



Driving organisational adoption of DevOps, Cloud and Microservices

Official Supplier to HM Government for three consecutive years

G-Cloud 9

G-Cloud 10

G-Cloud 11



HM Government
G-Cloud
Supplier

G-Cloud 11 - Terms and Conditions



Terms of Sales & Services

These General Terms and Conditions, and the related Service Contract Proposal, form together the "Agreement" that govern the provision of consulting, coaching and implementation services by Nuaware Ltd.

The present general terms and conditions are applicable to any sale of software license and access to software services carried out by Nuaware Ltd. They also apply to provision of consulting, coaching or implementation services.

1. Definitions and Interpretation

a. The following terms shall have the meanings set out below:

- "Agreement" - has the meaning given to it at Clause 2.a.
- "Background IPR" - means all Intellectual Property Rights or other proprietary rights owned by the Company, its subcontractors or any third party, the use of which is necessary for or incidental to the provision of the Services.
- "Booking Form" or "BF" means a booking form executed by the parties in the format set out at with respect to the Services. Available on request.
- "Client" - means the legal or natural person procuring the Services as specified in the Agreement.
- "Company" - Nuaware Ltd. (company number 10344956) with registered office at C/O Rodliffe Accounting Ltd 23 Skyline Village, Limeharbour, London, England, E14 9TS
- "Company's Confidential Information" - means any commercial information of the Company, any information contained within instruction manuals or other documents provided to the Client by the Company, any information related to the Services, and any other information provided to the Client by or on behalf of the Company which is marked as confidential.



- "Foreground IPR" - means all Intellectual Property Rights arising, or which subsist in materials created, in relation to an Agreement.
- "Intellectual Property Rights" - means all patents, petty patents, utility models, trade marks, design rights, applications for any of the foregoing, copyright, moral rights, database rights, trade or business names, domain names, website addresses whether registrable or otherwise (including applications for and the right to apply for registration of any such rights), and any similar rights in any country whether currently existing or created in the future, in each case for their full term together with any renewals or extensions.
- "Joining Instructions" - means such joining instructions as are provided to the Client in relation to the Services. Sample available on request.
- "Services" - means those services to be provided by the Company to the Client as specified in the Agreement, which may include public scheduled courses; on-site training courses; consultancy services; training development; project management and administration; provision of equipment or systems; conduct of examinations; venue hire; and/or courseware.
- "Software" - means the Supplier's proprietary software in machine-readable object code form only and/or Third Party Software as set out in the applicable Order Form. Third Party Software means the Software of third parties made available to Customer by Supplier subject to Customer agreeing to the terms and conditions of the relevant Third Party Software vendor.
- "Terms" - means these general terms and conditions of business.
- "Working Day" - means a day other than Saturday, Sunday, and statutory holidays in the location where the Services are to be provided.
- "VAT" - means UK value added tax, or any similar sales tax in any relevant jurisdiction.



b. Use of words 'includes', 'including', or similar expression will be construed as illustrative and without limitation to the generality of related words.

c. No provision of an Agreement shall be construed adversely to a party solely on ground that such party was responsible for preparation of that Agreement.

2. Composition of Agreement

a. Each "Agreement" shall comprise and incorporate:

- i. the relevant BF or other document executed by a director of the Company and an authorised signatory of the Client;
- ii. these Terms;
- iii. any of the Company's web portal access terms and conditions applicable to the Services; and
- iv. any Joining Instructions provided by the Company.

b. If there is any inconsistency between any of the constituents of an Agreement, the order of priority in descending order for the purposes of resolving such ambiguity shall be the order in which the constituents appear in Clause 2.a.

c. In relation to Clause 2.a.i, no other document relating to the Services shall be deemed incorporated into the relevant Agreement except where such incorporation is unambiguously confirmed in writing by each party.

d. Notwithstanding that the Company may have given a detailed quotation for Services, no request for Services shall be binding unless the parties have executed an Agreement by signing a BF.

e. Each Agreement constitutes the entire agreement and understanding between the parties relating to the transactions contemplated by or in connection with that Agreement and the other matters referred to in that Agreement, and supersedes and extinguishes any other agreement or understanding (written or oral) between the parties or any of them relating to the same.

f. The Company's catalogues, brochures, leaflets, correspondence and information published on the Company's website are not binding and shall not form part of an Agreement. Each party acknowledges and agrees that it does not rely on, and shall have no remedy in respect of, any promise, assurance, statement, warranty, undertaking or representation made (whether



innocently or negligently) by the other party or any other person except as expressly set out in an Agreement in respect of which its sole remedy shall be for breach of contract.

