



STANDARD TERMS OF BUSINESS

This document sets out the terms of business between you (the “Customer”) and Fox Red Consultants Limited (“the Supplier”, “we” and “us”).

These terms and conditions should be read in conjunction with either the attached engagement letter (“Engagement Letter”) or our written confirmation (including via email) that we will provide certain advice and services (the “Written Confirmation”) and are regarded as forming part of the Engagement Letter or Written Confirmation. They are incorporated in the contract(s) pursuant to which we provide advice and services to our client(s).

Following receipt of this document, we will assume that you accept these terms and conditions, and any instructions given to us are accepted on that basis.

THE CUSTOMER’S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 8 (LIMITATION OF LIABILITY).

1 Interpretation

1.1 The following definitions and rules of interpretation apply in these Conditions.

Business Day a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Charges the charges payable by the Customer for the supply of the Services as set out in the Engagement Letter and/or Written Confirmation.

Conditions these terms and conditions.

Contract the contract between the Supplier and the Customer for the provision of Services in accordance with these Conditions and the Engagement Letter and/or Written Confirmation.

Customer the person or firm (including each of its subsidiaries and holding companies, or of the subsidiaries of any of the Customer’s holding companies, to which our advice extends, and which relies on that advice) who purchases Services from the Supplier.

Customer Default has the meaning set out in clause 4.2.

Data Protection Legislation all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder); and the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 2426) as amended.

Engagement the engagement of the Supplier by the Customer on the terms of the Contract.

Engagement Letter the engagement letter provided by the Supplier to the Customer setting out the scope of the Services to be provided by the Supplier and associated fees payable.

Intellectual Property Rights patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

UK GDPR has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

Services the services described in the Engagement Letter and/or Written Confirmation.

Supplier Fox Red Consultants Limited registered in England and Wales with company number 15847060.

Written Confirmation the Supplier's written confirmation (including via email) that the Supplier will provide certain advice and services.

- 1.2 A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- 1.3 Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.4 A reference to **writing** or **written** includes email but not fax.

2 **Engagement**

- 2.1 The Supplier is regulated by the Intellectual Property Regulation Board (**IPReg**) and is bound by the Rules of Conduct as set out in the Core Regulatory Framework: <https://ipreg.org.uk/pro/ipregs-regulatory-arrangements/core-regulatory-framework>.
- 2.2 The Customer shall engage the Supplier to provide the Services on the terms of the Contract.
- 2.3 Where the Services consist of advice, the advice is for the Customer's sole benefit and tailored to the particular matter. The Customer should not act in reliance on that advice

in any other circumstances, without consulting the Supplier first. Once the Engagement is completed, the Supplier will not update the advice unless requested which will incur a further fee.

- 2.4 The Supplier's advice must not be disclosed to any party other than the Customer's professional advisors, or the people who may have to act on the advice on the Customer's behalf.
- 2.5 Where the Customer consists of more than one party, the Supplier may require confirmation from each party that it is to take instructions from one party on behalf of all the parties. In that case, the Supplier will accept instructions from that one party, and the Supplier will look to that party for payment of the Charges in the first instance for payment, but each of the other parties will also be responsible for any Charges incurred.
- 2.6 If the Customer is a corporate entity, unless the Supplier is instructed to accept instructions from specified persons only, the Supplier may accept instructions from any persons who appears to have authority to give the Supplier instructions on behalf of the corporate entity.
- 2.7 To comply with Money Laundering Regulations 2007, the Supplier must undertake certain investigations into new clients and report to the relevant authorities any suspicious activities. By the Customer instructing the Supplier, the Customer agrees that such legislation binds the Supplier, and the Customer shall make no claim against the Supplier and hold the Supplier harmless for any loss or damage resulting from the Supplier's compliance with legislation or any actions resulting from them.
- 2.8 During the Engagement, the Supplier shall:
 - 2.8.1 provide the Services with due care, skill and ability; and
 - 2.8.2 promptly give to the Customer such information and updates as it may reasonably require in connection with matters relating to the provision of the Services.
- 2.9 The Supplier will endeavour to advise the Customer of time limits and actions that are required relating to the Services (if any) however will not undertake to give the Customer reminders relating to these.
- 2.10 The Supplier may use a third party to perform any administrative, clerical or secretarial functions which are reasonably incidental to the provision of the Services.
- 2.11 The Supplier will act on oral instructions in an emergency. All oral instructions should subsequently be confirmed in writing. The Supplier does not accept any liability for any misunderstanding or misinterpretation of oral instructions.

