



EXELARATE Limited

STANDARD TERMS AND CONDITIONS OF TRADE

INTRODUCTION

This booklet contains the Standard Terms and Conditions ('Terms and Conditions') upon which EXELARATE conduct their business.

For the purposes of these Terms and Conditions reference to:

'EXELARATE' shall mean and include EXELARATE Limited (company registration number 07710609) 'the Customer' shall mean the party who wishes to contract with EXELARATE for the supply of goods and/or service, the contract for which shall be subject to these Terms and Conditions.

These Terms and Conditions apply to the supply of all services by EXELARATE unless otherwise agreed by EXELARATE in writing.

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PROVISION OF PROFESSIONAL SERVICES

1 Customer Request and Acceptance of Orders

1.1 If the Customer wishes to engage EXELARATE to provide professional services it must submit a request specifying the work to be undertaken and an estimate of the number of consultants required.

1.2 If EXELARATE accepts a Customer's request, EXELARATE will send to the Customer a completed Order Acceptance Form which shall constitute an agreement between EXELARATE and the Customer pursuant to these Terms and Conditions.

1.3 For significant projects:

1.3.1 a Project Definition Workshop ('PDW') will be held, from which a Project Definition Report ('PDR') (alternatively called Statement of Work ('SOW')) will be prepared detailing the resources required and timetables which will support the Customer's request. EXELARATE shall be entitled to charge the Customer at its standard rates for all work associated with the PDW and preparation of the PDR; and thereafter 1.3.2 the Customer will be required to enter into a written Professional Services Agreement ('PSA') supplied by EXELARATE.

2 Project

2.1 Work on the Project will begin on the date specified in the Order Acceptance Form or PSA and will continue as specified. Whilst EXELARATE will use all reasonable endeavours to complete the Project by any target date specified on the Order Acceptance Form or PSA, time shall not be of the essence. Work will be conducted at the location specified in the Order Acceptance Form or PSA.

3 Charges

3.1 The Customer will pay EXELARATE the charges specified in the Order Acceptance Form or PSA (where applicable calculated by reference to the daily rate specified, in which case a working day shall comprise 7 hours). Overtime rates will apply for services provided in excess of 7 hours per working day at:

3.1.1 times normal hourly rate for services carried out on working days in excess of 7 hours;

3.1.2 times normal hourly rate for services carried out on Saturdays; and

3.1.3 times normal hourly rates for work carried out on Sundays and Bank or Public holidays.

3.2 In addition to the charges payable pursuant to clause 3.1 the Customer will reimburse EXELARATE reasonable accommodation, subsistence and travel expenses incurred in the performance of the Project unless specified otherwise.

3.3 EXELARATE will render an invoice in respect of charges and expenses at the end of the Project provided that if the Project lasts or is anticipated to last for more than 30 days EXELARATE will render an invoice at the end of each calendar month.

3.4 The Customer acknowledges that in order for EXELARATE to be able to fulfil its obligations EXELARATE will allocate certain staff to be available on certain dates and that for the Customer to cancel, postpone or in any way fail to make it possible or practicable for EXELARATE to perform any of its services on such dates will result in loss to EXELARATE. Accordingly EXELARATE reserves the right to invoice the Customer for cancellation or postponement charges in the event that the Customer fails to make available to EXELARATE, at a time previously notified to the Customer, documentation, information, personnel and/or facilities for the purposes of fulfillment EXELARATE's fulfillment of its obligations. Charges to be levied by EXELARATE pursuant to this clause 3.4 will be calculated as a percentage of the value of the services and staff allocated as follows:

Up to 2 days notice **100%**

Up to 5 but more than 2 days notice **75%**

Up to 10 Days but more than 5 days notice **50%**

4 Customer's Obligations

4.1 The Customer shall:

4.1.1 provide EXELARATE with such information and documentation as EXELARATE might reasonably require to complete the Project;

4.1.2 ensure that its employees cooperate with EXELARATE in connection with the Project;

4.1.3 in the event that EXELARATE is required to use and/or modify any software owned by or licensed to the Customer as part of the Project, ensure that all necessary consents, permissions and licenses to such use and/or modification have been obtained.

4.1.4 be responsible for backing-up all data and software before any Project begins and during the course of an Project and EXELARATE shall not be responsible for any loss of software or data;

4.1.5 provide a safe working environment for any EXELARATE employees or agents who are engaged in the Project at the Customer's premises.

4.2 It is acknowledged by the Customer that where the Project includes the provision of advice by EXELARATE on suitable hardware and/or software to meet the requirements of the Customer, it is critical that EXELARATE be provided with comprehensive and accurate information by the Customer or its agents. EXELARATE shall not be responsible for any delay in completion of the Project or defect in the advice provided by EXELARATE which results from a delay in supply of, or inaccurate provision of, information by the Customer.