3. Services and Software Licenses

a. In consideration for the payment of the fees by the Client, the Company shall provide the Services and / or Software licenses.

b. The Company shall use reasonable endeavours to ensure that all software introduced onto the Client's machines will be free of computer viruses and has undergone virus checking procedures in line with the Company's current practice.

4. Fees

a. The Company will invoice the Client in respect of the fees due under each Agreement in accordance with the BF as applicable. The fees shall be as set out in the Agreement or, if no fees are specified, the standard fees charged by the Company for such Services as at the date of provision. In the case of Services provided over a period, the fees shall, at the Company's option, be either the standard fees as at date of Service provision, or the fees as at the date of invoice for the relevant Services.

b. The fees shall be exclusive of any amounts incurred in relation to travel, subsistence, or other expenses, which shall be payable by the Client upon presentation of invoices by the Company.

c. Fees are exclusive of VAT. The Client will pay the Company any VAT properly chargeable on services supplied by the Company pursuant to an Agreement, provided the Company has delivered a correct VAT invoice as required by statute.

d. Where the Client's accounting practices require the use of a purchase order number, the Client shall provide a valid purchase order number to the Company immediately upon signing each Agreement.

5. Terms of Payment



- a. Subject to a satisfactory credit check the Client shall pay the fees invoiced by the Company in accordance with the payment terms set out in the BF as applicable.
- b. Except where otherwise specified in an Agreement, the fees for Services shall be due and payable by the Client within fifteen (15) Working Days of the date of the Company's invoice.
- c. The Client shall not be entitled to exercise any set-off, lien or any similar claim in relation to fees due to the Company. Time of payment shall be of the essence.
- d. Without prejudice to any other rights, the Company shall be entitled to charge interest on overdue payments at the statutory rate, such interest to run from the relevant invoice date until receipt of all outstanding payments in full in cleared funds. The Parties acknowledge that this amounts to a substantial remedy for late payment.
- e. The Client shall pay the amounts set out in the relevant Order Form for the Software ordered by the Customer and as set out in the relevant Scope of Work for certain Services .
- f. Fees for the Software and each Service are invoiced in accordance with the terms of the relevant Software Schedule or the Schedule applicable to each Service.
- g. The Client shall reimburse the Supplier for all actual, reasonable travel expenses including, but not limited to, airfare, hotel and meals incurred by the Supplier in performance of the Services.

6. Cancellations

- a. The Company reserves the right to cancel, curtail or re-schedule training courses or events, in which case it shall use reasonable endeavours to notify the Client. In the event of cancellation, the Company shall refund the course fees which the Client has already paid in advance in relation to the cancelled course. The Company reserves the right to withhold Services or provide reduced Services if course participants attending on the Client's behalf fail to satisfy course requirements or meet the course prerequisites.
- b. If the Client is an individual acting for purposes which are wholly or mainly outside that individual's trade, business, craft, or profession, then the Client may cancel an Agreement



without any liability within fourteen (14) days of the date of that Agreement provided that provision of the Services have not commenced.

c. Except as provided under Clause 7.b, the cancellation and/or re-scheduling fees set out below shall apply in the event a course (or the Client's attendance at a course) is cancelled or rescheduled at the Client's request. The Company may issue a supplementary fee invoice to the Client for such cancellation and/or re-scheduling fees and the Client shall make full payment to the Company within fifteen (15) Working Days of the date of that invoice:

Public Scheduled Courses

Date of Cancellation/Rescheduling	Cancellation Fee Payable	Rescheduling Fee Payable
15-11 clear Working Days prior to the start of the course	50%	25%
10-6 clear Working Days prior to the start of the course	75%	50%
Fewer than six (6) Working Days prior to the start of the course	100%	100%

d. The Client may substitute course participants by written notification to the Company provided that such substitute participants comply with all course requirements (including pre-requisites and pre-course reading) as notified by the Company to the Client, or as detailed in the course outline or Joining Instructions.

