

# deCipher Limited Terms and Conditions

## 1 GENERAL

The following definitions apply to these General Terms and Conditions:

1.1 Contractor: deCipher Limited.

1.2 Client: the client, any person acting on behalf of and with the authority of any type of organisation, or any person purchasing services and products from the Contractor.

1.3 Contract: the agreement under which the Contractor undertakes to conduct the work for the Client.

## 2 ACCEPTANCE

2.1 Any verbal or written (including email) instructions received from the Client to engage the Contractor for the supply of services and shall constitute a binding Contract and acceptance of these Terms and Conditions.

2.2 If the acceptance was commissioned orally, or the Contractor has not yet received the signed Terms and Conditions, the Contract is deemed to have been concluded under these Terms and Conditions as soon as the Contractor has initiated the Contract at the Client's request.

2.3 The Contract replaces any previous proposals, correspondence, agreements or other communications, whether orally or in writing.

2.4 The Contract continues for an indefinite period unless otherwise agreed.

## 3 COOPERATION BY THE CLIENT

3.1 The Client undertakes to provide the Contractor with all information, documents and access to computer media which the Contractor believes to be required for the timely and proper execution of the Contract, and to do so on time and in the desired form and manner due professional care and diligence.

3.2 The Client undertakes to inform the Contractor without delay of any facts and circumstances that might be relevant to the execution of the Contract.

3.3 Unless the nature of the Contract dictates otherwise, the Client is responsible for the accuracy, completeness and reliability of the information and documentation provided to the Contractor, even if they originate with or are acquired from third parties.

3.4 Unless the nature of the Contract dictates otherwise, the Client will deploy the staff deemed required by the Contractor, or have this staff deployed, in order to allow the Contractor to carry out the Contract. The Client undertakes to ensure that its staff is sufficiently skilled and experienced at the work to be carried out under the Contract.

## 4 EXECUTION OF THE CONTRACT

4.1 The Contractor determines the manner in which the Contract will be executed and by whom, with due observance of the wishes expressed by the Client where possible. The Contractor will inform the Client of the name(s) of the Contractor's permanent or contract staff member(s) conducting the work. The Contractor will make every effort to ensure that the staff member(s) is/are available for conducting the work for the duration of the Contract. Despite this, the Contractor has the right to replace the staff member(s) in consultation with the Client.

4.2 The Contractor cannot carry out any activities in addition to those commissioned and bill these to the Client until the Client gives prior consent. However, if the Contractor has to perform such additional activities by virtue of its statutory obligation to provide reliable services, it is entitled to bill these to the Client, even if the Client did not explicitly give its prior consent to the performance of additional activities.

4.3 The Client cannot involve third parties in the execution of the Contract unless it has reached agreement with the Contractor about such involvement. This provision applies as outside involvement in a Contract, whether directly or indirectly, may significantly affect the Contractor's opportunities for the proper execution of the Contract.

4.4 If the Client is required to make an advance payment or to make information and/or materials available for the purposes of executing the Contract, then the term taken for completion of the work will not take effect until the Contractor receives the payment in full or until all information and/or materials have been made available to the Contractor respectively.

4.5 As the duration of the Contract is subject to many factors, such as access to computer hardware and the quality of the information provided by the Client, the due dates for completion of the work should be regarded as deadlines only where this has been agreed in writing.

4.6 Unless execution of the Contract proves to be permanently impossible, the Client cannot terminate the Contract on account of overdue performance, unless the Contractor does not perform the Contract, either partially or in full, within a reasonable period of which it was notified in writing after expiry of the agreed delivery period.

4.7 Title in any products supplied by the Contractor passes to the Client only when the Client has made payment in full for all products provided by the Contractor and of all other sums due to the Contractor by the Client on any account whatsoever.

4.8 The Contractor shall keep full documentation in relation to the Contract.

## 5 CONFIDENTIALITY

5.1 Except where a statutory provision, regulation or other professional obligation to disclose information is in effect, the Contractor and its permanent and contract staff undertake to maintain confidentiality in respect of confidential information acquired from the Client. The Client may discharge the Contractor and its staff from this obligation. All permanent and contract staff engaged by the Contractor have agreed to, and signed, the Contractor's Confidentiality Agreement.