3 **Communication**

- 3.1 The Supplier usually conducts communication by email. Email is not fully secure. If the Customer does not wish to use email, please let the Supplier know.

4 **Customer's Obligations**

- 4.1 The Customer shall:

- 4.1.1 ensure that the terms of the Engagement Letter and/or Written Confirmation and any information it provides are complete and accurate;
- 4.1.2 provide clear and complete instructions within any official time limits;
- 4.1.3 co-operate with the Supplier in all matters relating to the Services;
- 4.1.4 provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- 4.1.5 comply with all applicable laws, statutes, regulations and codes from time to time in force in performing obligations under the Contract; and
- 4.1.6 comply with any additional obligations as set out in the Engagement Letter and/or Written Confirmation.

- 4.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- 4.2.1 without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- 4.2.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2; and
- 4.2.3 the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

5 **Charges and Payment**

- 5.1 The Customer shall pay the Charges for the Services as set out in the Engagement Letter or Written Confirmation.

- 5.2 Where the Customer instructs work to be completed outside the scope of the agreed Services, the Supplier reserves the right to charge the Customer on a time spent basis at the Supplier's standard rates and will invoice the Customer accordingly.
- 5.3 The Supplier reserves the right to increase the Charges from time to time however the Supplier will notify the Customer prior to any increase taking effect.
- 5.4 Where the Supplier pays a disbursement fee on the Customer's behalf, the Supplier may charge a service charge up to 5% of the disbursement or fee cost.
- 5.5 The Supplier shall invoice the Customer on completion of the Services or as otherwise set out in the Engagement Letter or Written Confirmation.
- 5.6 The Customer shall pay each invoice submitted by the Supplier:
- 5.6.1 within 30 days of the date of the invoice or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer; and
 - 5.6.2 in full and in cleared funds to a bank account nominated in writing by the Supplier, and

time for payment shall be of the essence of the Contract.

- 5.7 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.8 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 10, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 5.8 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 5.9 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

6 **Intellectual Property Rights**

- 6.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.
- 6.2 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to

the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

7 Data Protection

- 7.1 The parties shall comply with their respective data protection obligations as set out in Data Protection Legislation in the course of the Engagement.
- 7.2 The Supplier will retain and process the Customer's personal data to provide services to the Customer, to keep the Supplier's file and records up to date and to meet the Supplier's legal and regulatory requirements.
- 7.3 The Supplier may be required to share the Customer's personal data with third parties and the Supplier will only do so where necessary.
- 7.4 The Supplier shall handle the Customer's personal data in accordance with obligations as a data controller.
- 7.5 The Customer has the right to require a copy of the personal data that the Supplier holds on them at any time. Please email mail@foxredconsultants.com. In the event that the Customer is unhappy with the Supplier's response, the Customer has the right to complain to the Information Commissioners' Office: [Information Commissioner's Office \(ICO\)](#).
- 7.6 Please refer to our Privacy Policy on our web site www.foxredconsultants.com for more information.

8 Conflicts of Interest

- 8.1 Due to the nature of the Supplier's profession, it is not uncommon that the Supplier acts at any one time for two or more clients who are commercial competitors. The Customer agrees that the Supplier will not be prevented from acting for any of the Customer's competitors merely because they are competitors.

9 Limitation of Liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

- 9.1 References to liability in this clause 9 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 9.2 Nothing in this clause 9 shall limit the Customer's payment obligations under the Contract.
- 9.3 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- 9.3.1 death or personal injury caused by negligence;
 - 9.3.2 fraud or fraudulent misrepresentation; and

- 9.3.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 9.4 Subject to clause 9.3 (Liabilities which cannot legally be limited), the Supplier's total liability to the Customer for all loss or damage shall not exceed £1,000,000 in the aggregate.
- 9.5 Subject clause 9.2 (No limitation of customer's payment obligations) and clause 9.3 (Liabilities which cannot legally be limited), this clause 9.5 sets out the types of loss that are wholly excluded:
- 9.5.1 loss of profits.
 - 9.5.2 loss of sales or business.
 - 9.5.3 loss of agreements or contracts.
 - 9.5.4 loss of anticipated savings.
 - 9.5.5 loss of use or corruption of software, data or information.
 - 9.5.6 loss of or damage to goodwill; and
 - 9.5.7 indirect or consequential loss.
- 9.6 The Supplier has given commitments as to quality of the Services in clause 2.8.1. In view of these commitments, the terms implied by sections 3 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 9.7 Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire 3 years from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 9.8 This clause 9 shall survive termination of the Contract.
- 10 Term and Termination**
- 10.1 The Contract shall commence (or be deemed to have commenced, if applicable) upon the Supplier commencing the provision of the Services and shall continue until it has completed such provision.
- 10.2 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party 1 month's written notice.
- 10.3 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- 10.3.1 the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
 - 10.3.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
 - 10.3.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - 10.3.4 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 10.4 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 10.5 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect if the Supplier considers that it is not in the best interest of the Customer for the Supplier to continue to work for the Customer.
- 10.6 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services under the Contract or any other contract between the Customer and the Supplier if:
- 10.6.1 the Customer fails to pay any amount due under the Contract on the due date for payment; or
 - 10.6.2 the Customer becomes subject to any of the events listed in clause 10.3.2 to clause 10.3.4, or the Supplier reasonably believes that the Customer is about to become subject to any of them.

