

INNOVATE STANDARD TERMS OF BUSINESS

Definitions

"Innovate" means Innovate Business Consulting Limited, UK registered company number 14973597.

"Quotation" means the written proposal submitted to the Client by Innovate.

"Contract" means the binding contract formed once a Quotation is accepted by the Client, inclusive of the Innovate Standard Terms of Business.

"Innovate Standard Terms of Business" means these terms.

"Services" shall mean the goods and services to be provided by Innovate as stated in the Contract, inclusive of Retained HR Services where applicable.

"Price" means the quoted price (exclusive of VAT) for the Services including any fees and expenses.

"Retained HR Services" means the contracting of any regular HR support, including our Retained Support and Pay-Per-Use Support services, as defined in Clause 13.

1 Contract Formation

1.1 On acceptance of a Quotation, the Parties agree that a binding contract shall be formed on the basis of the terms included within the Quotation and these Innovate Standard Terms of Business, to the exclusion of all other terms and conditions including any terms which a Client may purport to apply under any confirmation of instruction or similar document.

1.2 In the event of any conflict between the Quotation and these Innovate Standard Terms of Business, the terms of the Quotation shall take priority and apply to the extent of such conflict.

2 Price and Payment

2.1 The Client agrees to pay the Price in accordance with the provisions of the Contract. Payment of the Price shall be made by the Client without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law) within 7 days of the submission date of the invoice for the Services.

2.2 All sums due from the Client which are not paid on the due date (without prejudice to the rights of Innovate under these terms) shall bear interest from day to day at the same annual rate as is prescribed from time to time at the rate equal to 3% a year above the Bank of England's base rate from time to time, but at 3% a year for any period when that base rate is below 0%.

2.3 Innovate may from time to time increase the hourly rates (if applicable) referred to in the Quotation by such amount as is reasonable and unless the Client objects to such increased rates within seven days of notification in writing all Services shall thereafter be provided at the increased rates notified. This will normally be done on an annual basis. If the Client objects to the increased rates, Innovate shall have the right to discontinue performance of the Services.

2.4 During any period in which payments from the Client are overdue, the obligations of Innovate may be suspended.

2.5 Expenses incurred by Innovate and recoverable from the Client hereunder shall be subject to an administration charge of 5% plus VAT (where applicable) payable by the Client.

3 Programme

3.1 The Parties agree that due to the nature of the Services, Innovate shall have no liability to Client for any delays in performance of the Services and any programme or schedule agreed with Client shall be estimates only and time shall not be of the essence for performance of the Services.

3.2 Subject to Clause 3.1, Innovate shall make reasonable endeavours to perform the Services in a timely manner.

4 Cancellation Charges

4.1 Cancellation charges apply once Services have commenced or commitments have been made in anticipation of completion of Services.

4.2 If the Services are cancelled up to and including 10 working days before Services have commenced, an administration fee of 10% of the Price shall be payable.

4.3 If the Services are cancelled at any later point then Client shall be responsible for payment of all Services performed at the rates and pricing agreed in the Quotation, plus Client shall reimburse all costs incurred by Innovate associated with the cancellation of any commitments made in anticipation of the full performance of the Services, and any costs of demobilisation including unplanned non-productive time resulting and notice periods to personnel of up to 2 working weeks.

5 Confidentiality

Each party undertakes not at any time to divulge or allow to be divulged to any person any confidential information relating to the business or affairs of the other party other than as necessary to perform the Contract, or in the case of the Client to the extent necessary for the beneficial use of the Services, subject in all cases to securing equivalent rights of confidentiality with any third parties to whom such disclosure is made.

6 Change to the Services

Any change to the Services desired by Client shall be subject to agreement with Innovate and where agreed, Innovate shall provide a revised Quotation to incorporate such agreed changes, which shall supersede the previous Quotation when accepted by Client on an unconditional basis.

7 Intellectual Property

7.1 Innovate retains ownership of all intellectual property in all documents, information, reports and analysis provided by Innovate to the Client (including when provided prior or subsequent to the Contract) associated with the Services and grants a non-exclusive non-transferrable license to use such documents, information, reports and analysis to the extent required for the beneficial use of the Services by the Client.

7.2 Client grants to Innovate a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Client to Innovate for the purpose of providing the Services.

7.3 For the avoidance of doubt both parties retain ownership of their pre-existing or independently developed intellectual property including in all cases modifications and improvements to the same.

8 Warranty for Defective Services

8.1 Innovate commit to perform the Services in full conformance with the Contract, including with reasonable skill and care.

8.2 The Parties agree to a warranty (defects liability) period of 12 months from completion of the Contract.

8.3 In the event that any Services are not in accordance with the warranty in Clause 8.1 and subject to notice being provided within the time period specified in Clause 8.2, Innovate shall reperform (where possible) such Services so that they are in accordance with the warranty in Clause 8.1. Where this is not possible Innovate shall arrange for a refund of the part of the Services which was not in accordance with the warranty in Clause 8.1, to be reasonably determined by Innovate at its sole discretion.

