

Close UK Limited – Terms and conditions

1. INTERPRETATION

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

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

Close UK: Close UK Limited registered in England and Wales with company number 06302566.

Commencement Date: has the meaning given in Clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with Clause 13.5.

Contract: the contract between Close UK and the Client for the supply of Services in accordance with these Conditions.

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

Client: the person or firm who purchases Services from Close UK.

Client Default: has the meaning set out in Clause 4.2.

Deliverables: the deliverables set out in the Order produced by Close UK for the Client.

Fees: the fees payable by the Client for the supply of the Services in accordance with Clause 9.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, goodwill and the right to sue for passing off or unfair competition, 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 written acceptance of Close UK proposal of services.

Services: the services, including the Deliverables, supplied by Close UK to the Client as set out in the Specification.

Specification: the description or specification of the Services provided by Close UK to the Client.

Close UK's Materials: has the meaning set out in Clause 4.1 (f).
- 1.2 Interpretation
 - (a) 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.
 - (b) 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.
 - (c) A reference to **writing** or **written** includes 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 Close UK issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
 - 2.3 Any Close UK's introduction documents or brochures are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
 - 2.4 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.
 - 2.5 Any proposal given by Close UK shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.
3. Services
 - 3.1 Close UK will provide the Services to the Client using reasonable skill, care and diligence in accordance with the Specification in all material respects.
 - 3.2 Close UK shall use all reasonable endeavours to meet any performance dates specified in the proposal or other documents provided to the Client, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
 - 3.3 Close UK reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and Close UK shall notify the Client in any such event.
4. Client Responsibilities
 - 4.1 The Client shall:
 - (a) ensure that the terms of the Order and any information it provides to Close UK are complete and accurate;
 - (b) co-operate with Close UK in all matters relating to the Services;
 - (c) provide Close UK, its employees, agents, consultants and subcontractors, with access to the Client's premises, office and facilities as and when may be necessary in order for Close UK to supply the Services;
 - (d) provide Close UK with such information and materials as Close UK may reasonably require in order to supply the Services;
 - (e) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
 - (f) keep all materials, equipment, documents and other property of Close UK (**Close UK's Materials**) at the Client's premises in safe custody at its own risk, maintain the Close UK's Materials in good condition until returned to Close UK, and not dispose of or use the Close UK's Materials other than in accordance with Close UK's written instructions or authorisation.
 - 4.2 If Close UK's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (**Client Default**):
 - (a) without limiting or affecting any other right or remedy available to it, Close UK 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 Close UK's performance of any of its obligations;
 - (b) Close UK shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from the Close UK's failure or delay to perform any of its obligations as set out in this Clause 4.2; and
 - (c) the Client shall reimburse Close UK on written demand for any costs or losses sustained or incurred by Close UK arising directly or indirectly from the Client Default.
5. Location

The Services will be provided from a Close UK office, unless otherwise agreed.
6. Contract Management

Each party will nominate a named individual who will be responsible for managing all issues relating to the performance of the Contract. When it is necessary for either party to change its named individual, prior notice in writing shall be given.
7. Employees
 - 7.1 Where individual employees are named in the Proposal, Close UK will use all reasonable efforts to ensure that the named individual(s) are used. However, this is not guaranteed. Where changes in employees providing the Services are necessary, reasonable notice of the changes will be given to the Client.
 - 7.2 In order to protect the legitimate business interests of Close UK, the Client covenants with Close UK that it shall not (except with the prior written consent of Close UK) directly or indirectly solicit or entice away (or attempt to solicit or entice away), from the employment of Close UK any person employed or engaged by Close UK in the provision of the Services during the term of this Contract, and for a period of 12 months after termination or expiry of this Contract other than by means of a national advertising campaign open to all-comers and not specifically targeted at such staff of Close UK.
 - 7.3 If the Client commits any breach of Clause 7.2 it shall, on demand, pay to Close UK, as liquidated damages, a sum equal to 50% of one year's basic salary or the annual fee that was payable by Close UK to that employee, worker or independent contractor plus the recruitment costs incurred by Close UK in replacing such person.
8. Intellectual Property Rights
 - 8.1 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 Client) shall be owned by Close UK.
 - 8.2 Close UK grants to the Client, or shall procure the direct grant to the Client of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy the Deliverables (excluding materials provided by the Client) for the purpose of receiving and using the Services and the Deliverables in its business.

