

Box Yellow

TERMS OF BUSINESS FOR THE SUPPLY OF CONSULTANCY AND TRAINING SERVICES

(Box Yellow, a firm - hereafter referred to as "the Supplier")

1. Scope of Terms of Business

- 1.1 All work carried out by or at the responsibility of the Supplier (a "Project") for the Customer is subject to these Terms. These Terms may be varied or excluded (in whole or in part) by any proposal or tender ("Proposal") submitted by the Supplier to the Customer or by subsequent express agreement in writing (which may be included in the Sales Order Agreement) signed on behalf of the Supplier and the Customer, but not otherwise.
- 1.2 The Customer represents that it has no plans to use the Results (as later defined) or work product resulting from the services carried out by the Supplier in a securities offering. The Customer agrees that, before doing so, it shall renegotiate with the Supplier the indemnity provisions herein in good faith, which indemnity provisions shall, inter alia, extend to any claims by third parties against the Supplier that such third party has relied in whole or in part on the Results or the Supplier's work product.

2. Commencement and Completion of Work

- 2.1 Unless otherwise stated in the Proposal, the appointment of the Supplier shall commence from the date of the Supplier's acceptance of the Customer's purchase order, or from the time when the Supplier shall have begun to perform for the Customer any of the services specified in the Proposal, whichever is the earlier. The Customer will co-operate with the Supplier in all reasonable ways and will make freely available or place at the Supplier's disposal all facilities and personnel reasonably required by the Supplier to carry out the Project.
- 2.2 The Customer shall provide the Supplier with all data (presently or subsequently in the possession of the Customer) relating to the Project. The Customer represents to the Supplier that all such data are accurate to the best of the Customer's knowledge.
- 2.3 If the Supplier is delayed in the Project by any act or default of the Customer or any other party or by any cause beyond the reasonable control of the Supplier, including without limitation, civil disturbance, act of God, fire, explosion, accident, act of Government or Governmental agencies, or failure of third party suppliers, the period for completion of the Project shall be extended by a reasonable period and the Supplier shall be paid for any additional reasonable costs incurred attributable to the delay.
- 2.4 The Supplier shall make reasonable endeavours to supply the Results on the date agreed, this date will be taken as a guideline for time planning purposes only. Time is not of the essence unless specifically agreed in writing with liquidated damages for late delivery fully defined before commencement of the Project.

3. **Supplier Personnel**

It is a condition of contract that the Customer will not approach or contact, with the intention of employing or retaining, any employee of the Supplier engaged on or connected with the Proposal or the Project without the prior agreement of the Supplier. This restriction is to apply at all times during the Project and for a period of one year immediately following the termination of the Project.

4. **Disbursements to Third Parties (not applicable to fixed price contracts)**

A ten per cent surcharge may be made on all disbursements made by the Supplier associated with the Project. The disbursements include, but are not limited to subcontractors (other than the Supplier's employees), out-of-pocket expenses plus costs of travel, accommodation and meals away from the normal place of business of the Supplier's personnel, telephone calls and faxes necessarily incurred in carrying out the Project.

5. **Techniques**

The Supplier intends to employ the methods, procedures, techniques, personnel and sources of information set out in the Proposal, but reserves the right to vary these as necessary or desirable in order to achieve the aims of the Project.

6. **Care and Diligence/Contractual Limitations**

6.1 All findings, forecasts, statements of opinion and recommendations in the Proposal or in any report or letter ("the Results") submitted by the Supplier to the Customer on the work carried out under a Project are made in good faith, and on the basis of the information before the Supplier at the time. The Supplier shall in the discharge of the services agreed to be performed by the Supplier exercise all the reasonable skill, care and diligence normally provided by a telecommunications operator in the performance of services similar to those provided for the Customer and under the same terms and circumstances.

6.2 In so far as the Results are based on observations, data and/or materials supplied by the Customer or obtained by the Supplier from a third party the Supplier assumes no responsibility and makes no warranty or representation as to their correctness. All material, data and other information supplied by or on behalf of the Customer will be accepted by the Supplier at the Customer's risk. The Supplier will exert reasonable efforts to ensure their safety and security in a manner consistent with the Supplier's safety and security policy for its own property. The Customer shall inform the Supplier in writing prior to supply of such items to the Supplier of any special or hazardous features associated with such items. The Customer shall indemnify the Supplier at all times against any costs, claims, demands and expenses arising from the Customer's failure to comply with the provisions of paragraph 6.2.

