

1. **Definitions**
- 1.1 "Agreement" - shall mean these Conditions, the Proposal and, where relevant, the Licence Agreement taken together and in the event of any inconsistency or ambiguity, these Terms and Conditions shall prevail.
- 1.2 "CLEARPEOPLE" - means ClearPeople Limited of 82 Victoria Street, LONDON, SW1H 0HW, registered in England, Company Number 4643620.
- 1.3 "Client" or "Customer" - means the person/s organisation named in the Proposal.
- 1.4 "Completion Date" or "Delivery Date" - means the date/s upon which the Services or any part/s thereof have been carried out and completed as agreed between the parties or such other date as may be agreed between the parties from time to time. In any event, if all Services have been delivered and no written complaints received by registered letter addressed to CLEARPEOPLE within 10 day calendar days of the Delivery Date.
- 1.5 "Conditions" - means these Terms and Conditions.
- 1.6 "Daily Rate" - shall mean the rate payable for the Services per Working Day, as set out in the ClearPeople Price list or prices given in the ClearPeople proposal.
- 1.7 "Expenses" - means (but shall not be limited to) travel expenses, parking fees, the cost of Hotel accommodation or otherwise, and any other expenses reasonably and properly incurred in the supply of the Services at cost plus 5%, together with a charge for mileage at the rate of 50 pence per mile.
- 1.8 "Fee" - means the fees charged by CLEARPEOPLE for the provision of the Services excluding Expenses.
- 1.9 "Force Majeure" - shall mean any Act of God, war, strike, lock-out, trade dispute, fires, breakdowns, interruptions of transport, Government action, terrorism, delays in delivery of goods or products or any cause whatsoever whether or not the like nature to those already mentioned which directly or indirectly prevents the performance or completion of Services on the Completion Date.
- 1.10 "Hourly Rate" - shall mean such sum as represents the Daily Rate divided by the Working Hours.
- 1.11 "Intellectual Property" - means any software or document provided or developed by CLEARPEOPLE in any media whatsoever including enhancement improvement or modification thereof to such software whether in the ownership or in the control of either party together with any copyright relating to such enhancement, improvements and/or modification.
- 1.12 "Interest" - shall mean 4% above the minimum lending rate of Barclays Bank PLC, from time to time in force calculated on a daily basis.
- 1.13 "Proposal" - means the Proposal annexed hereto which is hereby agreed and deemed to incorporate the Conditions.
- 1.14 "Services" - means the supply of services by CLEARPEOPLE as referred to in the Proposal or by reference to any quotation given by CLEARPEOPLE to the Client as may be referenced in the Proposal or in any Licence Agreement.
- 1.15 "Working Day" - means the days between Monday to Friday (excluding Saturday and Sunday, Public or National Bank Holidays) in England.
- 1.16 "Working Hours" - means the hours between 09:00 hours to 17:30 hours during each Working Day.
2. **Effect of Conditions**
- 2.1 The Conditions shall apply to all Services and the Agreement to the exclusion of all other terms and conditions including any terms or conditions which the Client may purport to apply under any contract or agreement or similar document.
- 2.2 Any variation of the conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless previously agreed in writing by CLEARPEOPLE.
- 2.3 Any terms and provisions contained in the Proposal which are inconsistent with the Conditions shall not be binding on and shall not apply to the Agreement or the Services.
3. **The Fee**
- 3.1 Unless otherwise stipulated by CLEARPEOPLE, any quotation as to the Fee is valid for 30 days from the date of the giving of such quotations but subject to the Terms or qualifications contained therein.
- 3.2 The Fee shall be as set out in the Proposal and shall be charged out PROVIDED THAT:-
- 3.2.1 Services provided to the Client at the Client's request:-
- 3.2.1.1 Outside Working Hours shall be charged out at a minimum unit of 3.5 hours (even if the work is carried out in a period less than such unit) and at a rate of 2 x the Hourly Rate and
- 3.2.1.2 If carried out on days which are not Working Days, the Fee will be charged at a minimum unit of 3.5 hours as aforesaid at a rate being 2.5 x the Hourly Rate
- 3.2.1.3 Except that the provisions of this sub-paragraph 3.2.1 shall not apply in respect of a fixed Fee quoted by CLEARPEOPLE unless the Client shall be in breach of its obligations or the Client has requested additional Services.
- 3.3 CLEARPEOPLE reserves the right to charge the appropriate Daily Rate and to otherwise increase the Fee for the Services in the event that:-
- 3.3.1 CLEARPEOPLE incurs increases in overheads or in the cost of carrying out the Services resulting from delays caused by whatsoever reason or howsoever arising from and directly attributable to any act, omission, misrepresentation or default of obligations on the part of the Client
- 3.3.2 Changes in the Services (whether in the nature of supply, specification or design) which are required by the Client from time to time
- 3.3.3 Incorrect, inadvertent or incomplete information or representations furnished by the Client upon which CLEARPEOPLE has reasonably relied upon
- 3.3.4 Additional expenses are incurred by CLEARPEOPLE resulting from delays which are attributable to reasons, acts or omissions beyond its control
- 3.5 Value Added Tax shall be charged at the appropriate rate on the Fee and the Expenses.
