

GCloud9 - Commercial Purchasing Business Terms and Conditions

1. TERMS OF BUSINESS

1.1 These terms of business shall apply to any contract ('the contract') formed on the acceptance of a purchase order by the Supplier Explosive Learning Solutions Ltd (ELS) from any organisation wishing to receive services from ELS ('the Client').

1.2 Any reference to a statutory provision includes a reference to its statutory modification or re-enactment;

1.3 The clause headings are not to be taken into account in its construction or interpretation.

1.4 For the avoidance of doubt both parties agree that ELS is not supplying the Services as an Employment Business as defined in the Employment Agencies Act and that accordingly the Agency Workers Regulations 2010 shall not apply.

2. CONTRACTS

2.1 The Client has no obligation to place any purchase order upon the Supplier and the Supplier has no obligation to accept any purchase order so placed.

2.2 Any Contract will incorporate the terms and conditions of this Agreement and will come into effect only when a purchase order has been lawfully placed and accepted by the Parties.

2.3 If a Supplier fails to provide written acceptance of a purchase order but performs the required services stated on the purchase order, then the purchase order will be deemed to have been accepted and the Agreement will have come into effect.

3. OBLIGATIONS OF THE SUPPLIER

3.1 By accepting a purchase order the Supplier warrants that it has the qualifications, experience and resources necessary to perform its obligations under the resulting Contract.

3.2 In performing its obligations under any Contract the Supplier undertakes that it will:

3.2.1 render the Services with all due skill, care and attention and in a timely and cost effective manner;

3.2.2 comply with all relevant procedural and quality standards, codes of practice, protocols and legal requirements;

3.2.3 refrain from conduct, including the acceptance of engagements and the assumption of contractual obligations towards competitors of the Client and other third parties, that is calculated or likely to harm the commercial interests of the Client;

3.2.4 comply with all reasonable requirements communicated by the Client and its customers relating to the use of their premises, facilities and equipment and with their Health & Safety procedures;

3.2.5 exercise due consideration for the commercial and legal obligations of the Client and its customers and refrain from conduct that might render them liable to legal claims and proceedings at the suit of any party or to prosecution for a criminal offence;

3.2.6 submit accurate written records of the chargeable days worked by its staff on any contract

3.2.7 furnish the Client with written reports on the progress of work undertaken by the supplier in connection with any Contract when necessary

3.2.8 submit claims for expenses at the end of each working month together with all necessary receipts unless otherwise directed on the Purchase order.

3.3 The Supplier shall have the right to substitute any staff, contractors or agents, provided they are suitably qualified to deliver the service.

3.4 Save as aforesaid, the Supplier will adopt its own method of working in rendering Services under any Contract.

3.5 The Client may require the Supplier to remove from its premises or those of any customer and to cease retaining for the purposes of the Contract any staff, contractors or agents it may have retained whose presence and/or continued involvement in the provision of Services under the Contract the Client reasonably considers prejudicial to its interests or those of its customer.

3.6 If an individual's services are unsatisfactory in the Client's reasonable opinion, the Client shall notify the Supplier in writing. The Supplier will replace the individual within 48 hours with another of appropriate competence. If it is not possible to provide a replacement individual, the Supplier will inform the Client immediately and the Client shall have the right to terminate the services of the individual immediately upon written notice detailing the reasons for termination.

4. OBLIGATIONS OF THE CLIENT

4.1 The Client will take such steps as are reasonable in all circumstances to ensure that the Supplier is given such instructions and such access to information, premises and facilities as may be required to enable the Supplier to fulfil its obligations to the Client under any Contract. The Supplier will have no liability to the Client for any delay, loss, damage, costs, expenses or claims for compensation arising from any information or instructions supplied by the Client that are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or from any other fault of the Client.

4.2 The Client will ensure the accuracy of any specification of services to be provided.

4.3 The Client will ensure that individuals conveyed by the Supplier are provided with reasonable working conditions as per current Health and Safety legislation and that all equipment, accommodation and data required are provided.

4.4 Where the Client has supplied data to enable the Supplier to carry out services, the data shall be in good condition and the Client shall retain a backup copy.

