

# Blake Clough

## CONSULTING

### Terms and Conditions – Consultancy and Technical Services

#### 1. Definitions and Interpretation

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

##### 1.1. Definitions:

**Blake Clough** - means Blake Clough Consulting Ltd, a company incorporated in England and Wales with company number 13304409.

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

**Client** - means the person, company or body named on the contract.

**Commencement Date** - has the meaning given in clause 2.2.

**Conditions** – mean these terms and conditions as amended from time to time.

**Contract** – means the contract between Blake Clough and the Client for the supply of Services in accordance with and incorporating these Conditions, the Scope of Work and any proposal or quotation issued by Blake Clough.

**Contractor** - means the parties responsible for any implementation or construction utilising the Services or Deliverables.

**Deliverables** – means the deliverables set out in the Scope of Work and produced by Blake Clough for the Client in accordance with the terms of the Contract.

**Intellectual Property Rights** - means patents, utility models, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), 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.

**Order** - the Client's order for Services as set out in the Client's purchase order form or the Client's written acceptance of Blake Clough's quotation, as the case may be.

**Party** - means Blake Clough or the Client both together are hereby referred to as **Parties**.

**Services** - means the services to be carried out by Blake Clough as set out in the contract.

**Scope of Work** - the description or specification of the Services provided in writing by Blake Clough to the Client as set out in any proposal, quotation or order confirmation issued by Blake Clough.

##### 1.2. Interpretation:

- 1.2.1. 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.

- 1.2.2. 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.

- 1.2.3. A reference to writing or written includes by email but not fax.

#### 2. Basis of Contract

- 2.1. The Order constitutes an offer by the Client to purchase Services in accordance with these Conditions.

- 2.2. The Order shall only be deemed to be accepted when Blake Clough issues written acceptance of the Order at which point, and on which date the Contract shall come into existence (**Commencement Date**).

- 2.3. These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

- 2.4. Any quotation given by Blake Clough shall not constitute an offer, and unless otherwise stated in the quotation is only valid for a period of thirty (30) days from its date of issue.

- 2.5. The Client's continued instructions will be taken as acceptance of the Contract.

#### 3. Services

- 3.1. Blake Clough shall perform the Services in a professional manner using reasonable skill and care and in accordance with the Scope of Work and these Conditions.

- 3.2. All terms, warranties and conditions not expressly set out in the Contract, whether implied by statute or otherwise, are excluded from the Contract to the maximum extent permitted by law.

- 3.3. The Client shall:

- 3.3.1. ensure that Blake Clough, without undue delay, receives all relevant information and documentation necessary for the performance of the Services and ensure that such information is complete and accurate in all material respects;

- 3.3.2. co-operate with Blake Clough in all matters relating to the Services; and

- 3.3.3. comply with any additional requirements or support required from the Client as set out in the Scope of Work.

- 3.4. Blake Clough shall use all reasonable endeavours to meet any performance dates specified in the Scope of Works, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

- 3.5. Any documented error in the Services or Deliverables that does not comply with this clause 3 and which has been confirmed by Blake Clough in writing will be rectified by Blake Clough within a reasonable period

at Blake Clough's sole cost, provided said error is directly and solely attributable to Blake Clough and is not attributable to the Client or any other third party, including any Contractor, and Blake Clough is duly notified of said errors within six months after completion of the Services (**notice period**). Unless the Client notifies Blake Clough that it intends to make a claim in respect of any error within the notice period, Blake Clough shall have no liability for any error in the Services or Deliverables.

#### 4. Compensation and Payment

- 4.1. The Client shall pay Blake Clough for the Services, as specified in the Contract.
- 4.2. In the event of any agreed variation for additional services (in accordance with clause 8 below), the applicable fee rates of Blake Clough shall be as set out in the Scope of Works or otherwise as agreed in accordance with clause 8.2.
- 4.3. To the extent that payments to be made under the Contract in relation to the Services attract VAT, withholding tax or any similar taxes and levies, Blake Clough shall add such taxes and levies to the invoice as appropriate and issue the Client a valid tax invoice, which shall detail separately the proper amount of such taxes and levies payable. The Client shall, on receipt of a valid tax invoice from Blake Clough, pay to Blake Clough such additional amounts as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services..
- 4.4. Blake Clough shall invoice the Client in accordance with any milestones set out in the Scope of Works, or, in the absence of defined milestones, on a monthly basis. Unless otherwise specified in the Contract, payment of all amounts due under the Contract shall be made:
  - 4.4.1. within 30 days of the date of the relevant invoice; and
  - 4.4.2. In full and cleared funds to Blake Clough's bank account as stated on the invoice.
- 4.5. If the Client fails to make any payment by the due date required under the Contract, without limiting Blake Clough's other available remedies, the Client shall pay interest each day on the overdue amount at a rate of 4% per annum above the Bank of England's base rate from time to time, from the due date until payment of the overdue sum, whether before or after judgment.
- 4.6. 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).

