

Jayne Packham Consultancy Limited

STANDARD TERMS OF BUSINESS (updated 14 July 2022)

1. Interpretation

1.1 The definitions and rules of interpretation in this clause apply to these Terms.

Capacity: as agent, consultant, director, employee, owner, partner, shareholder or in any other capacity.

Confidential Information: confidential information in whatever form relating to your business, customers, products, affairs and finances for the time being confidential to you.

Contract: the contract between you and us for the supply of Services in accordance with these Terms.

Day: means a weekday (excluding weekends and public holidays).

Deliverables: all documents, products and materials developed by us or our agents, subcontractors, consultants, affiliates and employees in relation to the Services in any form, including computer programs, data, reports and specifications (including drafts).

Individual: means Jayne Packham or such other person as specified in the Proposal.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, moral rights, trademarks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world.

Proposal: your order for the Services as set out at the front of these Terms or accompanying email.

Services: the services that we are providing to you in a consultancy or training capacity as set out in the Proposal. This includes, but is not limited to, group or individual **Training sessions** for a single company (in-house) or on open courses (multiple companies in attendance). eLearning courses are covered by separate terms and conditions.

Substitute: a substitute for the Individual appointed under the terms of clause 4.2.

Terms: the terms and conditions set out in this document.

We/us: Jayne Packham Consultancy Limited with our registered office at Romer Farm, Butterhill Bank, Burston, Stafford, ST18 0DT a company registered in England and Wales under company number 05893158. Our VAT registration number is GB 891 9348 73.

Writing or written: includes email.

1.2 The headings do not affect the interpretation of these Terms.

1.3 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.4 Unless the context otherwise requires, words in the singular include the plural and in the plural include the singular.

2. Basis of Agreement

2.1 These Terms and the Proposal constitute the entire agreement between you and us. You acknowledge that you have not relied on any statement, promise or representation made or given by or on behalf of us that is not set out in these Terms or the Proposal.

2.2 If any of these Terms are inconsistent with any term of the Proposal, the Proposal shall prevail.

2.3 These Terms shall become binding on you and us and a contract shall be formed between us upon the earlier of (a) you signing and returning to us the Proposal; or (b) you instructing us to commence work, in relation to the Proposal (including booking a training session date); or c) accept the Proposal.

- 2.4 Any quotation for the Services is given on the basis that a binding contract shall only come into existence in accordance with Clause 2.3.

3. Your Duties

You will:

- 3.1 provide to us all the information we reasonably request to allow us to provide the Services;
- 3.2 co-operate with us in all matters relating to the Services and appoint the Manager in relation to the Services, who shall have the authority contractually to bind you on matters relating to the Services;
- 3.3 provide, for us, our agents, subcontractors, consultants, affiliates and employees, in a timely manner and at no charge, access to your premises, office accommodation, data and other facilities as we reasonably require in order to provide you with the Services;
- 3.4 be responsible (at your own cost) for preparing and maintaining the relevant premises for the supply of the Services, including identifying, monitoring, removing and disposing of any hazardous materials from your premises in accordance with all applicable laws, before and during the supply of the Services at those premises, and informing us of all of your obligations and actions under this clause 3.4;
- 3.5 inform us of all health and safety rules and regulations and any other reasonable security requirements that apply at your premises;
- 3.6 obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, before the date on which the Services are to start.

4. Our Duties

- 4.1 We shall procure that the Individual shall:
- (a) provide the Services with all due care, skill and ability;
 - (b) unless prevented by ill health or accident, devote such time to the carrying out of the Services as may be necessary for their proper performance;
 - (c) use reasonable endeavours to meet any performance dates specified in the Proposal, but any such dates shall be estimates only and time for performance by us shall not be of the essence of this Contract; and
 - (d) use reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirements that apply at your premises and that have been communicated to us under clause 3.5, provided that we shall not be liable under these Terms if, as a result of such observation, we are in breach of any of our obligations under these Terms.
- 4.2 We may, subject to the following proviso, appoint a suitably qualified and skilled Substitute to perform the Services in place of the Individual, provided that the Substitute shall be required to enter into direct undertakings with you, including with regard to confidentiality. If you accept the Substitute, we shall continue to invoice you in accordance with clause 5 and shall be responsible for the remuneration of the Substitute.
- 4.3 We may use a third party to perform any administrative, clerical, secretarial or other functions which are reasonably incidental to the provision of the Services provided that you will not be liable to bear the cost of such functions.