5. FEES AND PAYMENT

5.1 Fees are quoted on a per diem basis, this is based on:

5.1.1 Eight (8) hour working day – exclusive of travel and lunch

5.1.2 Working week Monday - Friday

5.1.3 Office hours between 0900 and 1700

5.1.4 UK Bank Holidays and Public holidays are excluded

5.2 The Fees payable to the Supplier will be those stated in the purchase order.

5.3 The Fees and the reimbursement of any disbursements or expenses incurred by the Supplier and authorised by the Client will be paid by bank credit transfer within 30 days of the date of invoicing, invoices will be raised at the end of each working month.

5.4 Approval of services provided will normally be by the issue either a monthly timesheet or timesheet report of services provided. ELS requires notification within 5 days of receipt of the services of any disagreement with their content or disputed hours, otherwise the services will be deemed accepted

5.5 Time chargeable includes all time worked on the assignment on or off the Client's premises and time committed at or out of ELS'



office due to requirements, location and schedules of the assignment. If the Client requires significant working outside of normal hours, an additional fee rate will be charged. This will be notified to the Client in writing.

5.6 Expenses incurred at the course of carrying out the services are invoiced monthly in arrears with validated expense forms with receipts and payable by the Client. The client will be charged for accommodation, public transport charges and the mileage rate as dictated in the purchase order.

5.7 Subject to reasonable notice ELS's candidates will be released for holidays, occasional training and other ELS matters. Time taken off for these purposes will not be chargeable.

5.8 Unless stated otherwise, the Client agrees to pay the amounts due in respect of fees and expenses incurred in connection with the Contract, plus Value Added Tax at the prevailing rate.

5.9 Fees and expenses as stated above are payable in full and payment cannot be set off, delayed or deferred pending the outcome of any claim which may be made by the Client.

5.10 If the Client fails to make any payment when due then in addition to the fees payable (and without prejudice to any other right), interest shall accrue on the amount outstanding on a day to day basis from the due date in accordance with the Late Payment of Commercial Debts (Interest) Act 1998., ELS may also without notice suspend further performance of the services until such non-payment is remedied.

6. TERMINATION

6.1 Either Party may give written notice to the other that upon its expiry no further Services are to be rendered under a Contract. From the date upon which such notice expires, the obligations of the Supplier to render and of the Client to pay the Fee for further Services under that Contract will cease. The length of notice required will be as stated in the purchase order.

6.2 If the Client commits any material breach of its obligations under a Contract then the Supplier may give written notice to the Client that from the date of its delivery no further Services are to be rendered under that Contract. In such circumstances, no Fee will be payable for further Services rendered under the Contract.

6.3 If either party has entered into any composition or arrangement (whether formal or informal) with its creditors or has a bankruptcy order made against him or has been made the subject of an application for an interim order under Section 253 of the Insolvency Act 1986 or has an interim receiver of his property appointed under section 286 of the Insolvency Act 1986 or becomes the subject of a voluntary arrangement under Section 1 of the Insolvency Act 1986 or has a receiver manager administrator or administrative administrator appointed of its undertaking assets or income.

6.4 Notice under clause 6.1 must be in writing and sent by first class mail in a pre-paid envelope addressed to the Client or the Supplier, as the case may be, at its registered office/principal place of business. Notice under clause 6.2 and 6.3 must be in writing but may be served by facsimile transmission, by personal delivery to any servant or agent retained by the Supplier for the purposes of the Contract or by post. Notice by post will be deemed served on the second working day after posting unless the contrary is proved. Notice by facsimile transmission or personal delivery will be deemed served on transmission or at the time of delivery as the case may be.

6.5 The service of notice under clauses 6.1 and 6.2 will neither prejudice, compromise nor otherwise affect:

6.5.1 rights or obligations accrued under the Contract to which it relates and of either Party to legal redress for breach of its terms; or

6.5.2 the right of the Client to the full of Services rendered by the Supplier prior to notice taking effect.

7. INTELLECTUAL PROPERTY RIGHTS

7.1 The Parties foresee that the Supplier may make, discover or create intellectual property in the performance of its obligations under any Contract and agree that in this respect the Supplier has a special obligation to further the interests of the Client and its customers.

