

BUSINESS TO BUSINESS – SUPPLY OF SERVICES

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF clause 7.

1. INTERPRETATION

1.1. Definitions:

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Charges: the charges payable by the Customer for the supply of the Services in accordance with clause 5.

Commencement Date: has the meaning set out in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 10.5.

Contract: the contract between Embedism Limited and the Customer for the supply of Services in accordance with these Conditions.

Customer: the person or firm who purchases Services from Embedism Limited.

Customer Default : has the meaning set out in clause 4.2.

Deliverables: the deliverables set out in the Order produced by Embedism Limited for the Customer.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights in any jurisdiction.

Order: the Customer's order for Services as set out in the Customer's purchase order form, the Customer's written acceptance of a quotation by Embedism Limited, or overleaf, as the case may be.

Services: the services, including the Deliverables, supplied by Embedism Limited to the Customer as set out in the Specification.

Specification: the description or specification of the Services provided in writing by Embedism Limited to the Customer.

1.2. Interpretation:

- (a) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision

includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

(b) Any phrase introduced by the terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

(c) A reference to **writing** or **written** includes email.

2. BASIS OF CONTRACT

2.1. The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.

2.2. The Order shall only be deemed to be accepted when Embedism Limited issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3. Any samples, drawings, descriptive matter or advertising issued by Embedism Limited, and any descriptions or illustrations contained in Embedism Limited's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

2.4. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.5. Any quotation given shall not constitute an offer, and is only valid for a period of 10 Business Days from its date of issue.

3. SUPPLY OF SERVICES

3.1. Embedism Limited shall supply the Services to the Customer in accordance with the Specification in all material respects.

3.2. Embedism Limited shall use all reasonable endeavours to meet any performance dates specified in the Specification, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

3.3. Embedism Limited shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and shall notify the Customer in any such event.

3.4. Embedism Limited warrants to the Customer that the Services will be provided using reasonable care and skill.

4. CUSTOMER'S OBLIGATIONS

4.1. The Customer shall:

- (a) ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;
- (b) co-operate with Embedism Limited in all matters relating to the Services;
- (c) provide Embedism Limited with such information and materials as Embedism Limited may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
- (d) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start; and
- (e) comply with any additional obligations as set out in the Specification.

4.2. If Embedism Limited's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default**):**

- (a) Embedism Limited shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays Embedism Limited's performance of any of its obligations;
- (b) Embedism Limited shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Embedism Limited's failure or delay to perform any of its obligations as set out in this clause 4.2; and
- (c) the Customer shall reimburse Embedism Limited on written demand for any costs or losses sustained or incurred by Embedism Limited arising directly or indirectly from the Customer Default.

5. CHARGES AND PAYMENT

5.1. Condition 5.2 shall apply if the Services are to be provided on a time-and-materials basis. Condition 5.3 and condition 5.4 shall apply if the Services are to be provided for a fixed price. The remainder of this condition 5 shall apply in either case.

5.2. Where the Services are provided on a time-and-materials basis:

- (a) the charges payable for the Services shall be calculated in accordance with Embedism Limited's standard daily fee rates as amended from time to time;
 - (b) Embedism Limited's standard daily fee rates (as published from time to time) are calculated on the basis of an eight-hour day worked between [9.00 am] and [6.00] pm on weekdays (excluding weekends and public holidays);
 - (c) Embedism Limited shall be entitled to charge it's standard daily fee rate (as published from time to time) plus [20%] for each hour worked outside the hours referred to in condition 6.2(b) on a pro-rata basis;
 - (d) Embedism Limited shall invoice the Customer monthly in arrear for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this condition 6. Each invoice shall set out the time spent and provide a breakdown of any expenses and materials, accompanied by the relevant receipts.
- 5.3. Where the Services are provided for a fixed price the total price for the Services shall be the amount set out in the Specification. The total price shall be paid to Embedism Limited in instalments as set out in the Specification. All amounts due under this agreement shall be paid by the Customer to Embedism Limited in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). Embedism Limited shall invoice the Customer for the charges at each relevant stage, together with expenses and the costs of materials (and VAT, where appropriate), calculated as provided in condition 5.4.
- 5.4. Any fixed price contained in the Specification excludes:
 - (a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the project team in connection with the Services, and the cost of any materials or services reasonably and properly provided by third parties required by Embedism Limited for the supply of the Services. Such expenses, materials and third party services shall be invoiced by Embedism Limited at cost; and
 - (b) VAT, which Embedism Limited shall add to its invoices at the appropriate rate.
- 5.5. The Customer shall pay each invoice submitted to it by Embedism Limited in full, and in cleared funds, within 30 days of receipt.
- 5.6. Without prejudice to any other right or remedy that Embedism Limited may have, if the Customer fails to pay on the due date Embedism Limited may:

- (a) charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment; and
 - (b) suspend all Services until payment has been made in full.
- 5.7. Time for payment shall be of the essence of the Contract.
- 5.8. Embedism Limited may, without prejudice to any other rights it may have, set off any liability of the Customer to Embedism Limited against any liability of Embedism Limited to the Customer.

6. INTELLECTUAL PROPERTY RIGHTS

All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by Embedism Limited.

7. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 7.1. Nothing in the Contract shall limit or exclude Embedism Limited's liability for:
 - (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - (b) fraud or fraudulent misrepresentation; or
 - (c) any other liability which cannot be limited or excluded by applicable law.
- 7.2. Subject to clause 7.1, Embedism Limited shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
 - (a) loss of profits;
 - (b) loss of sales or business;
 - (c) loss of agreements or contracts;
 - (d) loss of anticipated savings;
 - (e) loss of use or corruption of software, data or information;
 - (f) loss of damage to goodwill; and
 - (g) any indirect or consequential loss.
- 7.3. Subject to clause 8.1, Embedism Limited's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or

otherwise, arising under or in connection with the Contract shall be limited to the total Charges paid under the Contract.

7.4. This clause 7 shall survive termination of the Contract.

8. TERMINATION

8.1. Without limiting its other rights or remedies, either party may terminate the Contract by giving the other party 1 months' written notice.

8.2. Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

8.3. Without limiting its other rights or remedies, Embedism Limited may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified to make such payment.

9. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason:

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

- (b) the Customer shall return all of any Deliverables which have not been fully paid for.
- (c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication survive termination shall continue in full force and effect.

10. GENERAL

10.1. **Force majeure.** Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

10.2. Assignment and other dealings.

- (a) Embedism Limited may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- (b) The Customer shall not, without the prior written consent of Embedism Limited, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

10.3. Confidentiality.

- (a) Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 10.3(b).
- (b) Each party may disclose the other party's confidential information:
 - (i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 10.3; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

- (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.
- 10.4. **Entire agreement.** This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 10.5. **Variation.** Embedism Limited may revise these terms and conditions at any time and shall notify the Customer in any such event.
- 10.6. **Waiver.** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- 10.7. **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable.
- 10.8. **Notices.**
 - (a) Any notice given to a party under or in connection with this contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office; or sent by fax to its main fax number.
 - (b) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, "writing" shall not include email.
- 10.9. **Third parties.** No one other than a party to the Contract shall have any right to enforce any of its terms.
- 10.10. **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.
- 10.11. **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.