- 8.3 The Client shall not sub-license, assign or otherwise transfer the rights granted in Clause 8.2.
- 8.4 The Client grants Close UK a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Client to Close UK for the term of the Contract for the purpose of providing the Services to the Client.
9. Payment and Fees
- 9.1 Close UK shall Invoice the Client monthly.
- 9.2 The Client shall pay each invoice submitted by Close UK:
- not later than 28th day of the month following the month in which the invoice is raised unless otherwise stated in the fee proposal sent to the Client; and
 - in full and in cleared funds to a bank account nominated in writing by Close UK, and time for payment shall be of the essence of the Contract.
- 9.3 All amounts payable by the Client 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 Close UK to the Client, the Client shall, on receipt of a valid VAT invoice from Close UK, pay to Close UK 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.
- 9.4 If the Client fails to make a payment due to Close UK under the Contract by the due date, then, without limiting Close UK's remedies under Clause 9, the Client 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 will accrue each day at 8% a year above the Bank of England's base rate from time to time, but at 8% a year for any period when that base rate is below 0%.
- 9.5 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).
10. Complaints
- 10.1 Close UK treats all complaints seriously and prefer to deal with them at source and between the individuals concerned. If this fails the following procedure shall be followed.
- 10.2 In the event of a complaint against Close UK, which has not been capable of resolution at source, the Client should write to "The Director" at the office with which the Client is dealing. For the purpose of clarity, the word "complaint" should be included in the heading.
11. Termination
- 11.1 The Contract may be terminated by either party at any time by giving not less than 30 calendar days written notice without affecting any other right or remedy available to it.
- 11.2 The Contract may be terminated by either party (without affecting any other right or remedy available to it) with immediate effect by giving written notice to the other party in the event of (a) a material or persistent breach of the Contract by the other party or (b) in the event that the other party is unable to pay its debts or has a receiver, administrator, administrative receiver or liquidator appointed or calls a meeting of its creditors, or ceases, for any other reason to carry on business, or in either party's reasonable opinion any of these events appears likely to occur.
- 11.3 Without affecting any other right or remedy available to it, Close UK may terminate the Contract with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under the Contract on the due date for payment.
- 11.4 Without affecting any other right or remedy available to it, Close UK may suspend the supply of Services under the Contract or any other contract between the Client and Close UK if:
- the Client fails to pay any amount due under the Contract on the due date for payment;
 - the Client becomes subject to any of the events listed in Clause 11.2 (b), or Close UK reasonably believes that the Client is about to become subject to any of them
- 11.5 On termination or expiry of the Contract the Client shall immediately pay to Close UK all of Close UK's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Close UK shall submit an invoice, which shall be payable by the Client immediately on receipt.
- 11.6 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.
- 11.7 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.
12. Limitations of Liability
- 12.1 Close UK has obtained insurance cover in respect of certain aspects of its own legal liability for individual claims not exceeding £2,000,000 per claim. The limits and exclusions in this clause reflect the insurance cover Close UK has been able to arrange and the Client is responsible for making its own arrangements for the insurance of any excess loss.
- 12.2 References to liability in this Clause 12 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 12.3 Nothing in this Clause 12 shall limit the Client's payment obligations under the Contract.
- 12.4 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for: death or personal injury caused by negligence; fraud or fraudulent misrepresentation; breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 12.5 Subject to Clause 12.4 (Liabilities which cannot legally be limited), the Close UK's total liability to the Client shall not exceed £2,000,000.
- 12.6 Subject to Clause 12.3 (No limitation of customer's payment obligations) and Clause 12.4 (Liabilities which cannot legally be limited), this Clause sets out the types of loss that are wholly excluded: loss of profits, anticipated profits; loss of sales or business; loss of agreements or contracts; loss of anticipated savings; loss of use or corruption of software, data or information; loss of or damage to goodwill; and indirect or consequential loss.
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.
- Close UK 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.
 - The Client 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.
- Each party undertakes that it shall not at any time during the Contract, and for a period of two years 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 13.3 (b)
 - Each party may disclose the other party's confidential information 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 13.3; and as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
 - 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.
- 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.
 - 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 deleted under this Clause 11.7 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.
- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be 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); or sent by email to the address specified by the parties.
- (b) Any notice shall be deemed to have been received:
- (i) if delivered by hand, at the time the notice is left at the proper address;
- (ii) if sent by next working day delivery service, at 9.00 am on the second Business Day after posting; or
- (iii) if sent by email at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (c) This Clause 13.8 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. 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 Governing law. 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 Jurisdiction. 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.