

STANDARD SERVICE TERMS AND CONDITIONS FOR ONSWITCH LIMITED

1. Definitions

In these Conditions the following words shall have the following meanings:

- 1.1 References to "we", "us" and "our" are references to Onswitch Limited.
- 1.2 References to "you" and "your" are references to the company, partnership or organisation to which the Proposal is addressed.
- 1.3 „Conditions" means our standard service terms and conditions contained in this document.
- 1.4 'Contract' means the contract between you and us for the supply of Services and Deliverables subject to these Conditions and the Proposal.
- 1.5 'Deliverables' means the literature, documentation, reports, presentations, courses or other deliverable items created for you in accordance with the Proposal and delivered to you under the Contract but does not include our notes and other products commercially distributed by us.
- 1.6 "Proposal" means the written communication from us to you attached to or referring to these Conditions.
- 1.7 'Services' means the services to be supplied by us to you as set out in the Proposal or the Contract.

2. Contract

- 2.1 Subject to any variation under clause 2.2 the Contract will be on these Conditions which constitute the entire agreement between us and you and supersede any previous agreement or understanding. All other terms, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.
- 2.2 Any variation to these Conditions and any representations shall have no effect unless expressly agreed in writing and signed by an appropriate signatory on behalf of both us and you.
- 2.3 No contract will come into existence until we communicate our acceptance to you in writing.

3. Price

- 3.1 The price payable for the Services and Deliverables is the price in pounds sterling (or alternative currency if specifically noted) set out in the Proposal and is exclusive of VAT (and/or any other applicable taxes) and all other direct costs such as transport, packaging and insurance, which shall be added to that price.
- 3.2 All prices quoted in any proposal or offer letter are valid for 30 days only, unless specified in them or until earlier acceptance by you, after which they may be altered by us without giving notice to you.

4. Payment

- 4.1 Upon acceptance of the Proposal we will send you an invoice, payment of which shall be due within 14 days of the date of the invoice. The time of payment shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 4.2 If you fail to make any payment on the due date then, without prejudice to any other right or remedy available to us, we shall be entitled to:-
 - 4.2.1 terminate the Contract or suspend any further Services or deliveries to you forthwith;
 - 4.2.2 charge interest (both before and after judgement) on the amount unpaid, at the rate of 5%



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above Clydesdale Bank Plc base lending rate, until payment in full is made (a part of a month being treated as a full month of the purpose of calculating interest).

4.3 You will make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.

5. Your responsibilities

5.1 You will provide us with full and free access to your premises for the performance of the Services if necessary.

5.2 If we require to use, copy and/or distribute any literature, logos and/or other items provided by you in accordance with performing the Services, you warrant that:-

5.2.1 you have all the necessary permissions and consents to enable us to do so;

5.2.2 we will not be infringing the rights of any third party;

5.2.3 we will not be breaching any confidentiality or contractual obligations.

5.3 You agree to indemnify us and keep us indemnified from and against all costs, claims, demands, liabilities, expenses, damages or losses (including without limitation consequential losses and loss of profit, and all interest, penalties and legal and other professional costs and expenses) arising out of or in connection with any breach of the warranties and obligations set out in clause 5.2.

5.5 If we are required to attend your premises or premises booked by yourselves you agree to observe all statutes and regulations regarding safe working conditions and you agree to provide a safe working environment for us and conform with all relevant laws and regulations. We reserve the right to stop work if we have reasonable grounds to believe that a safe working environment is not being provided.

6. Limitation of liability

6.1 The following provisions set out our entire financial liability (including any liability for the acts or omissions of our employees, agents and sub-contractors) to you in respect of any breach of these Conditions and any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

6.2 Except in respect of death or personal injury caused by our negligence, we shall not be liable to you by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses, depletion of goodwill or any other claims (whether caused by the negligence of us, our servants or agents or otherwise) which arise out of or in connection with the provision of the Services (howsoever caused and including any delay in providing or failure to provide the Services) or their use by you, and our entire liability under or in connection with the Contract shall not exceed the amount of our charges for the provision of the Services.

