

Standard Contract Terms & Conditions

General

For the purpose of this document ('the Contract'), Productive IT (UK) Ltd. will be referred to as 'the Company'. The client company or organisation will be referred to as 'the Client' and where applicable this will also include all staff, affiliates and contractors of the Client and all users of the Work. The Company's services to the Client will be referred to as 'the Services'. The work to be carried out under the Contract will be referred to as 'the Work'. The definition of the work to be carried out will be contained in a separate document referred to as 'the Specification'. Each component of the Work will be referred to as a 'Deliverable'.

The Company agrees to provide and the Client agrees to accept the Services and the Work described in the Specification under the terms and conditions set out below.

1. Specification

1. The Specification will state expressly what is included and what is not included in The Company's Services to the Client and details of the Work, including:
 - a) The Services to be provided by The Company, including initial consultations, consultancy services, designing & writing specification documents, development work, stage meetings, demonstrations, acceptance criteria, final adjustments, deployment, hand-over and training;
 - b) The time required for each stage and the consequent estimated cost.
2. The Specification will state acceptance criteria for each Deliverable and the specific stages at which The Company will seek written acceptance from the Client. The Client shall not unreasonably withhold or delay such acceptance.
3. The Client will instruct The Company in writing if it wishes to make changes to the Specification. If such changes require The Company to depart materially from the scope and/or extent of the Services required by the original Specification, The Company will be entitled to charge for any Services carried out as a result of the changes at its prevailing rate.
4. The Client will not be liable to pay additional charges at any stage if changes are required as a result of The Company's material departure from previously agreed stages, or if the Work is of unsatisfactory technical quality, or by reason of any failure on the part of The Company to exercise reasonable skill and care.

2. Ownership and Copyright

1. In this section, all references to the Work shall equally apply to the Specification and any other material designed, written or otherwise created and / or modified by the Company (including but not limited to software applications [whether executable, runtime, database or other], file & field definitions, report definitions, flowcharts, program logic, workflow, look & feel, screenshots, icons, automated process, business process changes) and other suggestions made within the Specification.
2. The Work is licensed, not sold to you by the Company for use under the conditions set out in this contract and The Company reserves any rights not expressly granted to you. You own the media on which the Work is recorded, but The Company retains ownership of all copies of the software itself.
3. The license is non-transferable and non-exclusive unless otherwise stated in the Specification.

4. The Company owns the copyright and all other intellectual property rights in the Work, unless otherwise expressed in writing by the Company. The Client may not modify, disassemble, decompile, or reverse engineer the Work, or otherwise attempt to discover the source code of the Work.
5. The copyright and other intellectual property rights in parts of the Work created by or licensed to The Company prior to the Contract ('Pre-Existing Works') will remain vested in The Company or its Licensors or Assigns.
6. The copyright and other intellectual property rights in parts of the Work created by or licensed to The Client prior to the Contract ('Pre-Existing Works') will remain vested in The Client or its Licensors or Assigns. Where the Work involves modifications to existing Work owned or licensed to the Client, the Client is advised to ensure they keep a secure backup copy of the Pre Existing Works to which they will retain the same level of access previously enjoyed. Subject to 2.7 (below), the final Work may restrict the same level of access previously enjoyed by the Client.
7. The Work will be provided with password protection at various levels to protect the Work and the Client's data. The Company will provide the Client with passwords to use the Work, but will not usually provide the master passwords. Where the master passwords are provided to or become known by the Client, full copyright remains with the Company unless expressed otherwise in writing. The use of software to attempt to discover the master passwords (password cracking) is strictly prohibited.
8. To assist in protection of the Company's copyright, some Work will require regular 're-registration'. This process involves a brief telephone call to the Company and the caller will be led through a simple procedure to reregister the software. This procedure usually lasts 2 minutes and is normally required annually but the Company may require re-registration at shorter intervals. Re-registration warnings will display on the Work for 30 days, following which the Work will cease to function until reregistered.
9. Should the Client not wish to re-register, the Client has the opportunity to export all data during the 30-day warning period. Should the Client not wish to re-register and fail to export their data during this 30-day period, the Company will provide an export service for a charge. Exported data can be in either comma-separated text or tab-separated text formats.
10. The Company reserves the right to withhold re-registration codes if the Client is in arrears for any payment other than arrears or payments under official dispute which has been brought to the attention of The Company in writing prior to the requirement to re-register the Work.
11. Neither the Company nor any of its staff or affiliates will be liable to you for any direct, consequential, incidental or indirect damages (including but not limited to damages for loss of business profits, business interruption, loss of business information) arising out of the Client's failure to export the data during the warning period in 2.9 (above) or The Company's withholding of re-registration codes in 2.10 (above) even if The Company has been advised of the possibility of such damages.
12. The Work will usually rely fully or partially on one or more third-party products or software. The Company will list all such third-party products in the Specification. The Client will be responsible for purchasing and licensing these third-party products independently or through The Company, but in all cases the Client agrees to abide by the terms and conditions of the third-party products. Failure to agree to the suppliers' terms and conditions or the inability to install or use their software has no bearing on this Contract.
13. There is no implied offer of support on third-party products by The Company save where expressly agreed in the Specification. Support for third-party products outside the Specification will be subject to additional charges by The Company.
14. The Company takes no responsibility for such third-party products save that the Work and the third-party product perform the tasks laid out in the Specification. Any recommendations are based on The Company's experience of the third-party products concerned, but no guarantee of these products is stated or implied.
15. The Client agrees to the inclusion of third-party logos and/or credits in the Software when required by third-party software agreements.
16. The Client shall obtain all such licenses and permissions in respect of dramatic, literary or artistic work including photography, photographic library material, music composition and performances as may be necessary for the Work and its agreed use.

