

## Klozers Terms & Conditions of Business

Klozers (“we”) are pleased to set out the Terms of Business which will apply to the work we do for you. These Terms of Business and the attached Terms of Engagement form the Contract between us. If at any time you have any questions in connection with the Contract or our work, please let us know.

### **1. The Services We Will Provide**

- 1.1 We will provide the Services described in the attached Terms of Engagement.
- 1.2 Timetable - where a timetable is referred to or set out in the Terms of Engagement, we will use reasonable efforts to carry out our obligations in accordance with the timetable. However, unless both of us specifically agree otherwise in writing, dates contained in the timetable are intended for planning and estimating purposes only and are not contractually binding.
- 1.3 Location - the Services will be provided at the location(s) set out in the Terms of Engagement.
- 1.4 Changes to Services - either of us may request changes to the Services as set out in the Terms of Engagement or changes to any other aspect of the Terms of Engagement or the Contract. Requests for changes must be supported by sufficient detail to enable the other party to assess the impact of the requested change on the cost, timetable or any other aspects of the Contract. Both of us agree to work together to consider, and if appropriate, agree any changes. Until a change is agreed in writing, both of us will continue to act in accordance with the latest agreed version of the Terms of Engagement.
- 1.5 Contract Management - each of us will name a contact that will be responsible for managing all issues relating to the performance of the Contract. The initial contacts are named in the Terms of Engagement.

### **2. Deliverables**

- 2.1 We will prepare the deliverables listed or referred to in the Terms of Engagement, if any, and deliver these to you.
- 2.2 Ownership of deliverables
  - 2.2.1. Client Materials - subject to any pre-existing intellectual property rights (ownership of which will not be affected), you will own the copyright in all deliverables identified in the Terms of Engagement as “client materials”
  - 2.2.2. We will own the copyright in all other deliverables which are not identified as client materials. You may make copies of these deliverables for your own internal use but you must not provide these deliverables or copies of them to any third party without first having our written permission.

### **3. Your Responsibilities**

Our performance is dependent on you carrying out your responsibilities as set out in these Terms of Business and in the Terms of Engagement.

- 3.1. Support Facilities - you agree to provide us and our staff with all office, other accommodation and facilities that we may reasonably require to perform the Services, in particular secretarial support, access to telephone and email communications and computer facilities.  
You will be responsible for ensuring that you have appropriate back-up, security and virus-checking procedures in place for any computer facilities you provide. We agree to comply with your reasonable virus-checking procedures in the use of such facilities.
- 3.2 Information and Materials - you agree to provide all information and materials reasonably required to enable us to provide the services. We will not be liable for any loss or damage arising from reliance on any information or material supplied by you or for any inaccuracy or other defect in any information or materials supplied by you.
- 3.3 Your Staff - you will ensure that your staff are available to provide assistance as reasonably required to enable us to provide the services. Where specific members of your staff are required, this will be agreed between us and set out in the Terms of Engagement. You will be responsible for ensuring that your staff have the appropriate skills and experience. In the event that any of your staff fail to perform as required, we may request that additional or alternative staff are made available.
- 3.4 Suppliers and other Third Parties - where you are using third parties to provide information or support to a project, including, but not limited to, where you are employing other suppliers whose work may affect our ability to provide the services, you will ensure that you have appropriate agreements in place with those third parties. Unless specifically agreed otherwise in writing, you will be responsible for the management of the third parties and the quality of their input and work.
- 3.5 Payment for Services - you agree to pay for the services as set out in the Terms of Engagement and Clause 4 below.

### **4. Fees and payment**

- 4.1 How fees will be calculated - The Terms of Engagement will state the applicable fee rates.
- 4.2 Hours -Charges will be calculated on the basis of a 7 hour day, worked between the hours of 09:00 and 17:00 on weekdays, excluding public holidays. If our staff are required to work away from home for extended periods, you agree to accept flexibility in the way they divide their time between your sites and their home base. Travel time, will not be charged provided any worksite site is less than 25 miles from home base, otherwise this will be chargeable as part of the above working hours. Unless the Terms of Engagement states otherwise, hours worked in excess of 7 hours a day, or outside weekdays, will be charged on a pro-rata basis.
- 4.3 Fee Estimates - any estimates given by us of any charge, whether for planning or any other purpose, will be given in good faith, but will not be binding.

