

SMMT Industry Forum Ltd Terms and Conditions (“Conditions”)

1. Interpretation

In these Conditions:

- a) “Customer” means the company or business to which IF shall provide services under and in accordance with the Letter;
- b) “Contract” means the agreement between the Customer and IF concluded by the Customer’s authorised signatory signing the Customer’s acceptance of the Letter subject to these Conditions;
- c) “Cost” means the price exclusive of Value Added Tax, payable to IF by the Customer pursuant to the Contract specified in the Letter;
- d) “Group” shall mean, in relation to the Customer, every other Customer which from time to time is a subsidiary or holding Customer of the Customer and the terms “subsidiary” and “holding company” shall have the meanings given to them by Section 1159 of the Companies Act 2006;
- e) “IF” means SMMT Industry Forum Limited, a company registered in England with registered number 08229698, whose registered office address is 71 Great Peter Street, London SW1P 2BN.
- f) “IF Materials” means all documents belonging to IF and supplied to the Customer in connection with the Contract, including but not limited to the “Common Approach Manual” or excerpts from it as appropriate and includes information in CD-ROM format or other non-printed media;
- g) “loss” includes destruction;
- h) “month” means calendar month;
- i) “person” includes a corporation;
- j) “Letter” means the letter as signed by the Customer which details the programme of Services to be provided to the Customer by IF subject to these Conditions;
- k) “Services” means the programme of services specified in the Letter.

2. Performance

- a) Upon signing a copy of the Letter, the Customer agrees, subject to the Conditions, to purchase the Services. IF is entitled at any time prior to the Customer signing the Letter to revoke the Letter, with the effect that it is not capable of being accepted by the Customer to form a legally binding contract and IF shall have no obligation or liability to the Customer.
- b) The Customer shall grant IF, IF engineers, employees, subcontractors and agents all the information and access to files, records and access to all Customer premises as IF reasonably requires to enable the performance of the Services;
- c) IF shall use reasonable endeavours to ensure that the Services shall be performed according to the timetable contained in the Letter or as may be varied by mutual consent;
- d) IF does not warrant the suitability of the Services to the Customer and the Customer shall be responsible for assessing and satisfying itself as to the benefits (if any) to be achieved by the Customer in accepting the Services;
- e) IF warrants that it will use reasonable care and skill in carrying out the Services;
- f) all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Contract;
- g) The Services will be deemed to be completed and the relevant element of the Contract price to be due and payable forthwith:
 - i) when IF issues a written notice to the Customer confirming such completion; or
 - ii) if IF is available to perform the Services but is prevented from doing so by reason of:
 - (A) the lack of relevant assistance from the Customer; and/or
 - (B) the condition of the Customer’s premises on the site and/or the facilities at which the Services are to be provided at the time agreed for the provision of the Services.

3. Severability

If any condition, clause or provision of these Conditions (including any sub-clause or paragraph or any part of one or more of these Conditions) is held to be void, unlawful or otherwise unenforceable under any applicable law, then that Condition shall be omitted from these Conditions and that shall not affect the validity or enforceability of the remainder of the Conditions.

4. Confidentiality

- a) Each of the parties is responsible for identifying any information including know-how which it regards as being confidential or a trade secret (“Confidential Information”) before disclosure to the other party and each of the parties undertakes to the other to keep confidential Confidential Information except where:
 - i) the Confidential Information was already lawfully known, or became lawfully known to either of the parties independently of the performance of the Services;
 - ii) the Confidential Information is, or comes into, the public domain other than due to wrongful use or disclosure by the parties;
 - iii) disclosure or use is necessary by either of the parties for the proper and effective performance of the Services;
 - iv) the disclosure is required by law to any government, governmental department, agency, regulatory or fiscal body or authority (whether national or foreign) and their authorised agents (including professional advisers).
- b) IF shall safeguard from loss or damage every document or item supplied by or obtained from the Customer for the purposes of the Letter and shall protect every such document or item from unauthorised use, disclosure or copying and shall return to the Customer every such document and item.
- c) Each of the parties shall ensure that their respective employees, agents and sub-contractors shall comply with the requirements of this Condition 4. The parties shall use the same standard of care in relation to the information as if it were Confidential Information of their own.

5. Amendments and Variations

No amendment or variation in the terms of the Contract will be valid unless previously agreed in writing between IF and the Customer.

6. Payment and Charges

- a) The Cost shall be payable within 14 days of issue of the invoice which shall state the period and amount of Services for which payment is claimed.
- b) IF may (without prejudice to its other rights and remedies) charge the Customer interest in respect of late payment of any sum due under the Contract on a day to day basis (both before and after any judgment) at the rate of 4 per cent per annum above the base rate of Barclays Bank plc from the due date for payment to the actual date of payment (both dates inclusive). The interest shall be paid by the Customer on demand.