6.3 The Customer acknowledges and accepts that the contract price does not contain a premium sufficient to cover the Supplier's risk of unlimited liability in respect of the Project and that a limitation on the Supplier's liability is therefore reasonable. Without prejudice to clause 6.4 the Supplier's liability to the Customer in respect of breach or non-performance of contract or defective work, shall be limited to £1,000,000 or the cost of service (Clause 9) whichever is the lower, and is *IN LIEU OF ALL OTHER WARRANTIES EITHER STATUTORY*

EXPRESS OR IMPLIED. IT IS EXPRESSLY AGREED THAT THE SUPPLIER'S DUTIES TO THE CUSTOMER ARISE SOLELY UNDER THE EXPRESS TERMS OF THIS CONTRACT AND SHALL NOT EXTEND TO ANY DUTY UNDER THE LAW OF TORT OR BREACH OF STATUTORY DUTY. If, in respect of loss or damage to physical property of the Customer, the Supplier actually receives (taking into account, without limit, any deductible or excess) insurance monies from its insurers in excess of the limit referred to above in this clause in respect of such loss or damage, the Supplier's liability to the Customer for such loss or damage shall not exceed such receipts.

6.4 Save in respect of liability for fraud or the death or personal injury due to the negligence of the Supplier, its servants or agents, the Supplier shall have no liability to the Customer under contract or otherwise (including negligence or breach of statutory duty) under the express terms of this Agreement or by reason of any non-fraudulent representation, or implied warranty, condition or other term, or any duty at common law, or any tort (including negligence), for

- (a) any loss of profits
- (b) any loss of revenue
- (c) any loss of income
- (d) any loss of business
- (e) any loss of goodwill or reputation
- (f) any loss of anticipated savings
- (g) any loss or corruption of data
- (h) any loss of use
- (i) increased costs of operations
- (j) increased costs of development
- (k) incorrect interpretation of the Customers data,
- (l) damages, loss or expenses payable to any third party or
- (m) any indirect or consequential or special loss or damage whatsoever and howsoever caused.

6.5 The Supplier can accept no responsibility for the failure of the Customer to follow the Supplier's advice. The Customer is therefore advised to refer back to the Supplier any proposal by the Customer that would conflict with the Supplier's advice. The Supplier will provide advice on the Customer's proposals, at its then current standard charge-out fees or other agreed sum.

6.6 The Customer shall defend, indemnify and hold harmless the Supplier and its directors and employees against all loss, damage, liability, suit or claim, including lawyers' fees and expenses, which is brought against the Supplier or its directors or employees arising out of or in connection with the services or the provision of the services hereunder by the Supplier, except to the extent that the Supplier is liable in accordance with the express terms of this Agreement.

7. Confidentiality/Intellectual Property

- 7.1 Except as provided by paragraph 7.2 and 7.3 herein, all material resulting from the Supplier's performance of the Project, including documents, calculations, computer printouts, notes, analytical reports, and any other pertinent data, are the property of the Supplier. Ownership of any such material which is unique to the Project, together with an irrevocable licence in respect of non-unique material, shall be the Customer's when the Customer completes payments and its other obligations under this Agreement, provided however that the Supplier shall have the right to retain copies of said materials for archive purposes. All reports and other materials resulting from the performance by the Supplier, of the Project are intended solely for the Customer's use on this Project and are not intended or represented to be suitable for use by the Customer or third parties on any other Project; such reuse of said materials by the Customer or third parties without written permission or adaptation by the Supplier for the specific purpose intended shall be at the user's sole risk without liability to the Supplier and the Customer agrees to indemnify and hold harmless the Supplier from all claims, damages and expenses including legal fees arising from such unauthorised reuse.
- 7.2 Copyright is reserved to the Supplier in the Proposal, and any material in the Results that has not been generated under the Project. No such material shall be copied or published (in whole or in part) or disseminated to any third party without the prior written permission of the Supplier.
- 7.3 The copyright in all documents and other similar material provided by or on behalf of the Customer for the use of the Supplier in connection with the Project shall remain vested in the originator of such material, but the Customer shall ensure that the Supplier is duly authorised to use such material for all purposes related to the Project.
- 7.4 Notwithstanding the foregoing conditions, the Supplier reserves the right to use an outline description of the Project in its promotional literature.