11 **Consequences of Termination**

- 11.1 On termination or expiry of the Contract:
- 11.1.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;

11.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

11.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

12 **Customer Files**

12.1 The Supplier's files will remain its property at all times. The Supplier reserves the right to destroy non-original material at any time after the conclusion of the Customer's matter. The Supplier generally retains files electronically for a period of 6 years after payment of the final bill and destroys them thereafter. The Supplier will also always keep a small amount of information after file closure to carry out conflicts of interest searches in the future, in compliance with its professional duties.

12.2 If the Customer wants a copy of their file or wants the Supplier to provide a copy to another professional advisor, the Customer must make a request in writing to the Supplier. The Supplier shall provide the Customer/other advisor with a copy of their file, as long as this is not a vexatious request, and reserves the right to charge a fee for doing so.

13 **General**

13.1 **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

13.2 **Assignment and other dealings.**

13.2.1 The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

13.2.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

13.3 **Confidentiality.**

13.3.1 Each party undertakes that it shall not at any time during or after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 12.3.2.

13.3.2 Each party may disclose the other party's confidential information:

13.3.2.1 to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 12.3; and

13.3.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

13.3.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

13.4 **Entire agreement.**

13.4.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

13.4.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

13.5 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

13.6 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

13.7 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement. If any provision or part-provision of this Contract is deleted under this clause 13.7 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

13.8 Notices.

13.8.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be:

13.8.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case);

13.8.1.2 sent by email to the following address (or an address substituted in writing by the party to be served):

- Customer: any email address from which the Customer has contacted the Supplier in relation to the Engagement from time to time;
- Supplier: mail@foxredconsultants.com

13.8.2 Any notice shall be deemed to have been received:

13.8.2.1 if delivered by hand, at the time the notice is left at the proper address;

13.8.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or

13.8.2.3 if sent by email on the next Business Day after sending.

13.8.3 This clause 12.8 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

13.9 Third party rights.

13.9.1 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

13.10 Complaints.

13.10.1 If the Customer becomes unhappy at any time with the Services and/or the Charges, we would appreciate the opportunity to put this right by the Customer contacting us in the first instance and the Supplier will endeavour to resolve the complaint within 8 weeks. You can obtain a copy of our complaints procedure on our website www.foxredconsultants.com.

13.10.2 If we are unable to resolve your complaint, then you can have the complaint independently looked at by the Intellectual Property Regulation Board (IPReg) if the matter relates to a complaint relating to a breach of the

professional code of conduct. Please visit their website for more information <https://ipreg.org.uk/>.

13.10.3 If you remain unhappy with our response following a complaint or in the unlikely event, we do not respond within 8 weeks, you may be able to refer your complaint to the Legal Ombudsman if you are eligible to do so. Ordinarily a complaint must be referred to the Legal Ombudsman no later than:

13.10.3.1 one year from the act/omission; or

13.10.3.2 one year from when the complainant should reasonably have known there was cause for complaint.

13.10.4 To check whether you are eligible to make a complaint to the Legal Ombudsman please visit their website: <https://www.legalombudsman.org.uk/make-a-complaint/>. To contact them please use the following methods:

13.10.4.1 in writing: Legal Ombudsman, PO Box 6167, Slough, SL1 0EH

13.10.4.2 email: enquiries@legalombudsman.org.uk

13.10.4.3 telephone: 0300 555 0333

13.11 **Governing law and Jurisdictions.**

13.11.1 The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

13.11.2 Subject to clause 12.10, each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

13.12 **Acceptance of Terms and Conditions**

13.12.1 The Supplier shall assume that the Customer is happy with these standard terms and conditions, unless the Customer notifies the Supplier to the contrary. The Supplier will treat the fact that the Customer continues to give instructions and/or accept the Supplier's services as deemed acceptance of these standard terms and conditions.