5.2 The Contractor cannot use the information provided by the Client for any purpose other than for which it was obtained without the Client's consent. By way of exception, this provision does not apply if the Contractor represents itself in disciplinary, civil or criminal proceedings in which this information may be relevant.

5.3 The Contractor has the right to refer its clients and potential clients in general terms to the activities performed, provided that this only serves as a description of the Contractor's experience. This is not deemed contrary to the provisions of 5.1 and 5.2.

## 6 PRICE

6.1 Price shall mean the cost of the services and products as agreed between the Contractor and the Client and includes all disbursement expenses e.g. charges the Contractor pays to third parties on the Client's behalf.

6.2 Where no price is stated in writing or agreed to orally, services and products shall be sold at the current amount at which such services and products are sold by the Contractor at the time of the contract.

6.3 If pricing factors, such as the cost of supply of the services and products are subject to change between the acceptance date of the Contract and the completion date of the Contract, the Contractor has the right to adjust the agreed price accordingly.

6.4 All fees are exclusive of GST.

6.5 Where an estimate is given by the Contractor for services and products the estimate may be withdrawn at any time.

6.6 The Client needs to be aware that the final price may vary from the estimate.

6.7 Where services and products are required in addition to the estimate then the estimate will be increased accordingly.

6.8 Where services and products included in the estimate are no longer required then the estimate will be decreased accordingly.

## 7 PAYMENT

7.1 The Client is required to pay the fee charged without any deduction, discount or debt settlement no later than 30 days after the invoice date. Payments, which must be denominated in the currency indicated in the invoice, must be made by means of money transfer to a bank account designated by the Contractor or by cheque. Objections to the amounts charged do not exempt the Client from its obligation to pay.

7.2 If the Client fails to pay within 30 days then, without prejudice to the Contractor's rights under these Terms and Conditions or generally, interest may be charged on any amount owing after payment became due at the rate of 2.5% per month or part month. Any expenses, disbursements and legal costs incurred by the Contractor in the enforcement of any rights contained in these Terms and Conditions shall be paid by the Client, including any reasonable lawyer's fees or debt collection agency fees.

7.3 The Contractor may require the Client to make an advance payment. If the Client fails to furnish the advance payment, the Contractor has the right, without prejudice to its other rights, to immediately suspend further execution of the Contract, and all amounts which the Client owes to the Contractor for whatever reason will become immediately due and payable. If, on completion of the Contract, the advance payment exceeds the costs accrued, the excess shall be returned to the Client.

## **8 CANCELLATION**

8.1 Unless the requirements of reasonableness and fairness dictate otherwise or the situation in 4.6 above arises, the Client and the Contractor have the right to terminate the Contract, whether prematurely or not, in writing at any time on giving not less than one month's notice in writing to the other party

8.2 The Contractor shall, without any liability, and without any prejudice to any other right it has in law or equity, have the right by notice to suspend or cancel in whole or in part any contract for the supply of services and products or services to the Client if the Client fails to pay any money owing after the due date or the Client commits an act of bankruptcy as defined in section 19 of the Insolvency Act 1967 or goes into receivership or liquidation.

8.3 If the Client as permitted by these Terms and Conditions, decides to terminate the Contract, whether prematurely or not, the Contractor is entitled to compensation for its additional costs that must reasonably be incurred as a result of the premature cancellation of the Contract, e.g. subcontracting costs, unless the cancellation was motivated by facts and circumstances that can be attributed to the Contractor. If the Contractor cancels the Contract, whether prematurely or not, the Client is entitled to assistance from the Contractor in transferring the work to third parties, unless the cancellation was motivated by facts and circumstances that can be attributed to the Client or which are in conflict with this right. In all cases of cancellation, whether premature or not, the Contractor retains the right to payment of the expense claims for the work carried out up to then, in which process the preliminary results of the work carried out up to then will be made available to the Client under the usual reserves. Any additional costs relating to the transfer of the work will be charged to the Client.