17. The Client will ensure that all materials provided or supplied to The Company for inclusion in the Work by or on behalf of the Client have been cleared with all copyright holders of that material, and the Client accepts full liability for any breach of copyright applying to those materials.
18. Neither the Client nor any of its staff or affiliates are permitted to rent, lease, loan, resell or distribute copies of the Work or any part thereof to others or electronically transfer the Work from one computer to another over a network, other than for backup purposes or as required by the normal use of the Work. The Client will take reasonable steps to protect the Software and the rights of ownership of the Company.
19. Unless otherwise expressed in the Specification, the Work is licensed to be installed and used on a single computer only, except that the Work may be executed from a common disk shared by many terminals provided that one authorised copy of the software has been licensed from The Company for each terminal executing the Work. The Company will charge a fee per terminal unless the Specification permits unlimited licenses.

3. Indemnity

1. Subject to the exclusions in section 2 (above), the Company agrees to indemnify, defend and hold harmless the Client from and against any amounts payable, limited by section 3.2 (below), under any judgment, verdict, court order or settlement to the extent resulting from any unaffiliated third-party allegation that the Services or Work provided by The Company under this Contract infringes such party's UK patent, copyright or trademark rights.
2. The Company will provide standard indemnity cover to a limit of £100,000 per client per year. Should the Client require cover for a larger amount, the Company will arrange such cover provided the Client pays the cost of the additional indemnity policy charges.

4. Liability

1. No warranty, condition or other term, express or implied, statutory or otherwise shall apply unless and except to the extent expressly contained in this Contract.
2. Neither the Company nor any of its staff or affiliates will be liable to you for any direct, consequential, incidental or indirect damages (including but not limited to damages for loss of business profits, business interruption, loss of business information) arising out of the use or inability to use the Work even if The Company has been advised of the possibility of such damages.
3. The Company accepts liability to pay damages in respect of loss or damage (excluding consequential loss) suffered by the Client as a direct result of providing the Services where this arises as a consequence of a breach of any of The Company's obligations contained in this Contract or as a result of negligence by The Company. The Company's entire and collective liability to the Client arising out of or relating to this Contract, including without limitation on account of performance or non-performance of obligations, regardless of the form of the cause of action whether in contract, tort (including without limitation negligence), statute or otherwise, will not exceed the amounts paid to The Company under this Contract or the amount set out in section 3.2, whichever is the lesser amount.
4. The Company will ensure to the best of its ability that all software supplied to the Client under this Contract is virus free and in good condition. However, no guarantee is given that it is uninfected and you are advised to perform your own checks before installation
5. Once supplied, it is the Client's responsibility to maintain and backup such Work and as such The Company cannot accept responsibility for Work that is lost, damaged or corrupted as a result of the Client's negligence after supply.
6. Save where expressly agreed otherwise in the Specification, The Company is not liable or responsible in any way for the hardware or third party software on which the Work will run, nor for the error-free operation of such hardware or software, including where the Company has recommended or sub contracted to the supplier of the hardware or software. It is entirely and without exception the full and absolute responsibility of the Client to ensure that the hardware and third party software is fully operational. This condition extends to include, but

not excluding other items, the operating system, network hardware and software, printers, email servers and software, fax servers and software used by the Client.