4. **Payment**
- 4.1 Notwithstanding anything to the contrary, Expenses shall be paid within 14 days from the date of submission of a valid VAT invoice by CLEARPEOPLE whether wholly or partly relating to Expenses.
- 4.2 Payment for Services shall be made by the Client within 30 days from the date of a VAT invoice submitted by CLEARPEOPLE to the Client without set-off or deduction of whatsoever nature or howsoever arising except as expressly authorised by the Agreement
- 4.3. Except that:-
- 4.3.1 Payment for Services agreed to be supplied at a fixed Fee shall be payable to CLEARPEOPLE by the Client as to 50% of the Fee with the Client's order and the remaining 50% will be divided over the term of the project and payable in equal monthly instalments.
- 4.4 If for any reason (other than Force Majeure or failure by the Client to comply with its obligations herein contained, including but not limited to Client's payment obligations) the Services shall not have been supplied by the Completion Date the Client shall pay:-
- (a) 80% of the Fee on such date as the parties shall have agreed to be the revised Completion Date for completion of the Services and
- (b) The balance of the Fee on the Completion Date of the Services, if later.
- 4.3 If the Client fails to make any payment in accordance with the provisions of this clause 4 the amount owing shall bear interest from the date upon which such payment is/are due and payable to the date of actual payment of the same (before as well as after any judgement).
5. **Agreements and Declarations**
- 5.1 CLEARPEOPLE agrees to:-
- 5.1.1 Subject to the Client carrying out its Obligations as herein contained, use its reasonable endeavours to carry out and/or procure the due performance of the Services by the Completion Date.
- 5.1.2 Provided that if CLEARPEOPLE shall directly or indirectly be prevented from performing the Services by the Completion Date as a result of Force Majeure it shall be entitled to extend the period for performance of the Services by a period equivalent to that during which its performance has been delayed or prevented or such other period as may be reasonable and practicable having regard to the circumstances PROVIDED that it shall have first given notice to the Client of the event of Force Majeure within 21 days of such event
- 5.2 **Clients Obligations**
- 5.2.1 The Client hereby agrees to provide all help, assistance and relevant information (without limitation) to enable CLEARPEOPLE to carry out the Services and shall not in any way hinder, obstruct or stop (whether by act or omission) CLEARPEOPLE from completing the Services by the Completion Date and the Client undertakes to assist and comply with any reasonable requests made by CLEARPEOPLE from time to time to enable it to carry out the Services.
- 5.2.2 In recognition and by way of acknowledgement that CLEARPEOPLE personnel and/or representatives have special skills and expertise in the performance of the Services and are of material importance to CLEARPEOPLE in its business, and also in consideration of the provisions herein contained, the Client covenants and undertakes that it shall not for a period of one year from the Completion Date or termination thereof (if sooner) directly or indirectly solicit employ or hire any CLEARPEOPLE personnel or representatives (whether employees or sub-contractors of CLEARPEOPLE) to carry out or perform any services similar to the Services or, in the event of earlier termination, to complete the Services following termination. In the event of breach of this covenant the Client shall pay CLEARPEOPLE the greater of:-
- (a) 30% of any annual fee, salary, remuneration and/or emoluments (of whatsoever nature) paid or given to such personnel or representatives and
- (b) 50% of such amounts as would reasonably represent the Fee which CLEARPEOPLE would have received if it had been commissioned to carry out the Services (which such personnel or representative has been employed to carry out for or on behalf of the Client) as shall be assessed for a period of one year from the date of employment or engagement of such personnel or representative by the Client.
6. **Intellectual Property**
- 6.1 The parties hereby agree and declare:-
- All Intellectual Property shall remain the property of CLEARPEOPLE unless express written agreement has been made otherwise for the Intellectual Property to be licensed to the Client.
- 6.2 Until full payment of the Fee and expenses, CLEARPEOPLE shall have the right of access over any part or parts of the Client's premises at which the Services are carried out and the right to retrieve the Intellectual Property and/or any goods, equipment or other possessions belonging to CLEARPEOPLE, its personnel and/or its representatives.
7. **Liability**
- 7.1 CLEARPEOPLE shall be under no liability whatsoever to the Client for any direct or indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach of the Agreement and in the event of any breach the remedies of the Client shall be limited to damages. Under no circumstances shall any liability of CLEARPEOPLE exceed the Fee. Provided always that under no circumstances shall CLEARPEOPLE be liable in respect of any damage or loss of whatsoever nature and howsoever arising under sub-clauses 5.2.2 and 6.2 of the Conditions.