8. Cost of Service

- 8.1 Work will be carried out and charged on a time basis unless a fixed budget is agreed in writing. Any time charge contained or referred to in the Proposal shall be for guidance only and relates to the relevant charge at the date of the Proposal only. Invoices will be issued using the fee rates and price schedule in force at the timework is carried out, unless otherwise agreed.
- 8.2 Where utilised, a charge will be made for the use of the Supplier's in-house computer services in accordance with a schedule of charges in force at the time the work is carried out unless otherwise agreed in writing with the Customer.

9. Terms of Payment

9.1 Terms of Payment

(a) Consultancy and Training Services:

Invoices will be rendered monthly and shall be paid (without deduction or off-set) by the Customer within 30 days of the date of submission of the invoice by the Supplier. Any sums remaining unpaid at the expiry of any such 30 days will bear interest to accrue from day to day at the rate

specified in the Late Payment of Commercial Debts (Interest) Regulations 1998 on the balance outstanding. Time is of the essence in relation to payments.

(b) Public Seminars:

Unless otherwise agreed in writing, all invoices for Public Seminars must be paid in full no later than 3 working days before the commencement of the first session.

- 9.2 If any item or part of an item of an invoice rendered by the Supplier is disputed or subject to question, the payment of the remainder of the invoice shall not be withheld on those grounds and the provisions above shall apply to such remainder, and also the disputed or questioned item to the extent that it shall subsequently be agreed or determined to have been due to the Supplier.
- 9.3 The cost of services and expenses incurred will bear a value added tax (VAT) surcharge at the rate applicable at the date of invoice.

10. Termination or Suspension

- 10.1 If either party shall become bankrupt, go in to liquidation (other than a voluntary liquidation for the purposes of amalgamation or reorganisation only) have a receiver, administrative receiver or administrator appointed over any part of its business or assets, enter in to a composition with its creditors or otherwise become insolvent (the "Bankrupt Party") the other party shall be entitled forthwith by notice to the Bankrupt Party terminate or suspend work under the Contract.
- 10.2 If the Customer fails to pay any sum due hereunder within two working days of the due date, the Supplier may by notice to the Customer suspend and, at the same or a later time, terminate the Contract.
- 10.3 If either party (the "Defaulting Party") breaches a material term of the Contract which remains unremedied for 60 days after service of written notice on the Defaulting Party by the other party specifying such a breach, or if it appears that the Defaulting Party is in breach of a material provision of any statute, statutory instrument or common law, the other party may suspend and, at the same or a later time, terminate the Contract, confirmed by notice in writing to the Defaulting Party.
- 10.4 The Customer may terminate the Contract at any time on 30 days written notice to the Supplier.
- 10.5 If the Customer terminates the Contract under paragraph 10.1 or 10.3 above the Customer shall pay to the Supplier only such sums as are due up to the date of termination. If the Supplier terminates the Contract under paragraph 10.1, 10.2 or 10.3, or the Customer terminates the Contract under paragraph 10.4 the Customer shall pay to the Supplier, in addition to the foregoing, such sums as are reasonably expended by the Supplier in bringing the work under the Contract to an end in a prompt but orderly fashion, plus all commitments (including any financial commitments to third parties) of the Supplier relevant to the Services and a cancellation fee of 10 per cent of the outstanding contract price, such sums in aggregate not to exceed the Contract price (where fixed).

10.6 If the Contract is suspended under paragraph 10.1, 10.2 or 10.3 and the Supplier is required to perform any additional work in connection with the resumption of services, the Customer shall pay the Supplier in respect of the performance of such additional work in advance.

