

## TECHNO FRESH CONSULTANCY

### TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

#### 1. INTERPRETATION

##### 1.1 Definitions. In these Conditions, the following definitions apply:

**Business Day:** a day (other than a Saturday, Sunday or public holiday) 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 7.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 14.8.

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

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

**Deliverables:** any documents, reports, information and similar materials to be produced by the Supplier and delivered to the Customer in relation to the Services.

**File:** a file of information created by the Supplier in connection with the supply of the Services including all paper, electronic, audio and photographic records and copies thereof that relate to the File.

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

**Services:** the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Specification or otherwise agreed between the parties.

**Specification:** the description or specification of the Services provided in writing by the Supplier to the Customer.

**Supplier:** Techno Fresh Consultancy Limited (registered in England and Wales with company number 03653038) or Richard Gaskin trading as Techno Fresh Consultancy as appropriate, depending on which of these accepts the Customer's Order and supplies the Services to the Customer.

##### 1.2 Construction. In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its personal representatives, successors or permitted assigns;

- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted and includes any subordinate legislation;
- (d) general words are not limited by example; and
- (e) a reference to writing or written includes e-mails.

## 2. **BASIS OF CONTRACT**

- 2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 2.2 Orders are not binding until accepted by the Supplier in writing or, if earlier, the Supplier starts to perform the Services, at which point the Contract is formed.
- 2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract. Marketing and other descriptive matter relating to the Services are illustrative only and do not form part of the Contract.
- 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 by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

## 3. **PARTIES**

- 3.1 The Customer warrants that whether acting as an agent or on its own behalf it has the authority to enter into the Contract on these Conditions.
- 3.2 Where the Supplier receives instructions from two or more Customers or where a Customer is acting as an agent on behalf of two or more principals, then each Customer and/or principal shall be jointly and severally liable for the Charges and for the Customer's obligations under the Contract.

## 4. **SUPPLY OF SERVICES**

- 4.1 The Supplier shall supply the Services to the Customer in accordance with the Specification (if any) in all material respects.

- 4.2 The Supplier shall use reasonable endeavours to meet any agreed performance dates, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 4.3 The Supplier 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
- 4.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
- 4.5 Where the Supplier is instructed to assess a loss and/or adjust an insurance or other claim the Supplier shall use reasonable endeavours to advise on the extent and value of the loss and/or claim having reference to local market conditions, transport costs, existing sales agreements and other relevant circumstances. The Customer acknowledges that any advice proffered by the Supplier in respect of the value of any goods represents a reasonable market value. The Supplier will not be held liable for market fluctuations or changes that may subsequently affect a valuation.
- 4.6 Where the Supplier is instructed to sell or arrange for the sale of property or goods, it is agreed that:
- (a) the Supplier shall use reasonable endeavours to obtain a reasonable market price for the property or goods having consideration to their condition, the market conditions at the time of sale, transport and insurance costs and other relevant circumstances;
  - (b) the Supplier shall, in performing any sale, act solely as agent of the owner of the property or goods or, where the property has been legally abandoned in accordance with an insurance policy, as agent of the insurance company. The Supplier shall account to the party on whose behalf the sale is conducted for any sale and/or salvage proceeds after deduction of any Charges and commissions due;
  - (c) the Customer shall indemnify the Supplier against all costs, losses, damages or expenses including customs charges, fines and penalties and any third party costs arising from or in connection with any such sale;
  - (d) the Customer or owner of the goods or insurance company as appropriate will be charged commission of 10% of the net sale value of goods sold in addition to any other Charges agreed between the parties.
- 4.7 Unless otherwise agreed by the Supplier in writing, a File shall be considered closed once payment of the Supplier's final invoice has been effected. The Supplier shall thereafter retain the File for a period of two years and unless otherwise agreed in writing the Supplier shall be entitled to destroy the File at the end of the two year period. Upon written request, the Supplier may return the File to the Customer or

retain the File for an additional period, in which case the Supplier reserves the right to charge the Customer a reasonable sum for its extended storage.

