

Terms and Conditions of Business of Cloudsca.pe Software Development Limited (‘the Consultancy’)

1. Services

The Consultancy will provide services as agreed in a Letter of Engagement / Quotation / Estimate, so far as is reasonably practicable within any agreed timescale, and with all proper skill and care. As an independent professional, the Consultancy will not be subject to direction or control, and itself accepts the responsibility for the proper provision of Services. The Consultancy is responsible for maintaining reasonable continuity in personnel providing Services on its behalf, but reserves the right in its sole discretion to make changes from time to time; no additional charge will be made for any handover period, and the Consultancy remains responsible for Services performed by any individual on its behalf.

2. Copyright and Intellectual Property Rights

‘Deliverable’ means a work produced by the Consultancy in the course of Services for delivery to the Client. Where pre-existing works are incorporated in any Deliverable, the Client has non-exclusive irrevocable world-wide royalty free licence to use modify and distribute such pre-existing works, but only as part of the Deliverable; all other rights in the pre-existing works are reserved. Subject thereto, all rights in any Deliverable pass to the Client upon payment of all fees due to the Consultancy which relate to that Deliverable, and the Consultancy will execute a formal assignment thereof on request by the Client.

3. Charges and Payment

- 3.1 Estimates are subject to change if based on incorrect information provided by the Client, or if any specified dependencies / facilities are not available on time, or if any of the requirements upon which a quotation / estimate was based are changed, or if any equipment required to be provided by the Client fails to operate correctly (save where the engagement itself is for the repair thereof). For bug-fixing and/or enhancement work on systems not originally written by the Consultancy, all estimates are subject to a larger margin of error due to the unfamiliarity of the system and the unknown quality of the existing software. Specifically, work performed on existing systems of a poor quality (such as those with a poor separation-of-concerns) is particularly hard for the Consultancy to supply accurate estimates for due to the time required for understanding the system, refactoring and/or correction of inherent/existing issues, issues that arise when adding new functionality because the existing system has not been developed with extension in mind and the increased likelihood of unforeseeable side effects caused by any modifications made. Estimating the size of software development work is not an exact science.
- 3.2 All sums due shall be invoiced and paid as specified in the Letter of Engagement / Quotation / Estimate. The Client will pay the Consultancy’s invoices within 14 days. Unless otherwise specified, where payment is on a time and materials basis, the Consultancy may invoice immediately after the work has been performed.
- 3.3 Any work to be performed on a time and materials basis shall be preceded by an agreed cost estimate, of which 35% shall be due immediately. All estimates are subject to change as described in section 3.1 of this document.
- 3.4 All work performed on a time and materials basis is performed on the basis of time spent and does not imply seeing a piece of work through to completion.
- 3.5 If any of the Consultancy’s invoices becomes overdue, the Consultancy may suspend provision of Services, and any agreed timescale will be automatically extended; the Consultancy may also terminate an engagement at any time when any payment is more than 7 days overdue.
- 3.6 If any of the Consultancy’s invoices becomes overdue then a fixed penalty charge is payable immediately per invoice. The penalty scale is:
Invoice under £1000: £40
Invoice under £10,000: £70
Invoice over £10,000: £100
- 3.7 If any of the Consultancy’s invoices becomes overdue by 14 days or more then interest is accrued on the outstanding amount at a rate of the base interest rate plus 8% per annum.
- 3.8 The first meeting between the consultancy and the Client shall be free of charge. The first meeting is defined as the first occasion when parties from the Consultancy and the Client first formally arrange to meet, either directly, or via teleconference to discuss the engagement.
- 3.9 When not covered by a service-level agreement, all work including meetings, development and documentation shall be performed on a Time and Materials basis, plus expenses.
- 3.10 Work performed on a time and materials basis is subject to a minimum work period of 2 hours. Work performed under an agreed service-level agreement may reduce this period.

4. Warranty

- 4.1 All work on systems originally created by the Consultancy is covered by a by a 5-day warranty for defects that can be causatively linked by the Client to work performed on a specific ticket in the ticketing system, subject to a 1 hour time limit per ticket.

4.2 All work on systems not originally created by the Consultancy is covered by a 5-day warranty for defects that can be causatively linked by the Client to work performed on a specific ticket in the ticketing system, subject to a 30-minute time limit per ticket.

5. Liability

The Consultancy is not liable for any loss or damage in excess of £500, except where it may not lawfully exclude or limit liability. Each party expressly excludes liability for consequential loss or damage, loss of profit, business, revenue, goodwill or anticipated savings. Any liability or remedy for innocent or negligent misrepresentation is expressly excluded. Neither party excludes or limits liability for death or personal injury.

6. Termination

Either party may terminate any engagement by one month's written notice to the other, or by immediate written notice if the other is in material breach or if the other becomes insolvent.

7. Non-poaching of staff

Neither party will engage, employ or otherwise solicit for employment any person who during the previous 12 months was an employee, partner, or subcontractor of the other and with whom such party had material contact in connection with any engagement, until 6 months after the end of that engagement.

8. Terms

A contract for an engagement formed on the basis of a Letter of Engagement / Quotation referencing these terms is governed only by these terms and by no others, except where both parties expressly agree in writing. In particular, it is agreed that any Purchase Order or other such document from the Client is intended for the Client's own administrative purposes only, and that notwithstanding its wording, neither a Purchase Order nor its content will have any legal effect. Save to the extent expressly provided, all conditions, warranties or other terms implied by statute or common law are hereby excluded to the fullest extent permitted by law.

9. Confidentiality

Unless the parties have signed a separate agreement containing more specific provisions in relation to confidentiality (in which case the provisions of such agreement will continue to apply in lieu of this clause), each party will keep any confidential information disclosed by the other secret. Neither party may use or take advantage of any such confidential information without the discloser's consent, even after the end of an engagement. This obligation does not apply to (i) information known to the receiver before disclosure by the other party, or (ii) information which becomes public knowledge without fault on the part of the receiver, or (iii) disclosures made to the extent required by some applicable legal or regulatory requirement.

10. Status

The Client is a client of a business undertaking carried on by the Consultancy, and it is not the intention of either to create or allow to arise any employee/employer relationship.

11. Law

These terms are governed by the laws of England & Wales, whose courts shall have sole jurisdiction in relation to all matters arising.