7. Where appropriate, the Company will do everything possible to ensure the Work conforms to the agreed design and functions correctly when viewed in the versions of Netscape Navigator or Internet Explorer on the specified platforms set out in the Specification. Where no platforms are specified in the Specification, only Windows and Macintosh platforms will be included. The Company shall ensure that the Work functions correctly in all respects in current versions of both web browsers in both PC and Macintosh platforms. The Company shall not be responsible for the way the Software appears in other browsers unless stipulated by the Client and tested in those browsers by The Company as part of the Specification.
8. Delay or failure to supply the Work by The Company due to war, fire, strike, lock-out, industrial action, tempest, accident or any other cause whatsoever beyond The Company's control shall not give rise to any claim whatsoever by the Client against The Company. In the event of unreasonable delay due to the above causes, the Client shall be entitled to terminate the Contract subject to payment of all costs incurred and commitments undertaken by The Company to the date of termination (inclusive of overheads).
9. Where the project requires that the Company and the Client work together, the Client hereby assumes a shared responsibility. In this clause, 'work together' includes, but is not limited to formal and informal meetings, providing relevant information, diagrams, data, samples and / or other material, testing the Work and using the Work as instructed.

5. Warranty

1. Other than as set forth in this Contract and the Specification, The Company disclaims all express and/or implied warranties with regard to the Work, its services and materials, including warranties of merchantability, or fitness for a particular purpose.
2. Save any guarantees or warranties or details of operation or performance in the Specification, the Company does not warrant that the Work will meet your needs or that the operation of the software will be error free. The Client acknowledges that it is not technically practicable to guarantee software to be error-free, and agrees that if any such errors are found to exist they shall not constitute a breach of this contract.
3. The Company warrants that:
 - a) The media provided by The Company, if any, on which the Work is recorded will be free from defects in materials and workmanship under normal use.
 - b) The Work as provided by The Company will substantially conform to the requirements set out in the Specification.
 - c) All Services by The Company will be provided with reasonable skill and care.
4. For a period of 14 days following final delivery and installation of the Work, The Company will correct any defects in workmanship or material, including failures to meet the specification set out in the Specification, at no extra cost to the Client. Any modifications carried out after this time will be charged at The Company's prevailing hourly or daily rate plus expenses unless such modifications are required by reason of The Company's non-compliance with the provisions of this Contract.
5. Where an agreement has been made to the effect that the Company will provide the Client with the master passwords, or in any event where the master passwords are provided to the Client, following the 14 day warranty (5.4), the Client hereby relinquish all rights to launch a lawsuit or take any other action against the Company since errors may reasonably have been introduced due to the Client's intentional or inadvertent changes to the code.

6. Confidentiality

1. During the provision of the Services by The Company to the Client and during any discussions between the parties prior to the provision of any services and for a period of twelve months following the completion of any services provided by The Company to the Client, each party shall treat as confidential all information obtained from the other party which is expressly marked as confidential or which is manifestly of a confidential nature and shall not divulge such information to any person (except to such party's own employees) without the other

party's prior written consent. However, a party will not be prohibited by reason of this Clause from complying with disclosure required by law if: (a) where possible without breaching any legal or regulatory requirement, it gives the other party advance notice of the disclosure requirement and (b) it co-operates with the other party in seeking to oppose, minimise or obtain confidential treatment of the requested disclosure.

2. Notwithstanding anything to the contrary contained in this Contract, neither party will be obliged to treat as confidential any information disclosed by the other party which: (a) is or has been independently developed by the recipient; (b) is or becomes generally available to the public other than as a result of a breach of an obligation under this Contract, or (c) is acquired from a third party who owes no obligation of confidence in respect of the information.

7. Data Protection Act

1. The Client hereby guarantees that, where required by law, they are registered to the fullest extent possible under The Data Protection Act for all types of data to be entered or recorded in the Work.

8. Prices

1. The Client is liable to pay The Company's prices as detailed in the Specification, plus reasonable expenses. Where possible, The Company shall obtain the prior written consent of the Client before incurring any expenses in excess of £100. Where no prices are detailed in the Specification, the prevailing Company rates will apply. The following rates are current at the time of printing and are intended only as an indication of the price.

2. Day rate: The following rates refer to all work performed during a one-person day of eight hours or less and is the minimum charge for any on-site work.

- Consultancy and / or development – 30 days or less £695.00 per day
- Consultancy and / or development – 31 days or more subject to project / POA

3. Hourly rate: The following rate applies to all work performed on an hourly basis, e.g. for minor adjustments made using a remote log on facility and is usually applied to additional work that falls outside the Specification unless the day rate is more appropriate to the additional work required. For customers with a current Support Level Agreement (for custom projects) where the work falls outside the cover of the SLA, the minimum charge is for one hour. For all other customers, the minimum charge is for two hours.

- Consultancy and / or development £125.00 per hour

A separate Specification or Work Authorisation document will usually be drawn up estimating the length and cost of any such additional work. The Client will be required to sign this document in order for the work to commence.