7.2 Subject to the provisions of the Patents Act 1977 and the Copyright, Designs and Patents Act 1988 and of any amending legislation, if in the performance of its obligations under any Contract the Supplier creates or discovers anything constituting intellectual property or in which intellectual property rights might subsist and that relates to or is capable of use in the business carried on by the Client or the customer on whose behalf the Services are rendered then the Supplier must immediately communicate all the details of such creation or discovery to the Client and the intellectual property rights therein will belong solely to the Client or to the customer depending on whether the Services under the Contract are rendered for the Client or that customer. At the request and expense of the Client the Supplier must provide such information, drawings and assistance as may be necessary for the Client or the customer to protect and to exploit such intellectual property as, when and wherever it may require.

7.3 At the request of the Client the Supplier will irrevocably appoint the Client or the customer to be its attorney and in its name and on its behalf to sign and execute such instruments and do such things and generally to use its name for the purpose of giving the Client, the customer or such nominee as either might appoint the full benefit of the provisions of this clause 7.

7.4 The Supplier will only assign servants and agents to work on any Contract who have entered into individual agreements that confer the self-same rights on the Client and its customers and impose the self-same responsibilities upon such servants and agents with respect to intellectual property as are conferred on the Client and imposed on the Supplier by this Agreement. The Supplier undertakes on request to produce such agreements for inspection by the Client.

8. CONFIDENTIALITY

8.1 Otherwise than in the proper performance of its obligations under a Contract or in conformity to an overriding statutory obligation, both parties will refrain from making use of and from publishing or disclosing confidential information that has come into its possession or control through the rendering or proposed rendering of Services by the Supplier to the Client.

8.2 Both parties warrant that they will take all reasonable steps to prevent the unauthorised publication, disclosure or use of confidential information that has come into their possession or control through the rendering or proposed rendering of Services by the Supplier to the Client and undertake to take such measures as may in all the circumstances be reasonable to assist the other party and any customer to recover and prevent the unauthorised use, dissemination, sale or other disposal of such information and material.

8.3 The Parties define no limit to the categories of information and material that are to be regarded for the purposes of this Agreement as secret or confidential but for the avoidance of doubt the following categories will be so regarded:

8.3.1 information relating to the financial circumstances of the Supplier, Client and any customer;

8.3.2 information relating to past, present and prospective financial and contractual relations between the Client and the Supplier;

8.3.3 information relating to contractual relations between either party and its past, present and prospective workers, other suppliers, customers and agents;

8.3.4 information relating to contractual relations between a customer and its past, present and prospective workers, suppliers, clients and agents;

8.3.5 information relating to the business of either party and any

customer, their trade secrets, their management and manufacturing methods, their processes, their systems and their existing and prospective research and development projects;

8.3.6 information relating to the mental and physical health, ability, social and financial circumstances of past, present and prospective members of the staff of either party and any customer;

8.3.7 information communicated to either party or a customer in confidence or in respect of which either owes a duty of confidentiality to any third party;

8.3.8 documents and any other media for the storage of data that may be reduced to legible form that record or relate to the categories of information identified at 8.3.1 to 8.3.7 above.

8.4 Both parties warrant that their staff, contractors and agents:

8.4.1 will only be afforded access to such confidential information as may be required for the due performance of their duties in respect of any Contract;

8.4.2 will have been notified before assignment to work on any Contract of the confidentiality requirements of this Agreement and have agreed in writing neither to cause nor permit the unauthorised disclosure of confidential information to any third party.

8.5 The Supplier undertakes on request to produce for inspection by the Client any agreement made pursuant to the provisions of sub-clause 8.4.2 above.

8.6 Nothing in this Agreement will prevent either party from disclosing confidential information:

8.6.1 that came lawfully into its possession otherwise than through the rendering or proposed rendering of Services to the Client by the Supplier; or

8.6.2 that is in the public domain otherwise than in consequence of any

breach of its obligations under this Agreement or a breach of the obligations of any servant, agent or contractor whose services it retains; or

8.6.3 that is required to be disclosed in compliance with a legal requirement of a governmental agency, regulatory authority or otherwise where disclosure is required by operation of law.

