

## **ACORUS TERMS AND CONDITIONS**

### **1. DEFINITIONS AND GENERAL**

1.1 "Client" means any person, partnership or company whose request for the provision of services is accepted by Acorus.

1.2 For the avoidance of doubt Acorus itself shall have no liability whatsoever to the Client under these conditions.

1.3 These conditions shall apply to all services provided by Acorus to the Client ("Services") unless otherwise agreed in writing. These conditions shall take effect to the exclusion of any other terms and conditions of the Client or otherwise. No prior correspondence, addition to, variation or waiver of these conditions shall be binding unless agreed in writing by Acorus. The headings in these conditions shall not effect their construction or interpretation.

### **2. PROVISION OF SERVICES**

2.1 Acorus shall provide the Services according to the written instructions received from the Client from time to time for the fee agreed in writing. In default of agreement Acorus shall charge for the Services at its usual rates for such work.

2.2 Where a member of Acorus' staff is named as the person to provide the Services Acorus shall be entitled, on giving reasonable notice, to use other staff of comparable skill and experience to supply the Services.

2.3 Unless otherwise agreed in writing Acorus may correspond by the Internet or other electronic media. In such cases Acorus will take reasonable steps to safeguard the security of the information transmitted, but will not accept liability for its security and confidentiality beyond these steps.

### **3. THE CLIENT'S OBLIGATIONS**

3.1 The Client warrants that all information provided by or for him to Acorus will be full and accurate.

3.2 The Client will be responsible for assessing the recommendations and advice given by Acorus and for any commercial decisions that it makes. The Client is responsible for taking into account the limitations in the instructions given to Acorus, and commercial and other factors, of which the Client and its other advisors are, or should be aware.

3.3 The Client will ensure that all legislative health and safety requirements are complied with in relation to employees of Acorus working on the Client's premises.

3.4 The Client will ensure that its employees attending Acorus' premises will comply with statutory and Acorus' health, safety, welfare, information technology and security arrangements.

3.5 Delivery, maintenance and insurance of materials and equipment provided by the Client shall be the responsibility of the Client. Acorus will be responsible for its own materials and equipment.

3.6 The Client will indemnify Acorus against claims brought or threatened by third parties (including all liabilities, losses, reasonable legal fees and internal management and administrative costs arising from such claims) as a result of or connected with the Services except to the extent that Acorus is legally liable to the Client.

### **4. PAYMENT TERMS**

4.1 Unless otherwise agreed in writing all sums due to Acorus are due within 21 days of invoice date. Acorus reserves the right unilaterally to vary payment terms by giving prior written notice.

4.2 If any payment is not made to Acorus by the due date: (i) Acorus reserves the right to cease to provide the Services and, if it thinks fit, terminate the contract; (ii) the Client agrees that payment for all Services carried out by Acorus up to that date shall become due and payable forthwith whether or not an invoice has been issued in respect of that work and notwithstanding that 21 days may not have expired since the invoice date; and (iii) in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 Acorus reserves the right to charge interest on any overdue payment at the rate of 5% above the base rate of Acorus' bankers in force from time to time and to charge an administration fee.

4.3 The Client shall reimburse Acorus for all expenses properly incurred by Acorus in the discharge of the Services.

4.4 Acorus will add VAT to its charges and expenses at the applicable rate then in force.

4.5 Acorus reserves the right to take up credit, bank and other references.

4.6 Acorus will charge £25 for each cheque that is dishonoured by the Bank.

### **5. ACORUS' WARRANTIES AND LIABILITY**

5.1 Acorus will use reasonable skill and care in carrying out the Services. Acorus advice is based upon the business climate and circumstances prevailing at the time the advice is given. Acorus accepts no responsibility for any external factors which may later change or fluctuate or of which Acorus cannot reasonably be expected to be aware.

5.2 The parties agree that Acorus' advice will only apply in the context of the instructions given by the Client to Acorus. Acorus will not accept liability for use by the Client in any other circumstances.

5.3 Any advice or recommendations given by Acorus as part of the Services will not be binding on Acorus unless confirmed by Acorus in writing.

5.4 Any work carried out for the Client by Acorus outside the Services and for which Acorus does not charge the Client shall not be, or deemed to be, subject to any contract between Acorus and the Client. Acorus will not expect or agree to the Client relying upon such work and Acorus excludes all liability in contract and in tort, including for negligence, for such work.

5.5 Acorus will not be liable for any of the following arising from provision of the Services (including arising from Acorus' negligence): (i) loss of anticipated profits or expected future business; (ii) damage to reputation or goodwill; (iii) damages, costs or expenses payable by the Client to any third party; (iv) loss of any order or contract; or (v) indirect or consequential loss of any kind.