8.4 The rights and remedies of Client in this Clause 8 shall represent the sole and exclusive rights and remedies of the Client for defective Services, and the sole and exclusive liability of Innovate to the Client for the same. The terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

9 Liability and Indemnity

9.1 Innovate shall not be liable to the Client for use of the Services by Client and shall indemnify Innovate against any claim for loss or damage arising from such use (including from third parties where applicable).

9.2 Innovate shall have no liability to the Client for any indirect, special, or consequential loss to the Client arising out of or in connection with the provision of the Services or the inability of the Client to secure business or contracts from third parties introduced to the Client by Innovate pursuant to any Services performed. The total aggregate liability of Innovate for any other loss of the Client arising under this Contract shall not exceed 100% of the Price or £1,000.00 whichever is greater.

9.3 Innovate shall be entitled to rely on any information or statements provided by the Client and is not be liable for Services that are the result of such reliance, including the accuracy thereof. If any additional work arises as a result of such reliance on any information or statements provided by the Client, such additional work shall be paid for by Client according to the rates agreed, or where no rates are agreed, according to such rates/pricing as advised by Innovate.

9.4 Innovate is acting in an advisory capacity and is not responsible for any particular result being achieved by Client (and does not guarantee the same), and does not provide any fitness for purpose warranty.

9.5 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

- (i) death or personal injury caused by negligence;
- (ii) fraud or fraudulent misrepresentation; and
- (iii) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

10 Termination

10.1 The following events shall entitle Innovate to terminate the Contract;

- (i) Failure on the part of the Client to make punctual payment of all sums due to the Innovate under the terms of this Contract.
- (ii) If the Client is subject to any insolvency proceedings or otherwise unable to provide satisfactory assurance to Innovate that it is able to pay its debts.
- (iii) If in the reasonable opinion of Innovate, a conflict of interest has arisen or applies.
- (iv) By providing 30 days' notice to Client.

10.2 The following events shall entitle Client to terminate the Contract;

- (i) Failure on the part of Innovate to remedy any material breach of its obligations under this Contract within a reasonable time following written notice from the Client which refers to this clause and specifies the breach with full particulars.
- (ii) If Innovate is subject to any insolvency proceedings.

10.3 In the event of termination under 10.1, then Client shall be responsible for payment of all Services performed at the rates and pricing agreed in the Quotation, plus Client shall reimburse all costs incurred by Innovate associated with the cancellation of any commitments made in anticipation of the full performance of the Services, and any costs of demobilisation including unplanned non-productive time resulting and notice periods to personnel of up to 2 working weeks.

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10.4 In the event of termination under 10.2, then Client shall be responsible for payment of all Services performed at the rates and pricing agreed in the Quotation only.

11 Recruitment of Innovate's Personnel

11.1 The Client undertakes that it (including for this purpose any subsidiary or associated company) or any person connected with it will not directly or indirectly recruit as an employee or engage as an independent contractor any person employed or so engaged by Innovate in connection with the Services provided hereunder for a period of six months after such person last participated in the provision of Services to the Client.

11.2 In the event that the Client is in breach of the undertaking in Clause 10.1, the Client and Innovate agree that the Client will pay liquidated damages to Innovate of a sum equal to 5% of the Price.

12. Client's Obligations: The Client agrees to:

12.1 Provide Innovate such information, advice and assistance relating to the Services as it may reasonably require within sufficient time to enable Innovate to perform the Services in accordance with the Contract.

12.2 Provide a safe working environment for any Innovate personnel performing Services at Client premises.

12.3 Provide accurate and timely information to Innovate to enable it to perform the Services.

12.4 If the Client fails to meet any of the provisions of this Clause 12, without limiting other rights or remedies of Innovate, Innovate shall (i) have the right to suspend performance of the Services until the Client remedies the default (ii) not be held liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from Innovate's failure or delay in performing any of its obligations as a result; and (iii) be entitled to claim for any costs or losses sustained or incurred by Innovate arising directly or indirectly from the Client's default.

13. Retained HR Services

13.1 Where the Services is or includes for Retained Support option only, and Innovate has agreed to provide unlimited telephone and/or electronic mail support, such support shall be subject to a fair usage policy, whereby the Client shall be entitled to a monthly maximum of:

8 hours for companies with 1-15 employees

10 hours for companies with 16-50 employees

12 hours for companies with 51-80 employees

calculated on an average basis over the preceding quarter. Time records shall be maintained by Innovate and Innovate's decision shall be final.

13.2 If the fair usage policy in Clause 13.1 is exceeded Innovate retain the right to increase the Price accordingly.

13.3 All communications and instructions from the Client, including but not limited to telephone calls and electronic mail will be billed in 15-minute segments with monthly itemised usage reports provided by Innovate to the Client.

13.4 Innovate's standard response time is 24 hours within working days, and shall make reasonable endeavours to respond more quickly to urgent queries where possible.

14. Data Protection

14.1 Both parties agree to comply with all applicable data protection legislation including, but not limited to, the Data Protection Act 2018, the General Data Protection Regulation 2016/679 and any subsequent amendments thereto.