5 EXELARATE's Obligations

5.1 EXELARATE shall ensure that the EXELARATE staff engaged on the Project are suitably experienced and have the necessary expertise to complete the Project.

5.2 EXELARATE warrants that it will use reasonable care and skill in conducting the Project.

6 Intellectual Property Rights

6.1 Unless expressly agreed otherwise in writing all copyright and other intellectual property rights in any software or other material produced by EXELARATE in completing the Project will be and remain the exclusive property of EXELARATE.

6.2 The Customer will be deemed to have been granted a non-exclusive perpetual non-assignable licence to use the software created for the purposes of the contract on its delivery provided that all monies due under the agreement for provision of professional services and payable by the Customer have been received by EXELARATE.

7 Reporting and Review Procedure

7.1 During the course of carrying out the Project EXELARATE will report to the Customer at the intervals specified in the Order Acceptance Form or PSA setting out the progress made and the time devoted to the Project during the relevant period.

7.2 For all projects which have undergone a PDW a final review by the parties will be held of the deliverables under the PDR and a Completion Certificate will be issued by EXELARATE for signature by the Customer.

7.3 Forthwith upon issue of the Completion Certificate the Customer shall have a period of 5 working days in which to advise EXELARATE of any deficiencies of the deliverables measured against the PDR. Such report must be made to the EXELARATE Helpdesk by email or telephone call for support action to be taken free of charge by EXELARATE in respect of such deficiencies reported within the stated 5 day period.

7.4 EXELARATE reserve the right to charge the Customer at prevailing standard rates for any services requested to be carried out by the Customer pursuant to clause 7.3 which arises out of anything other than a defect of the deliverables within the control of EXELARATE measured against the PDR.

8 Indemnity

The Customer agrees to protect, indemnify and defend EXELARATE at its own expense from and against any and all claims of infringement of copyright and other intellectual property rights resulting from the modification or development of any of the Customer's software as a part of the Project.

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GENERAL TERMS AND CONDITIONS

1 Definitions and Interpretation

In this document (unless the context requires otherwise):

"Customer" means the person, firm or company forming a contract with EXELARATE under these Terms and Conditions of Trade

"Order" means a request by the Customer for the supply of goods or services which is accepted by EXELARATE;

"Order Acceptance Form" means written or other confirmation from EXELARATE accepting an Order from the Customer;

"Terms and Conditions" means the Standard Terms and Conditions of Trade of EXELARATE Limited as set out in this document.

2 Payment Terms

2.1 All invoices issued by EXELARATE are payable within 30 days of the date of issue unless agreed otherwise in writing by EXELARATE.

2.2 If the Customer fails to pay an invoice or charges to EXELARATE by the due date and has not lodged a dispute in accordance with clause 2.4 below then without prejudice to its other rights under EXELARATE's Terms and Conditions EXELARATE shall be entitled:

2.2.1 to charge interest on any outstanding sum at the rate of 3% per annum over bank base rate from the date due to the date payment is received;

2.2.2 to suspend the provision of all services to the Customer

2.3 The Customer shall provide written confirmation of any bona fide dispute or query relating to an invoice within seven days of receipt of the invoice. The Customer shall settle all non-disputed amounts on an invoice by the due date.

2.4 All prices stated in any documentation supplied by EXELARATE to Customer (including, but without limitation, estimates, quotations, proposals and reports) shall be subject to the prevailing rate of Value Added Tax from time to time.

2.5 For all goods or products ordered for which supply is made from outside of the United Kingdom, the price quoted by EXELARATE shall be subject to any increase incurred by EXELARATE by reason of a change in the exchange rate applicable for such goods or products between the date of quotation by EXELARATE and shipment to the Customer.

3 Confidentiality

3.1 EXELARATE acknowledges that information disclosed to it by the Customer during the course of negotiations or the provision of services by EXELARATE may be confidential and accordingly EXELARATE undertakes that it will not disclose any information which is communicated to it by the Customer which is identified as confidential (unless it is already in the public domain) to any third party.

3.2 The Customer acknowledges that information disclosed to it by EXELARATE during the course of negotiations or the provision of services by EXELARATE may be confidential and accordingly undertakes that it will not disclose any information which is communicated to it by EXELARATE which is (subject to clause 3.3) identified as confidential (unless it is already in the public domain) to any third party.