7. Intellectual Property Rights

a. Use of the Company's name or logo is prohibited except with the Company's prior written consent except as provided by applicable law.

b. The Company and its licensors shall retain all right, title and interest in and to all Background IPR. The Client shall not acquire any rights the Background IPR or to any materials in which Background IPR subsists, including any documents, training guides, instruction manuals, drawings, diagrams, videos or any other materials provided by the Company in connection with Services.



c. The Company hereby grants to the Client a licence to use the Background IPR in those materials which the Company provides to the Client solely to the extent necessary for the Client to receive the Services. The Client shall not copy, reproduce, sell, licence, distribute, publish or otherwise circulate any Background IPR except with the Company's prior written consent.

d. All Foreground IPR shall vest in the Company upon creation and the Client hereby assigns with full title guarantee all Foreground IPR which relates to the Agreement. Such assignment shall take effect as a present assignment of future rights.

e. The Company hereby grants to the Client a worldwide, royalty-free, perpetual license to use the Foreground IPR for the Client's internal business purposes only, and provided always that the Client shall not commercialize Foreground IPR and in particular shall not sell, license, distribute, publish or otherwise circulate Foreground IPR to any third party except with the Company's prior written consent.

f. The Client shall promptly inform the Company in writing of any infringement or alleged infringement of Background IPR or Foreground IPR, or any allegation coming to the Client's attention that the Services, Background IPR or Foreground IPR infringe any person's intellectual property rights.

g. Subject to the exclusions and limitations on liability under Clause 10 , the Company shall indemnify the Client from and against all losses or expenses (including reasonable legal expenses) suffered or incurred by the Client as a result of a claim that:

- i. Background IPR;
- ii. Foreground IPR created by the Company;
- iii. or the provision of the Services (except in the circumstances set out at Clause 8h), infringes any person's Intellectual Property Rights

h. Where the Client requires Services to be provided by the Company to the Client's specifications or requires the Company to incorporate the Client's materials within the Services, the Client shall fully indemnify the Company from and against all losses or expenses (including reasonable legal expenses) suffered or incurred by the Client as a result of a claim that the provision of the Services and/or use of the Client's materials infringes any person's Intellectual Property Rights.



8. Term and termination

a. The term of each Agreement shall be set out in the relevant BF. The Company may, in its sole discretion, terminate or suspend any and all Agreements upon ten (10) days prior written notice to the Client if:

- i. the Client ceases to do business or otherwise suspends business operations;
- ii. becomes insolvent or seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding or any proceeding is instituted against the Client;
- iii. undergoes a change of ownership or similar arrangement; or
- iv. fails to make timely payments as required under an Agreement.

b. The Company may, in its sole discretion, immediately terminate or suspend any and all Agreements upon written notice if the Client commits a material breach of any Agreement, or a series of breaches the combination of which constitutes a material breach of an Agreement, and fails to remedy the breach within ten (10) days after receipt of notice giving particulars of breach and requiring it to be remedied.

9. Liability

a. Notwithstanding any contrary provision in an Agreement, neither party limits or excludes its liability in respect of:

- i. any death or personal injury caused by its negligence;
- ii. any fraud or fraudulent misrepresentation; or
- iii. any statutory or other liability which cannot be excluded under applicable law.

b. The Company shall not be liable to the Client for any loss of profit or loss of revenue arising out of or in connection with

- i. an Agreement; or
- ii. any breach or non-performance of an Agreement, no matter how fundamental (including by reason of that party's negligence).

c. The Company shall not be liable to the Client for:

- i. any indirect loss;
- ii. any loss of goodwill, business, reputation or opportunity;



- iii. any loss caused by supply of inaccurate or incomplete information by the Client; or
- iv. any loss of or corruption of data or software,

in each case arising out of or in connection with an Agreement or any breach or nonperformance of it no matter how fundamental (including by reason of that party's negligence) whether or not that party had been informed of or was aware that there was a serious possibility of such loss.

d. The Company's total aggregate liability arising under or in connection with an Agreement or any breach or non-performance of it no matter how fundamental (including by reason of that party's negligence) in contract, tort or otherwise shall be limited to an amount equal to the fees paid by the Client under that Agreement in the previous twelve (12) months.

e. The parties agree that each of Clauses 10.b, 10.c, and 10.d are separate and independent term.