8.4 If the Contract is terminated, both parties will immediately make available to the opposite party all products and documents belonging to the opposite party that it has in its possession provided, in the case of the Contractor, that the Client has paid all amounts due to date of termination.

## **9 LIABILITY**

9.1 The Contractor will carry out its work to the best of its ability, while exercising the due professionalism and diligence. If an error is made as a result of the Client providing incorrect or incomplete information, the Contractor is not liable for any resulting loss. If the Client proves that it has suffered a loss due to an error by the Contractor that could have been prevented if proper care had been taken, the Contractor is liable for that loss up to an amount limited to the fee received within the scope of the Contract

9.2 The Client shall indemnify the Contractor against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of breach of contract or the negligence of the Contractor or otherwise, brought by any person in connection with any matter, act, omission, or error by the Contractor its agents or employees in connection with the services and products.

9.3 The Client indemnifies the Contractor against third-party claims for losses incurred as a result of the Client supplying incorrect or incomplete information to the Contractor, unless the Client proves that the loss does not relate to imputable faults or negligence on its part or was caused by an intentional act or omission, or similar intentional recklessness on the part of the Contractor and unless any imperative national or international rule or law dictates otherwise.

9.4 The limitation of liability laid down in 9.3 above also applies to third parties commissioned by the Contractor to execute the Contract.

9.5 Statutes which imply warranties or conditions or impose obligations upon the Contractor which cannot by law (or which can only to a limited extent by law) be excluded or modified shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.

9.6 Except as otherwise provided by 9.1 the Contractor shall not be liable for any loss or damage of any kind including without limitation indirect consequential loss whether suffered or incurred by the Client or another person and whether in contract or tort (including negligence), or otherwise and whether such loss or damage arises directly or indirectly from services and products provided by the Contractor to the Client.

9.7 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Client acquires services and products from the Contractor for the purposes of a business in terms of section 2 and 43 of that Act.

## **10 FORCE MAJEURE**

10.1 Neither party is liable to the other for failing to meet its obligations under the Contract to the extent that the failure was caused by an act of God or other circumstance beyond its reasonable control. Should such circumstances arise, which must be considered a force majeure in ordinary commercial law, then the other party must be informed of this without undue delay.

## **11 INTELLECTUAL PROPERTY**

11.1 The Contractor reserves all intellectual property rights in relation to all work, documents, software and products of the intellect it uses or has used and/or develops or has developed within the framework of the execution of the Contract, the copyrights or other intellectual property rights to which it holds or can exercise.

## **12 COMPLAINTS**

12.1 The Contractor must be notified in writing of complaints relating to the work carried out and/or the invoiced amount within 60 days of the date of dispatch of the documents or information in respect of which the Client is filing a complaint, or within 60 days of the discovery of the shortcoming, if the Client proves that the shortcoming could not have reasonably been discovered previously.

12.2 Complaints as referred to in 13.1 do not exempt the Client from its obligation to pay.

12.3 If the Client files a legitimate complaint, the Contractor has the option of adjusting the fee charged, having the rejected work rectified or repeated free of charge or terminating the Contract (or remaining work) in exchange for a refund proportionate to the fee already paid by the Client.

## **13 APPLICABLE LAW AND JURISDICTION**

13.1 All Contracts between the Client and the Contractor are governed by the laws of New Zealand.

13.2 Unless the parties expressly agree otherwise in writing, all disputes between the Client and the Contractor relating to this Contract will be referred to the competent District Court of New Zealand.

## **14 MISCELLANEOUS**

14.1 The Contractor undertakes to provide independent services. Should the Contractor be aware of, or become aware of, any conflicts of interest it will notify the Client immediately.

14.2 Except where otherwise provided in the Contract, rights of action and other powers enjoyed by the Client for whatever reason regarding the Contractor will lapse in any event one year after an occurrence leading to the Client's entitlement to invoke these rights regarding the Contractor.

14.3 If any provision of these Terms and Conditions shall be invalid, void or illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

14.4 Where these Terms and Conditions differ from the order or instructions from the Client or the Client's own terms and conditions, these terms and conditions of trade shall prevail.