5. Fees and Booking

- 5.1 The charges for the Services are as set out in the Proposal.
- 5.2 Where the Services are provided for a fixed price, the total price for the Services shall be the amount set out in the Proposal.
- 5.3 Where the Proposal refers to one single payment, we will invoice you for the fixed price in advance, unless otherwise agreed.
- 5.4 Where the Services are provided on a time-and-materials basis:

- (a) the charges payable for the Services shall be calculated in accordance with our standard hourly or daily fee rates as amended from time to time;
 - (b) our daily fee rates are calculated on the basis of an eight-hour day worked between 8.00 am and 5.00 pm on weekdays (excluding weekends and public holidays);
 - (c) we shall be entitled to charge at an overtime rate of 120% of the normal rate for part days and for time worked outside the hours referred to in condition 5.4(b) above on a pro-rata basis; and
 - (d) we will invoice you monthly in arrears unless other arrangements (such as stage payments) are set out in the Proposal.
- 5.5 All charges are stated exclusive of VAT which shall be added to the charges at the applicable rate (where necessary).
- 5.6 You must pay each of our invoices in full, and in cleared funds by the payment method specified on the invoice, within 30 days of the date of the invoice.
- 5.7 Without prejudice to any other right or remedy, if you fail to pay the invoice on the due date, we may:
- (a) charge interest on the sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Santander Bank, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and you shall pay the interest immediately on demand; and
 - (b) suspend all Services until payment has been made in full.
- 5.8 All charges are stated exclusive of expenses incurred by us. Subject to your prior written consent, you will reimburse us for all training venue, hotel, subsistence, travelling, other administrative costs and any other ancillary expenses reasonably incurred by us or the Individual in providing the Services. Such expenses may be invoiced by us at cost at such times as we think appropriate.

6. Cancellation

- 6.1 You may only cancel Training Sessions (but no other Services) that have no self-directed eLearning element associated with them, by notice in writing to us. For example in-house face to face training sessions or live online Training Sessions.
- 6.2 On cancellation of a Training Session you must pay us the following fees:
- (a) if notice of cancellation is received 48 hours or less before the start of the relevant Training Session, a cancellation fee of 100% of the fee for the Training Session;
 - (b) if notice of cancellation is received 5 days or less before the start of the relevant Training Session, a cancellation fee of 50% of the fee for the Training Session;
 - (c) if notice of cancellation is received more than 5 days but less than 10 days before the start of the relevant Training Session, a cancellation fee of 25% of the fee for the Training Session; and
 - (d) if notice of cancellation is received more than 10 days before the start of the relevant Training Session no cancellation fee is payable.
- 6.3 If an individual needs to cancel their place on an open Training Session clause 6.2 applies. However, a substitute can attend in their place and no cancellation fee will be charged.
- 6.4 Medical Information and Code case update memberships and courses which have a self-directed eLearning element are paid in advance. They can be cancelled but no refunds will be given.

7. Other activities

Nothing in these Terms shall prevent us or the Individual from being engaged, concerned or having any financial interest in any Capacity in any other business, trade, profession or occupation provided that such activity does not cause a breach of any of our obligations under these Terms.