#### 5. Intellectual Property Rights

- 5.1. All Intellectual Property Rights in or arising out of or in connection with Services, including any Deliverables, drawings, reports, materials and any other documents provided in relation to the Services (excluding any Intellectual Property Rights in any materials provided by the Client), shall remain the property of and be owned by Blake Clough.
- 5.2. Blake Clough shall grant to the Client a non-exclusive, non-transferable licence to copy and use the Deliverables for the purpose of receiving the Services and solely in relation to the specific project for which the Services are performed.
- 5.3. Blake Clough shall not be liable for any use by the Client of the Deliverables or any drawings, reports, materials and any other documents provided in

relation to the Services for any purpose other than that for which they were prepared by Blake Clough in relation to the Services.

- 5.4. Blake Clough reserves the right to terminate the licence granted to the Client under this clause 5 at any time if any payment to Blake Clough under the Contract is outstanding.

#### 6. Confidentiality

- 6.1. Subject to any separate confidentiality agreement entered into between the parties in relation to the Services, the Client and Blake Clough mutually agree and undertake for the duration of the Contract and a period of five(5) years after the termination or expiry of the Contract not to disclose to any third party without the prior written consent of the other party, any confidential information concerning the business, affairs, customers, clients or suppliers of the other party obtained from the other party related to the Contract or Services, save as may be permitted under clause 6.2.
- 6.2. Each party may disclose the other party's confidential information:
  - 6.2.1. to its employees, officers or professional 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 and professional advisers to whom it discloses the other party's confidential information comply with this clause 6; and
  - 6.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

#### 7. Governing Law and Jurisdiction

- 7.1. 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 and construed in accordance with the laws of England and the parties agree to submit to the exclusive jurisdiction of the English courts 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.

#### 8. Variations and Change in Law

- 8.1. The Client shall be entitled to request additional work or services (referred to as variations) under the Contract.
- 8.2. All variation requests shall be in writing, clearly defining the variation required. Blake Clough shall consider any such variations and advise the Client of the impact to the current Services and Scope of Work, including to remuneration and time schedule.
- 8.3. No variation shall be implemented before the parties have reached an agreement regarding the extent and the remuneration required and the revised time schedule. The variation must be signed by both parties in written confirmation. If any variation is not agreed, Blake Clough shall not be required to perform any additional work or services.
- 8.4. In the event that there is any change in applicable law following the Commencement Date which would impact the Services and/or Scope of Work, Blake Clough will inform the Client and the parties will discuss and mutually agree any variations to the Services and/or Scope of Work.

## 9. Force Majeure and Client Default

- 9.1. Any hinderance, delay in or failure of performance of either party of its obligations under the Contract shall not constitute a default or give rise to any claim for damage if and to the extent such hinderance, delay or failure is caused by any event, circumstances or cause which is beyond the control of the party affected, which the party had no reasonable way of preventing or grounds to anticipate, including an act of war (whether declared or not), terrorism, natural disaster, fire, explosion, severe weather or labour dispute.
- 9.2. The affected party shall notify the other party in writing as soon as reasonably practicable of the causes and expected duration of any such occurrence set out in clause 9.1 and provided it has complied with this clause, the time for performance of the Services shall be extended accordingly.
- 9.3. If Blake Clough's performance of any of its obligations under the Contract is prevented or delayed by any act or omission of the Client or its representatives, or failure by the Client or its representatives to perform any relevant obligation (**Client Default**):
  - 9.3.1. without limiting or affecting any other right or remedy available to it, Blake Clough shall have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations in each case to the extent the Client Default prevents or delays the Blake Clough's performance of any of its obligations;
  - 9.3.2. Blake Clough shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from Blake Clough's failure or delay to perform any of its obligations as set out in this clause 9.3; and
  - 9.3.3. the Client shall reimburse Blake Clough on written demand for any costs or losses sustained or incurred by Blake Clough arising directly or indirectly from the Client Default.

## 10. Limitation of Liability

- 10.1. Unless otherwise stated in the relevant quotation or proposal, the Services and Deliverables are provided on a non-reliance basis taking into account the early stage of the relevant project and, subject to clause 10.4, Blake Clough makes no warranty, guarantee or representation, express or implied, that the Services or Deliverables will be accurate and complete in all regards in relation to the specific project or appropriate in relation to the detailed design, execution, completion, maintenance, reinstatement, refurbishment and repair of the specific project.
- 10.2. Subject to clause 10.4, Blake Clough shall not be responsible:
  - 10.2.1. for the construction means, methods, techniques, sequences, procedures, safety precautions, and programmes incident to the specific project;
  - 10.2.2. for the acts or omissions of the Client or of the Contractor or any of the Client's or the Contractor's employees, directors, representatives, agents, consultants or subcontractors;
  - 10.2.3. for the acts or omissions of material or equipment manufacturers or suppliers, or of any other engineer or consultant.