## 5. CUSTOMER'S OBLIGATIONS

### 5.1 The Customer shall:

- (a) ensure that the terms of the Order and any information it provides to the Supplier in connection with the Services are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Services;
- (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's and any third party's premises and other facilities as reasonably required by the Supplier;
- (d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (e) before the date on which performance of the Services is due to start obtain and thereafter maintain all necessary licences, permissions and consents which may be required for the performance of the Services; and
- (f) keep and maintain all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody.

### 5.2 If the Supplier'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) the Supplier 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 the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 5.2; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

### 5.3 The Customer shall indemnify the Supplier against all costs, losses, damages and expenses (including professional and other costs) arising out of or in connection with the Customer's failure to provide complete and accurate information to the Supplier in connection with the Services.

6. **THIRD PARTIES AND DISCLOSURE OF WORK**

- 6.1 Any Deliverable, advice or communication provided by the Supplier to the Customer in connection with the Services is for use by the Customer only (or where acting as agent, the Customer' principal). Any such Deliverable, advice or other communication is not to be disclosed to any third party without the prior written consent of the Supplier.
- 6.2 The Supplier accepts no liability to any third party who may rely on any Deliverable, advice or other communication provided by the Supplier in connection with the Services.
- 6.3 The Customer hereby agrees to indemnify the Company against all costs, losses, damages and expenses suffered by the Supplier arising out of or in connection with the disclosure by the Customer to any third party of, or reliance by any third party on, any Deliverable, advice or other communication provided by the Supplier in connection with the Services.

7. **CHARGES AND PAYMENT**

- 7.1 The Charges for the Services shall be as set out in the Order, or, if no Charges are set out in the Order, charged at the Supplier's standard list price for the Services at the date performance takes place.
- 7.2 In addition to the Charges set out in clause 7.1, the Customer shall be liable and the Supplier shall charge the Customer for all reasonable or necessary third party costs incurred by the Supplier in performing the Services.
- 7.3 The Supplier shall invoice the Customer on the earlier of completion of the Services or weekly in arrears.
- 7.4 The Customer shall pay each invoice submitted by the Supplier:
- (a) within 30 days of the date of the invoice; and
  - (b) in full without deduction, set-off or counterclaim except as required by law and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.
- 7.5 All prices are exclusive of VAT which shall be charged at the appropriate rate.
- 7.6 If the Customer fails to make any payment due to the Supplier on the due date then, without prejudice to any other right or remedy available to the Supplier, the Supplier shall be entitled to:

- (a) cancel the Contract or any contract between the parties or suspend any further performance of services;
- (b) require immediate payment in respect of services supplied;
- (c) charge the Customer interest on the amount unpaid at the rate of 5% per annum above the Bank of England Bank Rate from time to time accruing on a daily basis from the due date until payment is made, whether before or after judgment, compounding quarterly;
- (d) notwithstanding clause 7.6(c), the Supplier may in the alternative and at its sole discretion claim interest and penalties under the Late Payment of Commercial Debts (Interest) Act 1988; and
- (e) charge the Customer on a full indemnity basis for any legal and/or administrative costs it incurs in attempting to recover or recovering any monies due.

7.7 The Customer remains liable for all Charges until paid in full even if the Customer requests that the Supplier raises the Charges for payment by a third party.

7.8 The Supplier may request, and the Customer shall pay, a sum of money on account of Charges, costs and disbursements incurred during the performance of Services. Any monies paid on account shall be set against invoices raised by the Supplier. In the event that monies paid on account exceed the total sum invoiced by the Supplier, the Supplier shall account to the Customer for the excess as soon as reasonably practical.

## 8. **INTELLECTUAL PROPERTY RIGHTS**

All intellectual property rights in or arising out of or in connection with the Services shall be owned by the Supplier.

## 9. **CONFIDENTIALITY**

9.1 A party (**Receiving Party**) 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 Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 9 shall survive termination of the Contract.

9.2 The provisions of this clause 9 shall not apply to information which was in or comes into the public domain other than in breach of this clause 9 or any disclosure required by law or regulatory authority.

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

10.1 Nothing in these Conditions shall limit or exclude the Supplier'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 matter in respect of which it would be unlawful for the Supplier to exclude or restrict its liability.