8. **CLEARPEOPLE promotional briefings**
- 8.1 CLEARPEOPLE wishes to refer to the Services that have been provided to the Client by way of a link at the bottom of the Client's web site to ClearPeople's web site and a case study in order to promote the expertise, professionalism and business of CLEARPEOPLE in providing such Services: and
- 8.2 In consideration of providing the Services the Client hereby grants CLEARPEOPLE the right and liberty to do so during the provision of the Services and also after completion of the Services provided that such promotions in whatsoever media:-
- a. do not in any way detract from the Clients professionalism or business integrity or bring the Client into disrepute; and
- b. (except with the Clients prior consent) CLEARPEOPLE shall take reasonable steps to keep the Clients name and identity anonymous; and
- c. (except with the Clients prior consent) CLEARPEOPLE shall not use any trademark, logo or artwork design which can directly or indirectly be associated with the Client.
9. **Termination**
- 9.1 Without Prejudice to any other rights, CLEARPEOPLE shall have the right to terminate the Agreement by notice in writing to the Client as follows:-
- a. Forthwith upon the giving of notice where the Client shall be in material breach of its Obligations herein contained, such breach being incapable of remedy.
- b. Forthwith if the Client has not remedied any breach within 30 days following receipt of notice from CLEARPEOPLE requiring it to remedy the same.
- c. Forthwith if any distress or execution be levied on the premises of the Client where the Services are being carried out or if it should make any arrangement or composition with its Creditors generally or commit an act of bankruptcy or insolvency (as defined by the Insolvency Act 1986) or if any Receiving Order of Administration Order should be presented or resolution passed for its winding up (otherwise and for the purposes of and followed by an amalgamation or reconstruction) or if possession should be taken by a Receiver or Administrator of the whole or any material part of the assets or business of the Client.
- 9.2 In the event of termination for whatsoever reason, CLEARPEOPLE shall be entitled to retain and set-off against any liability of the Client to CLEARPEOPLE all monies paid representing the Fee and/or Expenses on account of the same to the extent of discharging such liability.
- 9.3 If CLEARPEOPLE is prevented or delayed in the performance of the Services by Force Majeure for a continuous period of 4 weeks or more then either party shall be at liberty to terminate this Agreement by service of notice in writing of not less than 2 weeks. In the event of such termination the Client shall pay CLEARPEOPLE the Expenses together with the Fee, however, such Fee shall be assessed on a quantum meruit basis.
10. **Assignment; Third Party Rights**
- 10.1 The Client shall not assign or transfer or purport to assign or transfer the benefit or burden of this Agreement without the prior written consent of CLEARPEOPLE, such consent not to be unreasonably withheld or delayed.
- 10.2 Unless expressly provided otherwise, this agreement confers no rights on any third party and the Rights of Third Parties Act (1998) is excluded.
- 10.3 Nothing in this Agreement shall be construed as creating any agency or partnering.
11. **Disputes**
- 11.1 If any dispute or difference arises out of the Agreement, the parties shall use their reasonable endeavours to settle the same by negotiation and by application of goodwill at the highest level, failing which either party shall be at liberty to refer the matter to an independent Arbitrator in accordance with the Arbitration Acts 1950 and 1979 and hereby agree that the Arbitrators Award both as to the determination and as to costs shall be final and binding..
12. **Governing Law**
- This Agreement and the agreements referred to herein are subject to the Laws of England and Wales and the courts of England and Wales shall have jurisdiction in all disputes.
13. **Notices**
- 13.1 Any notice, request, instruction or other document to be given hereunder shall be delivered or sent by First Class Post or by fax (such fax notice to be confirmed by letter posted within 12 hours) to the address of the other party set out in this Agreement (or such other address as may have been notified) for this purpose and any such notice or other document shall be deemed to have been served (if delivered) at the time of delivery (if sent by post), upon the expiration of 48 hours after posting, and (if sent by fax) upon the expiration of 12 hours after despatch. If any of these deemed service dates falls on a day which is not on a Working Day, delivery shall be deemed as 9am of the next Working Day.
14. **Severability**
- If any provision of this Agreement shall be found to be invalid or unenforceable, the invalidity or enforceability of such a provision shall not affect the other provisions of this 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 an invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible economic, legal and commercial objectives of the invalid or unenforceable provision.
15. **Entire Agreement**
- 15.1 CLEARPEOPLE shall not be liable to the Client for any loss arising from or in connection with any representations agreements statements and undertakings unless confirmed by a duly authorised representative of CLEARPEOPLE in writing or expressly incorporated or referred to in this Agreement and on the documents referred to herein by such person.
16. **V.A.T.**
- 16.1 All amounts stated in the Conditions, the Proposal and any Licence or other agreement are exclusive of Value Added Tax and any Value Added Tax arising pursuant to such agreements or in respect of the Services and/or the Expenses hereunder shall on the issue of a valid tax invoice in respect of the same be paid to the party making such supply by the party to whom it is made in addition to any other consideration payable therefor.