agreement, or otherwise be liable to the other, by reason of any delay in performance or non-performance of any of its obligations under this Agreement to the extent that such delay or non-performance is due to any cause beyond the reasonable control of that party including, without limitation, acts of God, acts or regulations of any government or supra-national authority, war or national emergency, accident, fire, riot, strikes, lockouts, industrial disputes or epidemics (an 'Event of Force Majeure')



provided that the party affected by an Event of Force Majeure shall immediately take reasonable steps to mitigate any losses and/or effects of an Event of Force Majeure and immediately give the other party written notification of the nature and extent of such losses and/or effects and the parties shall enter into bona fide discussions with a view to agreeing upon alternative arrangements as may be fair and reasonable.