3.3 The obligations in clauses 3.1 and 3.2 shall not apply to any information which:

3.3.1 was known to the recipient (without obligation to keep the same confidential) at the date of its disclosure;

3.3.2 is after the date of disclosure lawfully acquired by the recipient in good faith from an independent third party who is not subject to any obligation of confidentiality in respect of such information;

3.3.3 has been independently ascertained or created by the recipient without access to any or all of the confidential information; or

3.3.4 is required by law, judicial action, governmental department or agency or other regulatory authority to be disclosed.

4 Termination

4.1 Either party may forthwith terminate (confirmation of such termination to be notified in writing to the other party) without liability to the other any Agreement if any of the following events shall occur:

4.1.1 if the other party is guilty of a serious breach of any term, condition or provision of the Terms and Conditions which, in the case of a breach capable of remedy, has not been remedied within 21 days of a written request so to do;

4.1.2 if the other party, being a body corporate, shall present a petition or have a petition presented by a creditor for its winding up, or shall convene a meeting to pass a resolution for voluntary winding up, or shall enter into any liquidation (other than for the purposes of a bona fide reconstruction or amalgamation), or shall call a meeting of its creditors, or shall have a receiver of all or any of its undertakings or assets appointed;

4.1.3 if the other party, being an individual or a partnership, shall commit any act of bankruptcy, shall have a liquidator or trustee or similar officer appointed over any of its assets, shall make or negotiate for any composition or arrangement or assignment for the benefit of its creditors or shall be dissolved (as a partnership); or

4.1.4 if the other party shall be deemed by the relevant statutory provisions under the applicable law to be unable to pay its debts or shall cease to carry on business.

4.2 All rights and obligations of the parties shall cease to have effect immediately on termination of this agreement except that termination shall not effect:

4.2.1 accrued rights and obligations of the parties at the date of termination; and

4.2.2 the continued existence and validity of the rights and obligations of the parties and any provisions of an Agreement necessary for the interpretation or enforcement.

5 Sub contractors

EXELARATE may engage the services of third parties to provide assistance in connection with the provision of services to the Customer.

6 Non Solicitation of Staff

6.1 The Customer acknowledges that the solicitation of the staff or sub-contractors engaged by EXELARATE in the provision of services to the Customer would cause EXELARATE to suffer a loss accordingly, the Customer undertakes that it shall not for the duration of any Agreement pursuant to the Terms and Conditions apply, and for a period of one year following the expiry or termination of any such Agreement, employ or contract the services of any person who is or was employed or engaged by EXELARATE to provide services to the Customer under that Agreement.

6.2 The Customer acknowledges that the breach of clause 6.1 would cause EXELARATE significant loss and disruption and that by way of liquidated damages if the Customer breaches the obligation imposed by clauses 6.1 it will forthwith pay a sum equal to six months of the new salary of the relevant employee to EXELARATE.

7 Limitation of Liability

7.1 EXELARATE accepts unlimited liability for death or personal injury to the extent that the same arises directly from the negligence of EXELARATE or its employees.

7.2 EXELARATE shall not be liable to the Customer for:

7.2.1 any indirect loss or damage or special, incidental or consequential damages (including without limitation loss of profit) whether arising from any tortious act or omission, breach of contract or otherwise howsoever caused; nor

7.2.2 for any loss of data or software resulting from any tortuous act or omission, breach of contract or otherwise.

7.3 Subject to clause 7.4 below (and save as otherwise excluded) EXELARATE accepts responsibility for direct loss suffered by the Customer as a result of EXELARATE's negligence or breach of contract as follows:

7.3.1 in a case in which the loss results from negligence or breach of contract in connection with the provision of professional services, EXELARATE accepts liability for direct loss suffered by the Customer limited to the higher of £50,000 (fifty thousand pounds) and 100% of the charges paid by the Customer (excluding VAT) for the Project in connection with which the liability arose;

SAVE AS STATED ABOVE WITHOUT PREJUDICE TO THE GENERALITY OF CLAUSE 7.2 EXELARATE SHALL NOT BE LIABLE FOR ANY LOSS SUFFERED AS A RESULT OF ITS NEGLIGENCE BREACH OF CONTRACT OR OTHERWISE

7.4 EXELARATE will have no liability to the Customer in respect of any direct loss unless the Customer informs EXELARATE of any breach of contract or negligence ("Default")

7.4.1 as soon as reasonably practicable after it first becomes aware of it; and

7.4.2 allows EXELARATE a reasonable opportunity to correct the Default; and

7.4.3 takes all reasonable steps to mitigate the loss suffered as a result of the Default.

7.5 Except in the case of the Default arising under clause 7.1 EXELARATE shall have no liability to the Customer in respect of any Event of Default unless the Customer shall have served notice of the same upon EXELARATE within 1

year of the date it became aware of the circumstances giving rise to the Event of Default or the date when it ought reasonably to have become so aware.