- 10.3. No collateral warranty or letters of reliance will be provided by Blake Clough.
- 10.4. Nothing in the Contract limits any liability which cannot legally be limited or excluded, including liability for:
  - 10.4.1. death or personal injury caused by negligence; and
  - 10.4.2. fraud or fraudulent misrepresentation.
- 10.5. Subject to clause 10.4, Blake Clough shall not be liable in any way for the following types of loss which shall be wholly excluded:
  - 10.5.1. loss of profit;
  - 10.5.2. loss of revenue or business;
  - 10.5.3. loss of use of any facilities, or loss of product or production;
  - 10.5.4. loss of anticipated savings;
  - 10.5.5. loss of use or corruption of software, data or information;
  - 10.5.6. loss of or damage to goodwill; and
  - 10.5.7. special, indirect or consequential losses,in each case howsoever arising and whether reasonably foreseeable or not.
- 10.6. Subject to clause 10.4, Blake Clough's total aggregate liability to the Client arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise and whether for delay, default, re-work or re-performance or otherwise, shall not exceed the total amounts paid or payable to Blake Clough under the Contract.

## 11. Anti-Corruption

- 11.1. The Client shall not, either directly or indirectly, make any payment or give any gift to any government official, officer or employee of governmental body, department or agency or company, or any political party or official of a public international organisation to influence any decision or otherwise gain favour for Blake Clough in connection with Blake Clough's business in violation of any applicable law.
- 11.2. The Client understands that Blake Clough does not authorise any payments which would be prohibited by the applicable United Kingdom legislation regulating the ethical conduct of business practices.

## 12. Health and Safety

- 12.1. The Client shall inform Blake Clough of any hazards which may be relevant to or involved or introduced in the Services and any necessary safety measures required for the performance of the Services, prior to or during the completion of the Services.
- 12.2. Whenever Blake Clough undertakes work on site, the Client shall provide all adequate safety measures to ensure a working environment that is safe and in accordance with all relevant legislation and to ensure that the risks that cannot be eliminated are controlled at a tolerated level.
- 12.3. Blake Clough has the right to refuse to carry out an activity and/or remove its personnel from Client's site to the extent that the activity required or conditions at site are in Blake Clough's opinion, not satisfactory or present a risk to the health or safety of its personnel or others or any property.

## 13. Termination

- 13.1. Without affecting any other right or remedy available to it, each party shall have the right to terminate the

- Contract at any time upon 30 days written notice to the other party.
- 13.2. In the event of termination according to clause 13.1 above and in addition to clause 13.6 below, the Client shall reimburse Blake Clough for all work performed up to the date of termination and any and all costs and expenses reasonably incurred by Blake Clough arising due to or in connection with such termination.
- 13.3. Without affecting any other right or remedy available to it, each party shall have the right to terminate the Contract with immediate effect by giving written notice if:
- 13.3.1. the other party is in material breach of its obligations and fails to correct the material breach within 30 days written notice from the other party specifying the breach; or
- 13.3.2. 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 or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- 13.3.3. 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
- 13.3.4. 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..
- 13.4. Without affecting any other right or remedy available to it, Blake Clough may:
- 13.4.1. suspend the supply of Services under the Contract or any other contract between the Client and Blake Clough if the Client fails to pay any amount due under the Contract on the due date for payment:
- 13.4.2. terminate the Contract with immediate effect by giving written notice to the Client if:
- 13.4.2.1. the Client fails to pay any amount due under the Contract on the due date for payment and within ten(10) Business Days of notice from Blake Clough informing the Client of the failure to pay; or
- 13.4.2.2. there is a change of control of the Client.
- 13.5. On termination of the Contract the Client shall immediately pay to Blake Clough all of Blake Clough's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Blake Clough shall submit an invoice, which shall be payable by the Client immediately on receipt.
- 13.6. 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.
- 13.7. 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.
- 14. General**
- 14.1. Blake Clough may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- 14.2. The Contract constitutes the entire agreement between the parties. Each party acknowledges that in entering into the Contract it does not rely on 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.
- 14.3. No changes, modifications or amendments to the terms and conditions of the Contract shall be valid unless agreed to by the Parties in writing and signed by their authorised representatives.
- 14.4. Should there be any conflict between the terms and conditions of the Contract and any other documentation or correspondence then the terms and conditions of the Contract shall prevail.
- 14.5. A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.
- 14.6. 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 the Contract. If any provision of the Contract is deemed deleted under this clause, 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.
- 14.7. Unless expressly stated 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.
- 14.8. Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand, pre-paid first-class post or other next working day delivery service, or email.
- 14.9. Any notice shall be deemed to have been received:
- 14.9.1. if delivered by hand, at the time the notice is left at the proper address;
- 14.9.2. 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
- 14.9.3. if sent by email, at 9.00 am the next Business Day after transmission.
- 14.10. Clause 14.8 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.