10. Warranties and Representations

a. Each party warrants and represents that, as at date of each Agreement, it has full capacity and authority to enter into that Agreement.

b. If requested, the Company may help the Client to choose training or other Services but the Company does not provide any warranties that such Services will be fit for the Client's purpose and assessment and selection of Services remains the Client's ultimate responsibility.

c. The Company warrants that it will provide the Services with reasonable skill and care.

d. All other warranties (express or implied) are hereby excluded to maximum extent permitted by applicable law.



11. Modifications and Third Party Terms

a. The Company reserves the right to modify these Terms without prior notice on the following basis:

- i. When changes are made, the Company will post the new Terms on the following page of the Company's website (www.nuaware.com)
- ii. Such changes shall apply to each Agreement entered into prior to such publication unless the Client notifies the Company within thirty (30) days of their publication on the Company's website that it does not accept the changes.
- iii. Where notification under Clause 12.a.ii is given, the previous Terms shall remain in full force and effect for the remaining term of each Agreement entered into prior to publication of the new Terms.
- iv. The new (modified) Terms shall apply to any Agreement entered into on or after the date of publication of those Terms.

b. Upon the Client's request and in order to meet the Client's requirements, the Company may from time to time book courses (and / or accommodation) provided by third parties on the Client's behalf. In such instances, the third party contractual terms shall govern the booking of those third party courses (and / or accommodation) and in particular, the third party payment and cancellation terms shall prevail over terms of this Agreement with respect to those third party courses (and / or accommodation). The Company will provide to the Client a copy of relevant third party contractual terms upon the Client's request. The Client shall indemnify the Company for all costs incurred in booking such courses (and / or accommodation), and for any loss or expense suffered or incurred by the Company as a result of the Client's acts or omissions in relation to such third party courses (and / or accommodation).

12. Confidentiality

a. The Client will keep confidential all of the Company's Confidential Information which is disclosed to it.



- b.** Subject to Clause 13.g, the Client may not disclose the Company's Confidential Information to any third party without the Company's prior written consent.
- c.** The Client may share the Company's Confidential Information with only those of its employees who have a need to know the information and who are subject to legally binding obligations to keep such information confidential.
- d.** Confidential information disclosed by the Client to the Company in relation to this Agreement shall be clearly labelled and identified as confidential by the Client at the time of disclosure ("Client's Confidential Information"). When concurrent written identification of Client's Confidential Information is not feasible at the time of such disclosure, the Client shall provide such identification in writing promptly thereafter.
- e.** Oral communications pertaining to the Services shall be presumed to be confidential unless otherwise indicated by the disclosing party.
- f.** Subject to Clause 13.g, the Company shall not disclose the Client's Confidential Information, to any person except to those individuals who need access to such confidential information to ensure proper performance of the Services.
- g.** Neither party shall be liable for disclosure or use of confidential information which is:
 - i. generally available to the public without breach of this Agreement;
 - ii. disclosed with the prior written approval of the disclosing party; or
 - iii. required to be disclosed by applicable law or court order.
- h.** If the Client is required by a government body or court of law to disclose any of the Company's Confidential Information, the Client shall give the Company reasonable advance notice so that the Company has an opportunity to contest disclosure (to the extent the Client is not prohibited from doing so by law)
- i.** The Company shall be entitled to retain a copy of the Client's Confidential Information for its internal records subject to on-going compliance with the restrictions set out in this Agreement.
- j.** This Clause 13 shall survive termination or expiry of each Agreement.