8. Confidential information and our materials

- 8.1 We acknowledge that in the course of providing the Services we will have access to Confidential Information. We shall not and we shall procure that the Individual shall not (except in the proper course of our duties) use or disclose to any third party any Confidential Information.
- 8.2 You will keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and which we or our employees, agents, consultants, affiliates or subcontractors have disclosed to you and any other confidential information concerning our business or our products and services which you may obtain.
- 8.3 The restrictions in clauses 8.1 and 8.2 do not apply to:
- (a) any use or disclosure required by law or authorised by the party to whom the information relates; or
 - (b) any information which is already in, or comes into, the public domain otherwise than through unauthorised disclosure by the party to whom the information does not relate.
- 8.4 All materials, equipment and tools, drawings, specifications and data which we supply to you shall, at all times, be and remain our exclusive property, but shall be held by you in safe custody at your own risk and maintained and kept in good condition by you until returned to us, and shall not be disposed of or used other than in accordance with our written instructions or authorisation.
- 8.5 The materials we deliver as part of our Services do not in any way constitute advice or recommendations. We are providing training and guidance only. We are not able to advise you on your individual circumstances.
- 8.6 For online Training Sessions, you agree to keep user details and your password for the site confidential at all times and to not disclose them to any other employee or third party. You must notify us immediately if you become aware of any unauthorized use of your account and you shall indemnify us against all claims, damages, losses, costs or expenses (including professional fees) and any other liability that arises from any unauthorized use of your account.
- 8.7 The online Training Session materials are held on third party secure servers and we have taken all reasonable steps to ensure that the online content will be available at all times during the course of the Training but in the event that such content is not available in whole or in part at any time, or becomes corrupted, is deleted or is failed to be stored, we shall have no liability in any circumstances.
- 8.8 We will endeavour to ensure that all information that we provide is accurate and up-to-date but we shall not be liable for any claims arising from such information being inaccurate or not up-to-date or otherwise.

9. Data protection

- 9.1 We collect and process personal data in accordance with our Privacy Notice that you can view at <https://www.jaynepackham.co.uk/privacy-policy/>
- 9.2 You consent to the transfer of such information to our business contacts (such as server hosts, hosting platforms) outside the European Economic Area.

10. Intellectual property

- 10.1 We are the owner or the licensee of all Intellectual Property Rights and all other rights in the Services and the Deliverables and nothing in these Terms or otherwise shall operate to transfer the ownership of the Intellectual Property Rights in the Services or the Deliverables. If agreed in writing, we grant you a limited, non-exclusive, non-transferable, non-sub licensable revocable licence to use all or any of the Deliverables for the purposes for which the Services were provided only.
- 10.2 You acknowledge that, where we do not own any of the materials or content which we submit to you, your use of rights in such materials or content is conditional on our obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle us to license such rights to you.
- 10.3 You may not without our prior written consent make any audio or visual recordings of any part of our Materials.

- 10.4 We may from time to time record any or all or any part of the Materials being delivered during your attendance. You authorise us to use your image and voice in any such recordings (and to make use of such recording in any way we think fit) without payment, other condition or need for further consent.
- 10.5 You may not at any time copy, reproduce, publish in any form, share, sell, dispose of or otherwise make available to employees outside the scope of the proposal or a third party in any way any of the Materials.

11. Termination

- 11.1 Notwithstanding the provisions of clause 2, we may terminate this Contract on 1 months' notice for any reason with no liability to provide any further services to you.
- 11.2 You may terminate this Contract if we commit any serious or repeated breach or non-observance of any of the provisions of this Contract and such breach is not remedied within 14 days of notification of breach.
- 11.3 Notwithstanding the provisions of clause 2 or clause 11.1, we may terminate this Contract with immediate effect with no liability to provide any further services to you if at any time:
- (a) you fail to make a payment when due and payable under this Contract;
 - (b) you commit any gross misconduct affecting our business;
 - (c) you commit any serious or repeated breach or non-observance of any of the provisions of this Contract;
 - (d) you are convicted of any criminal offence (other than an offence under any road traffic legislation in the United Kingdom or elsewhere for which a fine or non-custodial penalty is imposed);
 - (e) you commit any fraud or dishonesty or carry out business or otherwise act in any manner which in our opinion brings or is likely to bring us into disrepute or is materially adverse to our interests.
 - (f) an order is made or a resolution is passed for your winding up, or circumstances arise which entitle a court of competent jurisdiction to make an order winding you up;
 - (g) an order is made for the appointment of an administrator to manage your affairs, business and property, or documents are filed with a court of competent jurisdiction for the appointment of an administrator for you, or notice of intention to appoint an administrator is given by you or your directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986);
 - (h) a receiver is appointed of any of your assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager for you, or if any other person takes possession of or sells your assets; or
 - (i) you make any arrangement or composition with your creditors, or make an application to a court of competent jurisdiction for the protection of your creditors in any way, or become bankrupt; or
 - (j) you cease, or threaten to cease, to trade; or
 - (k) you take or suffer any similar or analogous action in any jurisdiction in consequence of debt; or
 - (l) being an individual, you are subject to a bankruptcy order or are made bankrupt.
- 11.4 Our rights under this clause 11 are without prejudice to any other rights that we might have at law to terminate the Contract. Any delay by us in exercising our rights to terminate shall not constitute a waiver of these rights.
- 11.5 We shall not be obliged to retain documents and information relating to you after termination of this Contract.