4. It is the decision of The Company as to whether the daily or hourly rate will apply in any instance. If the hourly rate is quoted and during development it becomes clear that the work will take 6 hours or longer, then the lower daily rate will apply. In any instance, where we become aware that the development will take longer than the estimated time, we will contact you immediately to discuss the options available.
5. All expenses, including travel, accommodation and deliveries (meaning courier, Royal Mail Special Delivery and other messenger services where appropriate) will be charged at cost. There will be a minimum delivery charge of £10.00 for any one instance.
6. All prices are exclusive of Value Added Tax, which will be charged at the appropriate rate in force at the date of invoicing (currently 17.5%).

9. Payment

1. The Client agrees to pay the following:

- a) In advance a deposit of an agreed proportion of the total cost of the Services (as specified in the Specification) plus VAT, before commencement of the work.
 - b) All other invoices within 15 days of the date of each invoice.
2. If an invoice remains unpaid after 30 days (other than by reason of a bona fide dispute as to either the invoice or the Services provided), The Company shall be entitled to charge interest at the rate of 1.5% per month over The Bank of England Base Rate from the date on which the invoice became overdue to the date payment is received in full by The Company.
 3. Payment for any Deliverables produced pursuant to the Services will become due on the date when the Deliverable is deemed to be accepted by the Client. In the absence of any agreed acceptance criteria, if the Client has not notified The Company within 14 days of receipt of any Deliverable that the Deliverable is not acceptable, the Deliverable will be deemed to have been accepted by the Client. If the Client notifies The Company that a Deliverable is not acceptable, The Company will attempt to fix the problem in the Deliverable within 14 working days after receipt of such notice (some fixes may take longer). In such a case, when the deliverable is finally delivered and accepted by the client, payment shall be made within 7 days of delivery. Such value will be agreed between the parties. The point of delivery shall be the Client's address unless otherwise stated in the Specification.
 4. In the event that the Services are terminated by either party pursuant to the terms of this Contract, the Client agrees to pay The Company for all Services provided up to the date of termination (including expenses). The Company will release no materials until payment is made in full. If the amount of the deposit paid by the Client to The Company exceeds the value of the Services provided at the date of termination, The Company will refund any excess payment made to the Client.

10. Termination

1. This Contract is effective until terminated. The Client may terminate the Contract at any time by destroying the Work together with any copies of the whole or any part of the Work and notifying The Company of its intention in writing. Any such notice of termination should be sent by courier or The Royal Mail's Special Delivery service. Upon receipt of such notice, The Company shall (a) take immediate steps to bring to an end all expenditure or commitments relating to the Services and Work and to deliver to the Client as soon as possible detailed statements of all expenditure (including reasonable overheads) incurred in respect of the Services and Work; and (b) the Client shall immediately reimburse The Company such expenditure in full, provided that such expenditure exceeds the value of any deposit paid by the Client to The Company.
2. Upon termination each party will return to the other party any property of the other that it then has in its possession or control and The Company shall deliver up to the Client all Deliverables produced up to the date of termination, whether complete or partially complete, and ownership in such Deliverables shall vest in the Client (subject to clauses in section 2. Ownership and Copyright), subject to payment to The Company of any sums then due and not subject to a dispute.
3. Either party to the Contract shall be entitled to terminate the Contract forthwith by written notice to the other party if that other party shall become bankrupt or have a receiving order made against it or shall present its petition in bankruptcy or shall make an arrangement with its creditors or shall have an execution levied on its goods or (being a corporation) shall go into liquidation (other than in connection with a scheme or reconstruction or amalgamation) or have a resolution passed for its winding up or have a receiver appointed and thereon the provision of the Section of this Contract titled 'Termination' shall immediately apply.

11. Legal Jurisdiction

1. This Contract supersedes all previous arrangements and representations on behalf of the Client and The Company. This Contract may not be changed, terminated or amended except in writing. Either party's failure or delay in exercising any of its rights under this Contract will not constitute a waiver of such rights unless expressly waived in writing.
2. This Contract shall be construed under and governed by the laws of England and Wales and subject to the exclusive jurisdiction of the English Courts. If a court of law finds any provision of this Contract unenforceable, the parties agree to replace the offending provision with an enforceable provision that most nearly achieves the intent and economic effect of the unenforceable provision, and the remaining provisions of this Contract will remain in full force and effect.

12. Agreement

To proceed with your project, please sign a copy of these terms and conditions below and return to us with any appropriate work authorisation forms.

I have read and agree (and have authorisation to agree) to these terms and conditions.

Company Name: _____

Signature: _____

Full Name: _____

Position: _____

Date: _____

Productive IT (UK) Ltd., Incorporated in England, 2002, No. 4548932.