13. Notices and Contact Details

- a.** Notices must be given in writing. A notice shall be deemed effectively served:
- i. if sent by email, on the date when receipt has been personally acknowledged by return email (electronically generated receipts shall not be valid);
 - ii. if delivered personally, on the date when left at the Company's registered office or the Client's address (as applicable) and signed for; or
 - iii. if given by post, on the date when the notice has been signed for at the Company's registered office or the Client's address.
- b.** For the Company, notices shall be sent to: Rodliffe Accounting, 744-750 5th Floor, Salisbury House, London Wall, London, London, England, EC2M 5QQ.
- c.** For the Client, notices shall be sent to the attention of the person and address/email identified in the relevant Agreement.
- d.** In the event of general queries, the Company may be contacted as follows:
- i. by telephone: +44 (0) 203 488 0530;
 - ii. by e-mail: info@nuaware.com; or
 - iii. via our website: www.nuaware.com

14. Governing Law and Dispute Resolution

- a.** Each Agreement shall be governed by and construed in accordance with English Law. The parties hereby submit to the exclusive jurisdiction of the English courts in relation to all matters arising out of an Agreement.

15. Non-Solicitation

- a.** Neither Party shall, for the Term of the Agreement and for a 6 month period after its termination or expiry, employ or contract the services of any person who is or was employed or otherwise engaged by the other Party at any time in relation to the Agreement without the express written consent of that Party.
- b.** Neither Party shall, for the Term of the Agreement and for 6 month period after its termination or expiry, solicit or entice away from the other Party any customer or client where any such



solicitation or enticement would cause damage to the business of that Party without the express written consent of that Party.

16. Miscellaneous Provisions

a. Force majeure: The Company shall be entitled to delay or cancel delivery of Services, or to reduce the amount of Services delivered, if it is prevented from or hindered in or delayed in the provision of Services through any circumstances beyond its reasonable control including strike, lock-out, accident, war, government action, national emergency, act of terrorism, protest, riot, civil commotion, explosion, flood, epidemic, or fire. The Company shall not be liable for any delayed or non-performance of its obligations caused by circumstances beyond its reasonable control.

b. Relationship of parties: The parties are independent contractors. Nothing in this Agreement shall give rise to a partnership, joint venture, agency or any such other relationship between the parties. Neither party shall claim to be a legal representative, partner, agent, franchisee or employee of the other party.

c. Data protection: The Company's privacy statement shall apply.

d. Assignment: The Company may assign or sub-contract its obligations or rights under each Agreement to a competent third party in whole or in part. The Client may not assign an Agreement in whole or in part except with the Company's express written consent.

e. Export and compliance with laws: The Client acknowledges that Services provided under each Agreement may be subject to export control laws and regulations in the European Union, United States or other jurisdictions. The Client shall comply with all applicable laws, orders and regulations of any governmental authority in connection with receipt of Services and shall bind its employees or other users of Service accordingly.

f. Waiver: The failure or neglect of a party to enforce any provision of an Agreement shall not be construed as a waiver of that party's rights, nor in any way affect the validity of the whole or any part of any Agreement.



g. Severability: If any provision of an Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that the affected Agreement otherwise remains in full force and effect.

h. Third party rights: This Agreement is not intended to be for benefit of and shall not be enforceable by any person other than a party, in particular under the Contracts (Rights of Third Parties) Act 1999.

i. Survival: Clauses 1 (Definitions and Interpretation), 2 (Composition of Agreement), 5 (Fees), 6 (Terms of Payment), 8 (Intellectual property rights), 10 (Liability), 12 (Modifications and Third Party Terms), 13 (Confidentiality), 15 (Governing law and Dispute Resolution), and 16 (Miscellaneous Provisions) shall survive any termination or expiration of this Agreement to the extent necessary to give effect to its terms.

j. Non-solicitation: During term of the Agreement, and for a period of one (1) year following its termination or expiry, the Client shall not directly or indirectly employ or solicit for employment any members of the Company's then current personnel. If the Client breaches this Clause 16.j, in addition to any other remedies available whether under an Agreement or at law, the Company shall be entitled to recover from the Client liquidated damages of 35% of gross annual salary of the member of the Company's personnel employed or solicited for employment (as at the date their employment with the Company ended). The parties agree that such amount is a genuine pre-estimate of the Company's loss and not a penalty. This Clause 16.j shall not restrict the Client from employing any members of the Company's personnel who apply unsolicited in response to a general advertising or other general recruitment campaign