14.2 If Client shall provide Innovate with, or allow Innovate access to, the personal data of any other person (for example, employees' details), it is Client's responsibility to obtain permission from those persons to pass their data to Innovate. Innovate undertakes that it will only use such data to provide the Services and will not use it for any other purpose.

15. Complaints and Dispute Resolution

15.1 Any complaints must be made in writing within 28 days. Innovate will endeavour to resolve all disputes amicably and professionally within 14 working days. Should the dispute take longer, Innovate shall notify the Client accordingly.

15.2 The parties shall attempt to resolve any dispute arising out of or relating to this Contract through negotiations between senior executives of the parties, who have the authority to settle the same.

15.3 During the resolution process, the Client shall give Innovate the opportunity to investigate the complaint before corresponding with any other party, including discussions online or on social media sites. Breach of this Clause 15.3 will allow Innovate to suspend the Services and any costs associated shall be payable by Client.

15.4 For Retained and Project HR Support Services, any complaints that cannot be resolved with our in-house complaints procedure may be covered by the Chartered Institute of Personnel and Developments (CIPD) Code of Investigation. Further information is available on the CIPD website.

15.5 The procedures in Clause 15.4 should only be used if our internal procedures and negotiations have been exhausted.

15.6 The Parties hereby agree that the decision and outcome of the final method of dispute resolution under this clause 15 shall be final and binding on both Parties.

15.7 For disputes that are not associated with Retained and Project HR Support Services, where the procedure in Clause 15.2 does not find a resolution, such disputes shall be settled by arbitration pursuant to the procedure set out below;

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- (a) the arbitration shall be governed by the provisions of the Arbitration Act 1996
- (b) either Party may give a written notice of arbitration to the other (the "Arbitration Notice") stating
 - (i) that the dispute is referred to arbitration; and
 - (ii) providing details of the issues to be resolved;
- (c) the London Court of International Arbitration ("LCIA") procedural rules in force at the date that the dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- (d) the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
- (e) if the Parties fail to agree the appointment of the arbitrator within 10 days of the notice being issued under (b) above or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- (f) the arbitration proceedings shall take place in London and in the English language; and
- (g) the arbitration proceedings shall be governed by, and interpreted in accordance with, English law.

16 Publicity and References

16.1 Subject to Clause 5, Innovate shall be entitled to refer to its provision of Services to the Client for its business marketing purposes provided that prior to any published reference to the Client Innovate shall give the Client an opportunity to object to such reference and in the event of objection upon reasonable grounds shall not refer to the Client in such publicity or reference work.

17 Force Majeure

Both parties shall be released from their respective obligations in the event of and during national emergency, war, prohibitive governmental regulation or if any other cause beyond the reasonable control of the parties or either of them renders the performance of the Contract impossible. The time for performance of such obligations shall be extended accordingly to account for any periods of Force Majeure and its consequences. Where the Contract is not reasonably anticipated to be able to be performed, both Parties shall be entitled to terminate the Contract by giving 14 days' notice. Any Services performed prior to termination shall remain payable by Client.

18 Miscellaneous

18.1 Warranty

Each of the parties warrants its power to enter into this Contract and has obtained all necessary approvals to do so.

18.2 Whole Agreement

Each party acknowledges that this Contract (including any amendments agreed by the Parties and recorded within any revised Quotation that is subsequently accepted by Client) and its conditions contain the whole agreement between the parties and that it is not relied upon any oral or written representations made to it by the other or its employees or agents and has made its own independent investigations into all matters relevant to it.

18.3 Change of Address

Each of the parties shall give notice to the other of the change or acquisition of any address and/or telephone numbers at the earliest possible opportunity but in any event within 24 hours of such change or acquisition.

18.4 Notices

Any notice to be served on either of the parties by the other shall be sent by pre-paid recorded delivery or registered post to the address of the relevant party shown at the head of this agreement or such other address substituted in writing under Clause 18.3 (and if more than one address any such address) or by electronic mail and shall be deemed to have been received by the addressee within 72 hours of posting or 24 hours if sent by electronic mail.

18.5 Headings

Headings contained in this agreement are for reference purposes only and should not be incorporated into this agreement and shall not be deemed to be any indication of the meaning of the clauses to which they relate.

18.6 Joint and Several

Where Client comprises more than one person or entity, the liability of each of its constituent members shall be joint and several towards Innovate.

18.7 Proper Law and Jurisdiction

This Contract shall be governed by English law in every particular including formation and interpretation and shall be deemed to have been made in England.

18.8 Waiver

Failure by either party to enforce at any time or for any period any one or more of the terms or conditions of this Contract shall not be a waiver of them or the right at any time subsequently to enforce all terms and conditions of this agreement.

18.9 Status of Innovate

Innovate and Innovate personnel shall be independent contractors and not the employee of the Client.

18.10 Assignment

Client shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights, obligations and benefits under the Contract without the prior written consent of Innovate.

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