6.5 We will use our best endeavours to provide the Services and Deliverables in accordance with the Contract and within the estimated time. However, if causes outside our reasonable control give rise to a delay or failure by us to meet our obligations under the Contract, then we shall not be held liable. In the event of any such delay the time for carrying out the Services shall be extended accordingly.

6.6 A person who is not a party to the Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.



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7. Intellectual property rights

7.1 'Intellectual Property' means copyright including literature, presentations, workbooks, courses, registered designs, patents, patent applications and trademarks.

7.2 All Intellectual Property at our disposal at the start of the Contract and used in connection with the Services remains in our ownership: such material contains information confidential to us.

7.3 All Intellectual Property, ideas and information that are already in your possession at the date of the Contract remain in your ownership.

7.4 Subject to clauses 8 & 9 and to any rights of third parties and provided that the whole of the work programme as set out in the Proposal has been carried out and all fees duly paid, you are granted a permanent, world-wide, royalty-free non-exclusive licence to use the Intellectual Property arising directly from the Contract, but not otherwise. We will retain ownership of all such Intellectual Property.

8. Rights to deliverables

8.1 Subject to your compliance with these Conditions we grant you the irrevocable and unlimited right and licence to reproduce, use, modify, create derivative works or otherwise enjoy the benefits of the Deliverables.

8.2 We will not provide the Deliverables to any other person, firm, company or organisation but we may provide certain elements of the Deliverables to our future clients.

8.3 The Deliverables may include certain elements used or developed by us in the course of prior engagements.

8.4 You are entitled to use the Deliverables exclusively for your own internal operations but you are not entitled to distribute the Deliverables outside your own organisation. Accordingly, you agree that you will not provide the Deliverables to any third party, whether a person, firm, company or organisation, unless:-

8.4.1 you transfer all of your rights and interest in, and all copies of, such Deliverables to such third party; and

8.4.2 such third party undertakes to be bound by this restriction in the same manner and agrees that we shall be able to enforce and have the benefit of such undertaking.

9. Confidentiality

9.1 You and we shall take reasonable measures to hold in confidence all information and ideas obtained from the other party that are identifiable as confidential or secret. You and we will use your reasonable endeavours to prevent the publication or disclosure of any confidential information concerning such matters.

9.2 The provisions of clause 9.1 do not apply to:-

9.2.1 any information which is or becomes generally available to the public other than by breach of this agreement.

9.2.2 any information which is, was or becomes available otherwise than pursuant to the Contract and free of any restrictions as to its use or disclosure.

9.3 The provisions of this clause 9 shall continue to apply notwithstanding termination of the Contract.



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10. Termination

10.1 We have the right to terminate the Contract in accordance with the provisions of clause 4.2.

10.2 We have the right to terminate the Contract if you seek to materially change the terms of these Conditions, the Proposal or the Contract without our written consent.

10.3 Either of us may terminate the Contract forthwith by giving written notice if the other party:-

10.3.1 commits a breach of the Contract that is incapable of remedy;

10.3.2 fails to remedy any other breach of contract within fourteen days of receiving written notice of such a breach; or

10.3.3 goes into liquidation or has a petition for winding-up presented, becomes bankrupt, has an administrator or receiver appointed over all or any part of its business or assets, enters into any arrangement or composition with its creditors, suffers any similar action in consequence of debt or a moratorium comes into force in respect of the other (within the meaning of the Insolvency Act 1986).

10.4 Termination shall not affect any rights that either party has accrued up to and on termination.

11. General

11.1 Neither party shall assign or transfer, or purport to assign or transfer, any of its rights or obligations under the Contract without the prior written consent of the other party.

11.2 Notices under these Conditions shall be in writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

11.3 If any provision or part of a provision of these Conditions is held to be invalid or unenforceable by any court or other body of competent jurisdiction that provision or part of that provision shall be deemed severable and the other provisions or the remainder of the relevant provision will continue in full force and effect.

11.4 Neither party may solicit any staff employed by the other throughout the duration of the Contract and for a period of one year after completion of the provision of the Services.

11.5 The Contract shall be governed by and construed in accordance with English law and you and we submit to the exclusive jurisdiction of the English Courts.



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