4.4. Expenses - all charges are stated exclusive of expenses unless the Terms of Engagement state otherwise. You agree to pay our reasonable travel, subsistence and other expenses incurred in connection with the services. Any special expense arrangements will be agreed and set out in the Terms of Engagement.

4.5. Taxes - charges, including expenses, will be stated exclusive of any taxes. You will be responsible for paying any taxes arising from the Contract for which you are legally liable, such as Value Added Tax at the rate in force at the date the liability arises.

4.6. Payment of Invoices -Invoices will be issued on a monthly basis or upon completion of the engagement as appropriate. Unless the Terms of Engagement state otherwise, all charges will be specified in pounds sterling and invoices will require payment in the agreed currency. All invoices will be due for payment on receipt by you. In the event of late payment, we reserve the right to suspend the provision of services and to charge interest on amounts overdue for a period in excess of 30 days at a rate of 3% above the annual base rate of the Royal Bank of Scotland plc from time to time.

4.7. Fee Changes - we may vary fee rates stated in the Terms of Engagement by giving you 30 days written notice of the variation. Our current practice is to review standard fee rates twice a year. Fee rates quoted in the Terms of Engagement relate to the provision of services at the location or locations stated in the Terms of Engagement. Any change in location may result in a change in the applicable fee rates.

## **5. Term and termination**

5.1. Duration of Contract - This Contract will apply from the commencement date stated in the Terms of Engagement, if any, or where no commencement date is specified, from the date of signature of the Contract by both parties. The Contract will continue until all the services and deliverables have been provided unless it is terminated earlier in accordance with the terms set out below.

5.2. Your right to terminate the Contract - the Contract may be terminated by you at any time by giving not less than 30 days written notice. Where you terminate the Contract in this way, you will pay us for all services provided up to the termination and for additional costs reasonably incurred as a result of the early termination of the services. We will take all reasonable steps to mitigate any such additional costs.

5.3. Termination for breach of Contract - the Contract may be terminated by either of us in the event of a breach by the other of the Contract by serving notice requiring the breach to be remedied within 30 days. If the breach is not remedied within this time, the party serving notice will be entitled to serve a further notice terminating the Contract with immediate effect.

5.4. Return of Property - On termination of the Contract each of us will return to the other any property of the other that it then has in its possession or control, except that solely for our internal audit purposes, we may retain on copy of any documentation or software prepared by us, or any other documentation upon which our Services are based.

## 6. Confidentiality

6.1. Neither of us will disclose to any third party without the prior written consent of the other party any confidential information which is received from the other party for the purposes of providing or receiving Services which if disclosed in writing is marked confidential or if disclosed orally is confirmed in writing as being confidential and both of us agree that any confidential information received from the other party shall only be used for the purposes of providing or receiving Services under this or any other contract between us. These restrictions will apply for a period of 1 year from disclosure and will not apply to any information which:

1.1. is or becomes generally available to the public other than as a result of a breach of an obligation under this clause; or Klozers Ltd. Terms of Business  
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1.2. is acquired from a third party who owes no obligation of confidence in respect of the information; or

1.3. is or has been independently developed by the recipient

6.2. Notwithstanding 6.1 either of us will be entitled to disclose confidential information of the other to a third party to the extent that this is required by law, by any court of competent jurisdiction, or by a governmental or regulatory authority, provided that not less than 2 business days notice writing is first given to the other party.

6.3. Without prejudice to 6.1 and 6.2 above, we may cite the performance of the Services to our clients and prospective clients as indication of our experience, unless we both specifically agree otherwise in writing.

## 7. Liability

7.1. We will use reasonable skill and care in the provision of the Services and the preparation of any Deliverables.

7.2. We will accept liability to the limit of £1,000,000 for the death or personal injury caused by our negligence or the negligence of our employees acting in the course of their employment.

7.3. We will accept liability to pay damages in respect of loss or damage suffered by you as a direct result of our providing the Services where this arises as a consequence of a breach of any of our contractual obligations or negligence by us. Subject to 7.2 this liability to pay damages will not exceed either £250,000 or the amount paid or payable by you to us under this Contract at the date of the breach, whichever is the greater amount.

7.4. The remedies available and the liability we accept under this Clause are the only remedies and to the extent permissible by law the absolute limit of our liability arising under or in connection with the Contract. All other liability is expressly excluded in particular but without limitation liability for loss of profits, special or consequential loss including without limitation economic loss or failure to realise anticipated savings or benefits.