9. NON-SOLICITATION

9.1 During the 12 months immediately following the date on which the Supplier ceases to render Services under any Contract, neither Party (whether directly or indirectly or on its own account or with, through or for any other person, firm, client, undertaking) will:

9.1.1 entice away from or encourage to leave the service of the other; or

9.1.2 entice or discourage from providing services to the other any person retained in a technical or professional capacity in the service of or providing services for the other, whether or not such person would breach any contract of employment or contract for services by reason of leaving the service or ceasing to provide services for the other.

9.2 During the 6 months immediately after ceasing to render Services under a Contract the Supplier will neither solicit, seek business from nor render the same or similar services to the customer whether directly or indirectly or on its own account or with, through or for any other person, firm, client, undertaking otherwise than with the prior written agreement of the Client.

10. STATUS OF PARTIES

10.1 The relationship between the Client and the Supplier created by the acceptance of a purchase order will be that of client and independent contractor. Nothing in this Agreement or in any Contract will give rise or be construed as giving rise to a relationship of employment or partnership between the Client and the Supplier, its servants or agents nor



must the Supplier represent to any customer that its relationship with the Client is other than that of principal and independent contractor.

10.2 The Supplier will pay and keep the Client fully and effectively indemnified in respect of all and any liabilities for tax, tax penalties and interest, national insurance contributions and similar charges payable on or by virtue of the Fees and in respect of all costs reasonably incurred in dealing with any demands upon the Client for such liabilities.

11. DATA AND INFORMATION

11.1 All documentation, software and other material made available to the Supplier by the Client or a third party in connection with the rendering or proposed rendering of Services to the Client or a customer will be returned upon the request of the Client and shall not be copied, published or used for any purpose other than the rendering of the Services.

11.2 The Parties will at all times comply with the provisions and obligations imposed by the Data Protection Act 1998 and the Data Protection Principles together with any subsequent re-enactment or amendment thereof in storing and processing personal data, and all personal data acquired by either Party from the other will be returned on request. or any part thereof or has passed a resolution for its winding up or has a petition presented to any Court for its winding up or for an administration order then the other party may (without prejudice to its other rights against the other party) suspend or terminate its agreement.

11.3 The parties hereby acknowledge that performance of a duty imposed by the Data Protection Act 1998 will not breach any obligation of confidentiality that may be owed to the other.

12. INDEMNITY

12.1 The Supplier shall keep the Client indemnified in full against all liabilities, actions, suits, claims, demands, losses, charges, costs and expenses (including legal and other professional fees and expenses) arising out of

its acts or omissions and incurred by the Client as a result of or in connection with:

- (a). any breach of any condition of the Contract
- (b). any loss, destruction of or damage to property caused by, relating to or arising from the Suppliers services.
- (c). any infringement or alleged infringement of any Intellectual Property Rights caused by the use, manufacture or supply of the Services.
- (d). any defect in the Output Materials or any act or omission of the Supplier or any of the Suppliers Subcontractors occurring either in the course of delivery of the Service and/or Output Materials or otherwise in the course of performing the Contract.

13. FORCE MAJEURE

13.1 Neither party shall be liable for any delay or failure to meet its obligations under any Contract (other than a payment obligation) that is due to any cause outside its reasonable control including (without limitation) inclement weather, Act of God, war, riot, malicious acts of damage, civil commotion, strike, lockout, industrial dispute, refusal of licence (including refusal or revocation of any Telecommunications Network Operator or service provider's permit or licence), power failure, fire, or the lack of availability of materials.

14. SEVERABILITY

14.1 In the event that any of the restrictions contained in this Agreement is found to be void but would be valid were some part or parts thereof deleted or the period of application reduced, such restriction will apply with such modification as may be necessary to make the same valid and effective.

15. PRIOR TERMS AND CONDITIONS

15.1 The terms of this Agreement supersede and take effect in substitution for any terms and conditions upon which the Supplier may have agreed to render Services to or to the purchase order of the Client but do not affect rights and obligations that have accrued prior to the date of this Agreement.