10.2 Subject to clause 10.1:

- (a) the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract including any losses that may result from the Supplier's deliberate personal repudiatory breach of the Contract or breach of the Contract by the Supplier, its employees, agents or subcontractors; and
- (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, including losses caused by the Supplier's deliberate personal repudiatory breach or a deliberate breach of the Contract by the Supplier, its employees, agents or subcontractors shall not exceed the lesser of:
  - (i) £500,000 (being the limit of the Supplier's professional indemnity insurance cover);
  - (ii) the Charges actually paid for the Services; or
  - (iii) in respect of any particular claim and where Services are charged by reference to a daily rate, 3 x (three times) the daily rate of the most expensive individual involved in the actual provision of the Services on the day on which the incident giving rise to the Supplier's liability occurs.

10.3 The Supplier shall not be liable to the Customer for any losses suffered or incurred as a result of the Supplier acting in accordance with the Customer's instructions, written or verbal.

- 10.4 The Supplier accepts no liability for the accuracy of any information provided to the Supplier by any third party.
- 10.5 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 10.6 This clause 10 shall survive termination of the Contract.

11. **TERMINATION**

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

- (a) the other party commits a material breach 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;
- (b) the other party suspends, or threatens to suspend, payment of or is unable or deemed unable to pay its debts, or becomes insolvent, or if an order is made or a resolution is passed for the winding up of the other party, or if the other party is the subject of a bankruptcy petition or order, or if an administrator, administrative receiver or receiver is appointed in respect of the whole or any part of the other party's assets or business, or if the other party makes any composition with its creditors or takes or suffers any similar or analogous action in consequence of debt; or
- (c) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- (d) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

11.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.

11.3 Without limiting its other rights or remedies, either party shall have the right to terminate the Contract by giving the other party one month's written notice.

11.4 Without limiting its other rights or remedies, the Supplier shall have the right to suspend provision of the Services under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 11.1(b) to clause 11.1(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

## 12. CONSEQUENCES OF TERMINATION

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 shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. 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, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, 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 have effect after termination shall continue in full force and effect.

## 13. NON-SOLICITATION

13.1 The Customer shall not without the prior written consent of the Supplier at any time during the term of the Contract or for the period of nine months after its termination or the last date of supply of the Services, whichever is the later, directly or indirectly solicit or entice away from the Supplier or engage or employ or attempt to engage or employ any person who is or has been engaged as an employee, consultant or sub-contractor of the Supplier in the provision of the Services (**Employee**).

13.2 In the event the Customer breaches clause 13.1, the Customer shall pay to the Supplier as liquidated damages on demand a sum equivalent to:

- (a) the costs to the Supplier of advertising for, recruiting and training a replacement;
- (b) a reasonable percentage of the replacement's salary and benefits until such time as the replacement is able to perform the duties of the Employee with the skill of the Employee on leaving; and
- (c) the cost to the Supplier of any loss of business suffered as a result.

The parties agree that this sum represents a genuine pre-estimate of the Supplier's loss.

14. **GENERAL**

14.1 Force majeure:

- (a) For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to 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 subcontractors, failure to gain access to the required premises or facilities, or delays in goods reaching the UK or becoming available for inspection.
- (b) The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- (c) If the Force Majeure Event prevents the Supplier from providing any of the Services for more than [six] weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

14.2 Assignment and subcontracting:

- (a) The Supplier may at any time assign, transfer, 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) Where the Supplier is acting as agent for the Customer, the Customer authorises the Supplier to contract any third party or agent to provide the Services on such terms as the Supplier sees fit.
- (c) The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

14.3 Notices:

- (a) Notices under the Contract will be in writing and sent to the persons and addresses set out in the Order. They may be given, and will be deemed received:
  - (i) by first-class post or recorded delivery if sent to an address within the country in which they are posted: two Business Days after posting;
  - (ii) by airmail: seven Business Days after posting;
  - (iii) by hand: on delivery;

- (iv) by facsimile: on receipt of a successful transmission report from the correct number;
- (v) by email: on receipt of a delivery or read receipt from the correct address; and
- (vi) by commercial courier: on the date on which the courier's delivery receipt is signed.

14.4 Waiver:

- (a) A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- (b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

14.5 Severance:

- (a) If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

14.6 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor, except as expressly provided, constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way except as expressly provided.

14.7 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.

14.8 Variation: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by the Supplier.

14.9 Governing law and jurisdiction: This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.