5.6 Acorus will not be liable for (i) any failure or delay in carrying out the Services attributable to any act or omission, or delay by the Client, its employees or contractors; or (ii) any products supplied by a third party.

5.7 The Client shall bring any claim related to the Services within two years of (i) the relevant incident; or (ii) the date when the Client ought reasonably to have been aware of the existence of the claim. Acorus excludes liability for claims brought outside this time limit.

5.8 The liability of Acorus in contract, negligence or otherwise relating to the Services shall be limited to the reasonable cost of remedying any defect in the Services or other matter constituting a breach and in no circumstances shall the liability of Acorus exceed the greater of £100,000 or one-and-one-half times the total paid by the Client to Acorus for the Services.

5.9 Nothing in this clause 5 shall limit the liability of Acorus for death or personal injury caused by its negligence.

### **6. TERMINATION**

6.1 Without prejudice to their other rights, a party may terminate the contract if (i) the other party commits a material irremediable breach or fails to remedy a material and remediable breach within 21 days of receipt of written notice to do so; (ii) the other party has an administrator or administrative receiver appointed over all or any of its assets or goes into insolvent liquidation; or (iii) an event within the scope of condition 9.2 prevents or delays Acorus from carrying out the Services for 60 consecutive days or more.

6.2 Payment for all Services carried out up to and including the date of termination shall be due on termination by the client pursuant to condition 6.1.

6.3 Payment due on termination by Acorus pursuant to condition 6.1 shall include: (i) payment for all Services carried out up to and including the date of termination; and (ii) reimbursement to Acorus of the cost of any commitments entered into by Acorus on the assumption that it would supply all the Services.

### **7. CONFIDENTIALITY AND INTELLECTUAL PROPERTY**

7.1 Subject to the following and to clause 2.3 Acorus will treat as confidential all trade secrets and confidential information received from the Client relating to the Services concerning the Client or its business. Acorus will not disclose such information to a third party without the prior written consent of the Client. Acorus may use information obtained while providing the Services for the compilation of statistics.

7.2 All information and advice provided by Acorus to the Client is for the sole use of the Client and shall not be disclosed or made available by the Client to any third party without the prior written consent of Acorus.

7.3 Neither party shall be prevented from disclosing information which: (i) is or becomes public knowledge; (ii) is or becomes known from other sources without restriction on disclosure; (iii) is required to be disclosed by law; or (iv) the recipient party can prove is or has been independently developed by the recipient.

7.4 The Client will neither display nor use either the name "Acorus" or the Acorus logo nor will the Client disclose to any third party Acorus' involvement in the Services without the prior written consent of Acorus, unless legally required to do so.

7.5 All copyright in working papers, reports and other materials produced by Acorus shall vest in Acorus, but the Client may circulate copies of such within its own organisation.

### **8. ACORUS STAFF**

8.1 The Client shall not during the provision of the Services or within 6 months after the completion of the such without Acorus' prior written consent offer employment to any member of Acorus staff (of the level of consultant or higher) who has carried out work in connection with the Services or engage any such person either directly or indirectly to provide services to the Client.

8.2 If the Client is in breach of condition 8.1 the Client agrees to pay to Acorus, on demand, a sum equal to 30% of the total annual remuneration package paid by Acorus to the member of its staff concerned prior to his/her departure. The Client acknowledges that this sum represents a genuine and fair assessment of the likely loss to Acorus.

### **9. MISCELLANEOUS**

9.1 If two or more parties engage Acorus to supply Services in respect of a particular contract then such parties shall be jointly and severally liable for payment for the Services.

9.2 Acorus will not be liable for any failure or delay in carrying out the Services due to any circumstances beyond its reasonable control.

9.3 Any notice by either party shall be deemed to have been properly given if delivered by hand, or sent by first class recorded delivery post to the other party at its address notified in writing, and shall be deemed to have been delivered two working days after the date of posting.

9.4 Any condition found to be invalid or unenforceable shall be severed, and the remaining conditions shall continue to be valid and enforceable as if the contract had been agreed without the invalid or unenforceable condition.

9.5 The contract to which these terms and conditions apply shall be governed by English law and the parties submit to the non-exclusive jurisdiction of the English courts.

9.6 Conditions 7 and 8 shall remain enforceable irrespective of termination of the contract or completion of the Services for whatever reason. Termination or completion shall not prejudice the accrued rights or liabilities of either party.

9.7 A person who is not a party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any condition of this Contract. This does not affect any right of a third party which exists other than pursuant to that Act.