16. WAIVER

16.1 Failure by either party at any time to enforce any of the provisions of this Agreement or of a Contract will not be construed as a waiver by such Party of such provisions or in any way affect the validity of this Agreement or the Contract.

17. ASSIGNMENT

17.1 The benefit of the terms of this Agreement may not be assigned by either Party without the written consent of the other.

18. LIMIT OF LIABILITY

18.1 Save in respect of death or personal injury caused by the culpable act or default of the Supplier and as otherwise expressly agreed in writing between the Parties, the entire liability of the Supplier to the Client under or in connection with the rendering of Services under any Contract will not exceed the figure stated in the Purchase order accepted by the Supplier. Subject only to the foregoing limitation, the Supplier will be liable to the Client for any loss, including loss of profit that the Client sustains in consequence of any breach of Contract on the part of the Supplier.

18.2 ELS will have no liability for any Claim for loss of revenue or profits, loss of anticipated savings, loss of goodwill or injury to reputation, loss of business opportunity, loss or damage to or corruption of data, losses suffered by third parties or indirect, consequential or special loss or damage, regardless of whether ELS knew of had reason to know of the possibility of the loss, injury or damage in question

19. GOVERNING LAW

19.1 This Agreement shall be construed in accordance with and governed by the Law of England and Wales and each party agrees to submit to the exclusive jurisdiction of the Courts of England and Wales.

20. AMENDMENTS

20.1 Any variation of the terms of this Agreement must be recorded in writing and lawfully executed by the Parties.

21. ARBITRATION

21.1 Any dispute or difference between the parties in connection with this Agreement shall be referred to and be determined by a sole Arbitrator. The Arbitrator shall be appointed by agreement between the parties or in default of agreement by the President for the time being of the Institute of Arbitrators.

The procedure to be followed should be agreed by the parties or in default of agreement determined by the Arbitrator.

22. COMPLIANCE WITH LAWS

22.1 Compliance with Laws: The Client is committed to compliance with all applicable laws. These include (but are not limited to) the UK Bribery Act 2010 ("the Act"). The Client will not countenance any activity which breaches the Act or any other applicable laws. This is a fundamental condition of all contracts entered into by the Client. The Supplier unconditionally undertakes that it will not do or omit to do anything which would constitute an offence under the Act if UK law applied, or under any other applicable law.

22.2 Record Keeping: All transactions and holdings relating to the present agreement must be recorded in proper detail and according to applicable accounting standards. Such records must be available for inspection or audit at any time. No such records may be held elsewhere than at Supplier's premises and/or on



Supplier's systems, and all such records should be accessible to authorized staff at all times. Under no circumstances should any of Supplier's records relating to the present agreement be destroyed, amended, tampered with or dealt with in any way which would mislead a third party inspecting those records.

In the event of a default by both parties in respect of any procedural order made by the Arbitrator, the Arbitrator shall have power to proceed with the arbitration in the absence of that party and to deliver his award.

22.3 Anti-Bribery Obligation. The Supplier shall not and shall procure that its employees, agents and sub-contractors shall not offer, promise or give or request, accept or agree to accept from any person (whether for itself or on behalf of another) any advantage gift, payment, consideration or benefit of any kind which constitutes a bribe and/or an illegal or corrupt practice under the UK Bribery Act 2010 or the laws of any other country, either directly or indirectly in connection with this Agreement or the business of the Client ("the Anti- Bribery Obligation"). The Supplier shall include an anti-bribery obligation substantially on the same terms as this article in all of its contracts with sub-contractors.

The Supplier shall disclose in writing to the Client details of any breach or alleged breach of the Anti- Bribery Obligation and this shall be an on-going obligation.

The Supplier shall:

- (a) at all times maintain strict compliance with the Anti-Bribery Obligation;
- (b) monitor its employees, representatives and sub-contractors to ensure compliance with the Anti-Bribery Obligation; and
- (c) make clear, in all its dealings on behalf of the Client, that it is acting in accordance with the Anti-Bribery Obligation.
- (d) inform the Client of any investigation, arrest, charge, proceedings, regulatory order, government order or other legal process relating to the Supplier, its directors or officers, shareholders holding more than 1% of its shares or their families immediately after learning of it, and provide the Client with as much detail as possible.