12. Obligations on termination

On termination of this Contract you shall immediately pay to us any unpaid fees or other sums payable under this Contract. Termination will not affect either party's outstanding rights or duties, including our right to recover from you any money you owe us under these Terms.

13. Status

Our relationship to you will be that of independent contractor and nothing in these Terms shall render us or the Individual your employee, worker, agent or partner and we shall not hold ourselves out as such.

14. Limitation of Liability

- 14.1 Other than (i) liability for death or personal injury to any person caused by our negligence, (ii) liability for any fraud or fraudulent misrepresentation made by us or (iii) liability for any other matter which we may not legally exclude or limit, we exclude all liability for any loss or damage suffered by you resulting from the Contract (including all consequential loss or damage howsoever caused and whether or not this was in your or our reasonable contemplation and including any loss or damage suffered by you as a result of advice or opinions given by the Individual or by any of our employees, agents, consultants or subcontractors).
- 14.2 If we are prevented from or delayed in performing our obligations by your act or omission (or the act or omission of your agents, subcontractors, consultants or employees) or by any circumstance outside of our control, we shall not be liable for any costs, charges or losses sustained or incurred by you that arise directly or indirectly from such prevention or delay.
- 14.3 We shall not be in breach of this agreement, nor liable for any failure or delay in performance of any obligations under this agreement arising from or attributable to acts, events, omissions or accidents beyond our reasonable control.
- 14.4 In the event that we are found liable to you for any loss or damage, this liability shall be limited to the amount of any fees you paid to us in accordance with these Terms in the 12 months preceding the judgment. If you have purchased an online Training Course, our total liability shall be limited to the amount of the Course purchased. In the event that a court of competent jurisdiction does not allow such limitation on liability and awards damages against us in excess of such amount, you agree to release us from all damages and liability in excess of such amount.
- 14.5 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from these Terms.
- 14.6 This clause 14 shall survive termination of the Contract.

15. Notices

All notices sent by you to us must be sent to us or by email to jayne@jaynepackham.co.uk. We may give notice to you at either the email or postal address you provide to us in the Proposal or as subsequently notified by you. Notice will be deemed received and properly served 24 hours after an email is sent or three days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that the letter was properly addressed, stamped and placed in the post and, in the case of an email, that the email was sent to the specified email address of the addressee.

16. Assignment and subcontracting

- 16.1 We may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of our rights under these Terms.
- 16.2 You shall not, without our prior written consent, assign, transfer, charge, subcontract or deal in any other manner with all or any of your rights or obligations under these Terms.

17. General

- 17.1 If any court or competent authority decides that any of the provisions of these Terms are invalid, unlawful or unenforceable to any extent, the term will, to that extent only, be severed from the remaining terms, which will continue to be valid to the fullest extent permitted by law.
- 17.2 No failure or delay by us to exercise any right or remedy provided under these Terms or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise.

No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.

17.3 Except as set out in these Terms, any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by us.

17.4 A person who is not party to these Terms shall not have any rights under or in connection with them under the Contracts (Rights of Third Parties) Act 1999.

These Terms and any dispute or claim arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims) shall be governed by English law and you and we both agree to the exclusive jurisdiction of the English court.