7.6 Nothing in this clause 9 shall confer any right or remedy upon the Customer to which it would not otherwise be legally entitled.

7.7 In the event that any of the limitations of liability or exclusions of liability contained in the Terms and Conditions are found to be unenforceable by any competent court the maximum liability of EXELARATE for the loss which would otherwise have been limited or excluded shall be £500,000 (five hundred thousand pounds sterling).

8 Force Majeure

EXELARATE shall be under no liability to the Customer in respect of anything which, apart from this provision, may constitute breach of contract arising by reason of *force majeure*, namely, circumstances beyond the control of EXELARATE which shall include (but shall not be limited to) acts of God, perils of the sea or air, fire, flood, drought, explosion, sabotage, accident, embargo, riot, civil commotion, including acts of local government and parliamentary authority; inability to supply the software, materials, breakdown of equipment and labour disputes of whatever nature and for whatever cause arising including (but without prejudice to the generality of the foregoing) work to rule, overtime bars, strikes and lockouts and whether between either of the parties hereto and any or all of its employees and/or any other employer and any or all of its employees and/or between any two or more groups of employees (and whether of either of the parties hereto or any other employer).

9 Waiver

Failure or neglect by EXELARATE to enforce at any time any of the provisions hereof shall not be construed nor shall be deemed to be a waiver of EXELARATE's rights hereunder nor in any way affect the validity of the whole or any part of a contract nor prejudice EXELARATE's rights to take subsequent action.

10 Headings

The headings of the Terms and Conditions are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of any of the Terms and Conditions.

11 Severability

If any provision of an Agreement made pursuant to the Terms and Conditions shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the other provisions of such Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.

12 Notices

All communications relating to an Agreement pursuant to the Terms and Conditions shall be in writing and delivered by hand or sent by post or facsimile to the party concerned at the relevant address shown in the relevant Order Acceptance Form, Agreement or such other address as such party may from time to time have communicated to the other in writing in accordance with this clause. Any such communication shall take effect if delivered, upon delivery; if posted, upon the earlier of delivery and, if sent by first class registered post, 10 am on the second working day after posting; if sent by facsimile when a complete and legible copy of the communication, whether that sent by facsimile or a hard copy sent by post or delivered by hand, has been received at the appropriate address.

13 Law

The parties hereby agree that the contract concluded between them and constituted on these Terms and Conditions shall be construed in accordance with English Law and the parties hereby agree that they shall submit to the non-exclusive jurisdiction of the Courts of England and Wales.

14 Conflict

In the event of conflict between the content of an Order Acceptance Form and the Terms and Conditions the former will prevail.

15 Dispute Resolution

15.1 In the event of a dispute in connection with the supply of hardware, software or services by EXELARATE the parties will use their reasonable endeavours to negotiate to reach a settlement.

15.2 If a settlement cannot be achieved within 14 days of the dispute first arising then the dispute shall, if both parties agree, be referred for final settlement to an independent expert nominated jointly by the parties or (failing such nomination within 14 days after either party's request to the other therefor) nominated at the request of either party by the President of the British Computer Society.

15.3 An expert appointed pursuant to clause 15.2 shall be deemed to act as an expert and not as an arbitrator and his decision shall (in the absence of clerical or manifest error) be final and binding on the parties and his fees for so acting shall be borne by the parties in equal shares unless he determines that the conduct of either party is such that such party should bear a greater proportion of or all such fees.

15.4 Any reference to arbitration under this clause shall be deemed to be a reference to arbitration within the meaning of the Arbitration Act 1996 (as amended).

16 General

16.1 No addition to or modification to an Order Acceptance Form, the Terms and Conditions or any Agreement made between the parties will be binding on the parties unless made in writing and signed by a duly authorised representative of the parties.

16.2 Save as expressly stated the rights and obligations of the parties under any agreement to which these Terms and Conditions apply shall not be assignable.

16.3 In the event that EXELARATE suffers loss as a result of the Customer's breach of contract or any tortious act or omission, in addition to all other rights EXELARATE may have hereunder or in law, the Customer shall also pay EXELARATE all reasonable expenses incurred by EXELARATE in connection with the enforcement of any of EXELARATE's rights hereunder, including its legal costs.

16.4 EXELARATE reserves the right to vary or amend the Terms and Conditions at any time upon prior written notice to the Customer of one calendar month.

16.5 In accordance with clause 1(2)(a) of the Contracts (Rights of Third Parties) Act, the parties intend that no term of any agreement to which these Terms and Conditions shall apply shall be enforceable by someone who is not a party to such agreement.