10.7 Public Seminars

10.7.1 Cancellation or alternatives

- (a) If the Supplier deems it necessary to cancel or reschedule any course, the Customer will be offered an alternative course or a full refund of fees.
- (b) The Supplier reserves the right to provide an alternative venue and presenter or instructor to those published.
- (c) Customers may provide substitute delegates without penalty provided written notice is received prior to commencement of the course.

10.7.2 Cancellation fees

In the event of the Customer cancelling a reservation, the Supplier reserves the right to charge a fee on the following basis:

- (a) If cancellation is received more than 20 working days before the commencement of the course, no fee will be payable.
- (b) If cancellation is received between 20 and 10 working days before commencement of the course, 50% of the fees shall be charged to the Customer.
- (c) If cancellation is received within 5 days of commencement of the course, 100% of the fees shall be charged to the Customer.

The Supplier reserves the right to deduct such fees so arising from any refund of monies due to the Customer in respect of deposits or prepayments for Public Seminars.

11. General

11.1 These terms of business and all documents, arrangements and agreements to which they apply shall be construed and have effect in accordance with the Laws of Scotland.

11.2 This Agreement contains the entire Agreement and understanding between the parties hereto with respect to the subject matter hereof and replaces all prior agreements and understandings relating to the said subject matter.

11.3 If any part of the Agreement is found to be void, voidable, illegal or otherwise unenforceable the remaining parts of the Agreement will remain in full force and effect.

- 11.4 All rights granted to either party shall be cumulative and no exercise by either party of any right under the Agreement shall restrict or prejudice the exercise of any other right granted by the Agreement or otherwise available to it.
- 11.5 The Customer may not assign, sub-contract or transfer to any third party the benefit and/or burden of the Agreement without the Supplier's prior written consent.
- 11.6 The Agreement shall be governed by and the law of Scotland. Both parties irrevocably agree the Courts of Scotland shall have exclusive jurisdiction in relation to any claim dispute or difference concerning the Agreement.
- 11.7 The Supplier reserves the right to vary the terms and conditions of this Agreement by placing the revised terms and conditions on its website (www.boxyellow.co.uk.) Any variation to these terms and conditions will be placed on the website (or otherwise notified to the Customer) not less than one month before such variation is to take effect, except in the case of a Third Party Variation which means a variation which the Supplier considers is required as a result of a change in:
- (a) The law or a decision of any other relevant authority; or
 - (b) Any service of any other operator on which the Supplier relies to provide the Service. A Third Party Variation shall take effect as soon as the law or underlying service changes. The Supplier shall place the change on the website as soon as reasonably practicable. If the variation (other than a Third Party Variation) materially prejudices the Customer, the Customer may before the variation takes effect give written notice to the Supplier objecting to the variation, in which case the variation shall not apply to the Customer, (unless otherwise agreed with the Customer, such agreement not to be unreasonably withheld or delayed). If the Supplier does not receive notice of the Customer's objection to a material variation prior to the variation taking effect, the Customer will be deemed to have accepted it. The Customer should periodically check the Your Communications' website to make itself aware of any variations.
- 11.8 The failure to exercise or delay in exercising a right or remedy provided by the Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies.
- 11.9 Nothing in the Agreement shall create any third party rights.
- 11.10 Notices must be written and delivered by
- (a) Hand,
 - (b) Facsimile or electronic mail (confirmed by first class pre-paid post in respect of posting and delivery within the UK or airmail otherwise) or
 - (c) First class prepaid post in respect of posting and delivery within the UK or airmail otherwise. The address for service on the Supplier (subject to any change notified by the Supplier) is:

Box Yellow, 37 Toll Court, Lundin Links, Fife, KY8 6HH.

The address for service on the Customer is as set out in the most recent invoice.

11.11 A notice will be deemed served as follows:

- (a) By hand, on delivery except where this is outside a Working Day, in which case the next Working Day;
- (b) By fax (written record of successful dispatch) on delivery except where this is outside a Working Day, in which case the next Working Day;
- (c) By electronic mail on delivery except where this is outside a Working Day, in which case the next Working Day, provided that either a telephone call is made to and received by the recipient informing the recipient of the date and time of that electronic mail message or the recipient expressly or impliedly acknowledges receipt of the electronic mail message;
- (d) Two Working Days after posting, if posted in and for delivery in the UK; five Working Days if otherwise.