7.5. All warranties, conditions or terms other than those expressly set out in this Contract are excluded including but not limited to all implied and statutory conditions.

7.6. Any legal proceedings arising from this Contract must be brought within 1 year from the date when the party bringing the proceedings first becomes aware or ought reasonably to have become aware of the facts which give rise to the liability or alleged liability.

7.7. In this clause the term “Contractor(s)” means our employees and any agent or sub-contractor of ours and their respective employees, agents, partners or sub-contractors who perform work in connection with the Services, where the individual agent or sub-contractor is a member of Klozers Limited. You acknowledge and agree that in relation to the Services and this Contract your relationship is solely with us, Klozers Limited, and that no Contractor will have any liability to you in connection with the Services or this Contract except for any liability arising from death and personal injury caused by the negligence of a Contractor. You therefore agree not to bring a claim of any nature against any Contractor relating to the Services or this Contract except for claims relating to death and personal injury caused by its negligence. You acknowledge and agree that we will have the right (subject to the discretion of the Court) to a stay of proceedings if you bring any claim against a Contractor in breach of this Clause.

## **8. General**

8.1. Sub-contracting - We reserve the right to employ agents and sub-contractors to assist us when providing any part of the Services. Any reference to our staff in the Contract includes agents and sub-contractor staff. We will remain liable to you in respect of any Services provided.

8.2. Force Majeure - Neither of us will be liable to the other for any failure to fulfil obligations caused by circumstances outside its reasonable control.

8.3. Assignment - Neither of us may transfer, charge or otherwise seek to deal in any of its rights or obligations under this Contract without the prior written consent of the other party. Neither of us may assign its rights or obligations under this Contract except that we may assign our rights and obligations to any legal entity established or authorised to take over all or part of our business.

8.4. Waiver - Subject to Clause 7.6 no delay by either one of us in enforcing any of the terms or conditions of this Contract will affect or restrict our own rights and powers arising under the Contract. No waiver of any term or condition of this Contract will be effective unless made in writing.

8.5. Notices - Notices must be sent by prepaid registered post or faxed to the address of the other party given in this Contract or to any other address as the parties may have notified during the period of the Contract. Any notice sent by post will be deemed to have been delivered 48 hours after sending. Any notice sent by fax will be deemed to have been delivered on the first working day following its dispatch.

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8.6. Amendment - Any amendment of this Contract will not be effective unless agreed in writing and signed by both parties.

8.7. Survival - The provisions of this Contract which expressly or by implication are intended to survive its termination or expiry will survive and continue to bind both of us.

8.8. Staff - Neither of us will during the period of this Contract or within 6 months of its termination or expiry solicit directly or indirectly any staff of the other who have been involved in providing or receiving Services or otherwise connected with this Contract. This will not restrict either of us from employing staff who apply unsolicited in response to a general advertising or other general recruitment campaign.

8.9. Working for other clients - We will not be prevented or restricted by anything in this Contract from providing services for other clients.

8.9.1. Validity of Contract Provisions - If a Court or other competent body decides that any provision of this Contract is void or otherwise ineffective but would be valid and effective if appropriately modified then such provision will apply with the modification necessary to make it valid and effective.

8.9.2. Entire Agreement - This Contract including the Terms of Engagement and any attachments or referenced documents forms the entire agreement between us relating to the Services. It replaces and supersedes any previous proposals, correspondence, understandings or other communications whether written or oral (except that we do not exclude liability subject to the limitations set out in Clause 7 for any fraudulent pre-contractual misrepresentations on which you can be shown to have relied). The headings in this Contract are included to make it easier to read but do not form part of the Contract. In the event and only to the extent of any conflict between these Terms of Business and the Terms of Engagement, the Terms of Engagement will take precedence. In the event and only to the extent of any conflict between the Terms of Engagement and any referenced or attached document, the Terms of Engagement will take precedence.

## 9. Governing Law

9.1. Applicable Law - This Contract will be governed by and interpreted in accordance with the laws of Scotland.

## 10. Acceptance

On behalf of Klozers Ltd.  
Name (print): Iain Swanston

On behalf of  
Name (print):

Signed:

Signed:

Position: Director  
Date:

Position:  
Date: