

TERMS AND CONDITIONS OF BUSINESS

1 DEFINITIONS

- 1.1 This agreement is entered into between eClarity Solutions Limited (hereinafter referred to as "eClarity Solutions" and the purchaser of services or goods from the "Company" hereinafter referred to as "Client").
- 1.2 These terms apply to all eClarity Solutions Clients from the first financial contact point.
- 1.3 Any changes to these Terms and Conditions are valid only if agreed in writing between eClarity Solutions and the Client.
- 1.4 Any error or omission in any sales brochure, quotation, price list, acceptance or offer, invoice or other material issued by eClarity Solutions (whether typographical, clerical or otherwise) may be corrected by eClarity Solutions without any liability on the part of eClarity Solutions.

2 APPOINTMENT / THE ORDER FORM

- 2.1 The Client appoints eClarity Solutions to provide Goods and Services in accordance with the Order Form. The Terms apply to the Goods and Services set out in the Order Form. No other terms will apply to the provision of the Goods and Services.
- 2.2 The quantity, quality and description of the Goods and Services shall be as set out in the Order Form.
- 2.3 It is the sole responsibility of the Client to ensure the Goods and Services set out on the Order Form meet its requirements.
- 2.4 eClarity Solutions may make changes to the Goods and Services in order to conform with any legal requirements or which do not materially affect their quality or performance.
- 2.5 The Client shall at its own expense supply eClarity Solutions with all necessary materials and information required by eClarity Solutions to provide the Goods and Services in accordance with these Terms. If a failure by the Client to provide materials or information causes eClarity Solutions to miss a deadline, the eClarity Solutions deadline shall be deemed to be extended by the period of the Client's delay, plus that necessary due to availability of resources.

3 PRICE & PAYMENT TERMS

- 3.1 All prices quoted exclude VAT which will be charged at the rate at the time of invoicing.
- 3.2 All quotations lapse after 30 days (unless otherwise stated or agreed).
- 3.3 eClarity Solutions shall invoice the Client for the Goods and Services monthly in arrears and/or at the completion of a specific order as deemed appropriate by eClarity Solutions.
- 3.4 All prices quoted are illustrative estimates only and the price charged will be the current and correct price at time of invoice.
- 3.5 eClarity Solutions reserves the right to alter the price to reflect any changes in costs to supply goods or services.
- 3.6 Unless the subject of a genuine dispute, which must be raised in writing 10 days prior to the invoice due date, the Client shall pay the full outstanding balance within 30 calendar days of receipt of a valid invoice (the "Due Date"). By prior written negotiation eClarity Solutions may agree to accept payment on a Net Monthly basis.
- 3.7 eClarity Solutions accept payment by cheque, cash or BACS transfer.
- 3.8 eClarity Solutions reserves the right to charge a late payment fee should any invoice exceed its payment terms, which is in full support of the "Better Payment Practice Campaign" governed by the "Late Payment of Commercial Debts Regulations 2002".
- 3.9 Late payments may also incur interest charged at the current rate governed by the "Late Payment of Commercial Debts (interest) Act 1998". Such interest shall accrue on a daily basis at the rate of 8% above the base rate of Barclays Bank Plc from time to time from the due date until the date of payment whether before or after judgement.
- 3.10 Failure to pay according to the payment schedule may result in the immediate suspension of the provided service.
- 3.11 Should the Client have an approved credit account, eClarity Solutions reserve the right to reduce its limit or to bring forward the due date for payment and may do so without notice. The Client does not have the right to set off any money that may be claimed from eClarity Solutions against anything that may be outstanding.
- 3.12 eClarity Solutions reserves the right to allocate funds received, first to services then to goods supplied. Until payment is received in full, title to the goods supplied remain with eClarity Solutions.
- 3.13 Any single overdue invoice will, by implication, link all other unpaid invoices and thus they will become due irrespective of their original due dates.
- 3.14 eClarity Solutions reserves the right to take legal proceedings to recover the cost of the services supplied should payment not be received.
- 3.15 eClarity Solutions may claim a fixed sum of compensation to cover credit control overhead costs.
- 3.16 eClarity Solutions may recover the costs of taking legal action against the Client
- 3.17 Whilst the Client owes eClarity Solutions money, the right is reserved by eClarity Solutions to retain the goods/services until payment has been made in full (a *lien* - failure to meet obligation).
- 3.18 The Client will pay the price for the Goods and Services. If the Client wants eClarity Solutions to deliver the Goods, the Client will pay eClarity Solutions charges for transport, packaging and insurance.

- 3.19 All amounts due under these Terms shall be paid in full without any deduction or withholding other than as required by law and neither party shall be entitled to assert any credit, set-off or counterclaim against the other party in order to justify withholding payment of any such amount in whole or part.
- 3.20 eClarity Solutions reserves the right to require payment up front of services where:
 - 3.20.1 The Client has no trading history with eClarity Solutions
 - 3.20.2 The Client has poor credit history with eClarity Solutions or in general
 - 3.20.3 The order value is deemed significant

4 DISPUTES

- 4.1 Any queries which refer to the supplied invoice must be made in writing no later than 10 working days prior to the invoice due date.
- 4.2 Failure to dispute within this time period will be marked as full acceptance of the invoice and the Client will be liable for the full invoice amount.

5 VARIATIONS

- 5.1 Any waiver or variation of these terms is binding in honour only, unless:
 - 5.1.1 Made in writing
 - 5.1.2 Signed on behalf of each party and
 - 5.1.3 Expressly stating as an intention to vary these terms
- 5.2 All orders that are placed by Clients with eClarity Solutions will be on these terms (or any that may be issued on both parties to replace them).

6 FORCE MAJEURE

- 6.1 Should eClarity Solutions be unable to perform their obligations to the Client or be able only to perform them at an unreasonable cost because of uncontrollable circumstances, eClarity Solutions may cancel or suspend any obligations without liability.
- 6.2 Examples of such circumstances include acts of God, accidents, and explosion, war, fire, flood, transport delays, strikes and other industrial disputes, difficulties obtaining supplies or unforeseen technical or system issues.

7 JURISDICTION / APPLICABLE LAW

- 7.1 English Law is applicable to any contract made under these terms. The English and Welsh courts have non-exclusive jurisdiction.
- 7.2 If the Client is more than one person or entity, each is liable for all obligations under these terms (*joint and several liability*).
- 7.3 If any of these terms are unenforceable as drafted:
 - 7.3.1 It will not affect the enforceability if any other of these terms; and
 - 7.3.2 If it would be enforceable if amended, it will be treated as so amended
- 7.4 We may treat a Client as insolvent if:
 - 7.4.1 They are unable to pay their debts as they fall due; or
 - 7.4.2 They (or any item of their property) become the subject of;
 - (a) Any formal insolvency procedure (examples of which include receivership, liquidation, administration or bankruptcy)
 - (b) Any application or proposal for any formal insolvency procedure, or
 - (c) Any application, procedure or proposal overseas with similar effect or purpose.

8 LIABILITY

- 8.1 eClarity Solutions are not liable for any other loss or damage (including indirect or consequential loss, financial loss, loss of profits or loss of use) arising from the contract or the supply of goods or their use, even if eClarity Solutions is proven to be negligent.
- 8.2 eClarity Solutions total liability to the Client (from one single cause) caused by eClarity Solutions negligence is limited to the eClarity Solutions current insurance policy but will never exceed the value of job in hand excluding goods supplied.

9 CANCELLATION

- 9.1 If the Order is cancelled (for any reason) the Client is to pay eClarity Solutions in full for all financial or unfinished work which eClarity Solutions may then hold for the duration of the completed order. In the event of a cancellation eClarity Solutions reserve their intellectual property rights and may, request their removal.
- 9.2 eClarity Solutions may suspend or cancel the order of the Client by written notice if:
 - 9.2.1 The Client should fail to pay eClarity Solutions any due money

- 9.2.2 The Client becomes insolvent
- 9.2.3 The Client fails to honour their obligation under these terms
- 9.3 The Client may not cancel the order, unless eClarity Solution agrees and in which case this must be in writing, Clause 9.1 still applies

10 DELIVERY OF GOODS

- 10.1 The Client will collect the Goods from eClarity Solutions premises at any time after eClarity Solutions has notified the Client that the Goods are ready for collection.
- 10.2 Any dates quoted for delivery of the Goods are approximate and eClarity Solutions shall not be responsible for any delay in delivery of the Goods, however caused. Unless agreed in writing, in advance by eClarity Solutions, time for delivery shall not be of the essence. eClarity Solutions may deliver Goods before the scheduled delivery date.

11 OWNERSHIP AND RESPONSIBILITY

- 11.1 Ownership of any consignment of Goods shall not pass to the Client until eClarity Solutions has received payment in full of all sums to it in respect of all consignments of Goods delivered to the Client.
- 11.2 Until ownership in the Goods passes to the Client, the Client shall:
 - 11.2.1 hold the Goods on behalf of eClarity Solutions, take proper care of them take all reasonable steps to prevent any damage to or deterioration of them;
 - 11.2.2 store or keep the Goods separately from other Goods, so as to show clearly that they belong to eClarity Solutions;
 - 11.2.3 not sell or part with possession of the Goods;
 - 11.2.4 keep the Goods free from any mortgage, charge, lien or other encumbrance;
 - 11.2.5 insure the Goods; and
 - 11.2.6 notify eClarity Solutions immediately if any event specified in clause 13.1.2 to 13.1.9 occurs in relation to the Client.
- 11.3 Despite 11.1 and 11.2 eClarity Solutions may bring an action against the Client for the price of the Goods and Services if the Client fails to pay for them in full by the Due Date, even though property in the Goods has not passed to the Client.
- 11.4 The responsibility for loss or damage to any consignment of the Goods shall pass to the Client on delivery.
- 11.5 Each order for the Goods shall constitute a separate contract and any default by eClarity Solutions in relation to any one order shall not entitle the Client to treat these Terms as terminated.

12 WARRANTIES AND INDEMNITIES

- 12.1 eClarity Solutions warrants and represents to the Client that it will perform its obligations under these Terms with reasonable skill and care. All other warranties are expressly disclaimed to the fullest extent permitted by law.
- 12.2 eClarity Solutions shall not be liable to the Client (whether in contract, tort, including negligence and breach of duty, or otherwise at law) for any:
 - 12.2.1 indirect or consequential loss; and/or
 - 12.2.2 loss of profits, revenue or goodwill of the Client
- 12.3 eClarity Solutions does not exclude its liability for death or personal injury if caused by its own negligence or for fraud
- 12.4 All hardware warranties will be limited to that of the hardware manufacturer and will be serviced and honoured directly by the manufacturer themselves, not by eClarity Solutions. A service charge will be made for handling warranty claims on behalf of the Client.
- 12.5 All products sold at Manufacturers RRP unless the subject of an officially quoted price in writing.

13 TERMINATION

- 13.1 Either party may terminate these Terms immediately by notice in writing if the other party:
 - 13.1.1 commits a material breach of any of the Terms (including without limitation late payment) and, if such breach is capable of remedy, fails to remedy the breach within 30 days of receiving notice from the terminating party specifying the breach and requiring the breach to be remedied;
 - 13.1.2 enters into liquidation whether compulsorily or voluntarily (otherwise than for the purposes of a solvent amalgamation or reconstruction);
 - 13.1.3 becomes insolvent;
 - 13.1.4 ceases or threatens to cease to carry on business;
 - 13.1.5 compounds or makes any voluntary arrangements with its creditors;
 - 13.1.6 is the subject of a notice of appointment of an administrator, or a notice of intention to appoint an administrator or liquidator
 - 13.1.7 is unable to pay its debts as they fall due;
 - 13.1.8 has an encumbrancer take possession of, or a receiver or administrative receiver appointed over, all or any part of its assets; or
 - 13.1.9 takes or suffers any similar action due to debt

or the equivalent of any of the events described at clause 13.1.2 to 13.1.9 inclusive under the law of any jurisdiction occurs in relation to the other party.

- 13.2 The expiry of termination of these Terms for any reason shall not affect any rights and/or obligations:
 - 13.2.1 accrued before the date of termination or expiry; or
 - 13.2.2 expressed or intended to continue in force after and despite expiry or termination

14 CONFIDENTIALITY

- 14.1 In this Clause 14, Confidential Information means all technical, commercial and financial information, product information, trade secrets, know-how and all information relating to the plans, intentions, market opportunities, transaction, affairs and/or business of a party and its Group companies and/or its or their Clients and/or suppliers, and the Terms;
- 14.2 Each party shall keep secret and confidential all Confidential Information of the other and shall not (and shall procure that its employees and/or officers shall not) copy, use or disclose any such information to any third party, other than as may be necessary to comply with its obligations under these Terms.
- 14.3 The obligation of confidence shall not apply where the Confidential Information:
 - 14.3.1 is required to be disclosed by operation of law
 - 14.3.2 was in possession of the recipient prior to disclosure by the other party without restriction on disclosure or use;
 - 14.3.3 is subsequently acquired from a third party without any obligation of confidence;
 - 14.3.4 is or becomes generally available to the public through no act or default of the recipient; or
 - 14.3.5 is disclosed on a confidential basis for the purposes of obtaining professional advice.
- 14.4 This clause 14 shall continue in force notwithstanding the expiry or termination of these Terms, whatever the reason for such termination.

15 INTELLECTUAL PROPERTY RIGHTS

- 15.1 All intellectual property rights in reports and other deliverables created by eClarity Solutions in the course of performing the Services shall belong to eClarity Solutions and the Client shall not obtain any rights therein. eClarity Solutions hereby grants the Client a licence to use the intellectual property rights in the deliverables to the extent necessary to make use of the deliverables as contemplated by the Order Form.

16 GENERAL

- 16.1 Time is not of the essence in relation to the performance of the obligations of eClarity Solutions under these Terms.
- 16.2 Notices between the Client and eClarity Solutions relating to these Terms shall be in writing. Notices shall either be delivered personally or sent by first class post or fax to their registered office. Notices if delivered by hand shall be treated as received when delivered, if sent by first class post 48 hours after posting, if sent by air-mail post 72 hours after posting and if sent by fax when sent.
- 16.3 These Terms are the entire agreement between the Client and eClarity Solutions and replaces all previous agreements between them relating to the same subject matter.
- 16.4 Neither the Client or eClarity Solutions shall be liable if it breaches these Terms as a result of circumstances which are beyond its reasonable control, provided that as soon as is reasonable practicable it gives notice to the other party. For these purposes acts of omissions by the employees, sub-contractors, developers, agents and representatives of either party are within that party's control.
- 16.5 Unless these Terms provide otherwise, nothing in it creates a partnership or employment relationship between the Client and eClarity Solutions.
- 16.6 Neither eClarity Solutions nor the Client may assign or transfer these Terms or any rights or objections under them without the prior consent of the other (such consent not to be unreasonably withheld or delayed).
- 16.7 The Client and eClarity Solutions confirm that they do not intend any third party to have the right to enforce any provision of these Terms under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 16.8 If any provision of these Terms are found under the Laws of any jurisdiction to be invalid, illegal or unenforceable, the validity, legality or enforceability of that provision in that jurisdiction shall not in any way affect the validity, legality or enforceability of all the provisions of these Terms in any other jurisdiction.
- 16.9 The Client and eClarity Solutions shall attempt to substitute for any invalid, illegal or unenforceable provision a valid, legal and enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid, illegal or unenforceable provision.
- 16.10 All terms of this agreement which by their nature ought to survive termination will continue to be effective after this agreement has expired or been terminated.
- 16.11 The laws of England and Wales shall govern these Terms. The Client and eClarity Solutions agreed to submit to the exclusive jurisdiction of the Courts of England and Wales.