7. Health and Safety

The Customer shall comply with statutory Health and Safety requirements and exchange information with IF as required by statute and the IF Health and Safety policy. IF reserves the right to refuse to work in an environment which fails to comply with statutory Health and Safety requirements and prohibitions.

8. Liability, Indemnity and Insurance

- a) IF shall not be liable for any loss of or damage caused either to any physical property of the Customer or its staff or agents or any physical injury (including injury resulting in death) sustained by the staff or agents of the Customer other than by reason of any negligent act or omission of IF, IF employees or agents during the performance of the Services.
- b) The Customer shall indemnify IF, IF’s group companies and their employees, directors, subcontractors, consultants and agents (“Indemnified Parties”) against any claim, demand or liability made against or incurred by any of the Indemnified Parties in respect of any loss of, or damage to, any property of any of the Indemnified Parties or injury (including injury resulting in death) sustained by any of the Indemnified Parties during the performance of the Services whilst on Customer premises, unless such loss, damage or injury is caused by the negligent act or omission of such Indemnified Parties.
- c) Nothing in these Conditions excludes or limits the liability of IF for death or personal injury caused by IF’s negligence, or for fraudulent misrepresentation.
- d) Subject to Conditions 8(c) and (e), IF’s maximum aggregate total liability in contract, tort, negligence, breach of statutory duty or otherwise, howsoever arising out of or in connection with the Contract shall be limited to £2million.
- e) IF shall not be liable (in contract, tort, negligence, breach of statutory duty or otherwise) for:
 - i) any economic loss, loss of turnover, profits, business or goodwill as a result of any reliance placed by the Customer on the results of the Services or any breach of the Contract by IF; and
 - ii) any indirect or consequential loss, damage, costs, legal costs and professional and other expenses of any nature whatsoever incurred or suffered by the Customer.

9. Termination by IF due to Insolvency

- a) IF may by notice in writing to the Customer terminate the Contract with immediate effect if:
 - i) the Customer is deemed to be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - ii) the Customer calls a meeting for the purpose of passing a resolution to wind-up its business or passes a resolution to wind-up its business;
 - iii) a court makes an administration order or a winding-up order against the Customer;
 - iv) the Customer makes a composition or arrangement with its creditors;
 - v) the Customer has an administrative receiver, receiver or manager is appointed over all or part of its business by a creditor or by the court;
 - vi) possession is taken of any of the Customer’s property under the terms of a floating charge or the Customer suspends or ceases or threatens to suspend or cease to carry on its business.

10. Termination for breach of Contract

If either party commits a material breach of the Contract and, in the case of a breach which is

capable of remedy, fails to remedy such breach within 28 days of being required by the other party in writing to do so, the injured party shall be entitled to terminate the Contract with immediate effect by notice in writing to the other party.

11. Termination due to cancellation by IF

IF shall be entitled to terminate the Contract by giving the Customer not less than 28 days’ notice in writing to that effect.

12. Terminations due to cancellation by the Customer

The Customer may by notice in writing received by IF at least 28 days prior to the commencement of the Services, and subject to paying a Cost of £100 +VAT, cancel the Services. The Customer may not otherwise terminate the Contract except in accordance with Condition 10.

13. Consequence of Termination

Any termination of the Contract shall be without prejudice to the rights and remedies of either party which may have accrued up to the date of termination.

14. Special Provisions

- a) In the case of any conflict or inconsistency between these Conditions and the Letter, the Letter shall prevail.
- b) Both parties acknowledge that business or other circumstances may require IF to amend the IF engineers to be provided to the Customer.
- c) IF reserves the right to alter, amend or add to these terms and conditions from time to time providing a copy of either such alteration or amendment in writing to the Customer.
- d) The Contract will be subject to these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document whatsoever and whenever).

15. Copyright and Property in Information

- a) Nothing in the Contract or done under the Contract shall be taken to diminish any IF copyright, patent rights or rights to any other intellectual or industrial property which would apart from this Contract vest in IF.
- b) All copyright and other intellectual property rights in any of the IF Materials belong absolutely to IF and IF reserves all rights in all and any of them.
- c) Following provision of the Services, IF may expressly nominate certain materials, including IF Materials, to be left on site with the Customer for which IF hereby grants the Customer a licence, the form of which is set out at Condition 16, subject to terms IF specifies, for the Customer to use such materials, together with know-how and processes demonstrated, purely for the Customer’s own internal business and training purposes. The Customer agrees to be bound by the terms IF specifies as a condition to the grant of any such licence.

16. Intellectual Property Licence

a) Subject to the provisions of paragraphs (b), (c), (d) and (e) below, IF grants to the Customer a non-assignable, non-exclusive royalty-free licence in the United Kingdom for ten (10) years from the earlier of the first day of supply of the Services or the date the Customer signs the Letter, to use the IF Materials for the Customer’s own internal business purposes, including the following purposes:

- i) taking a reasonable number of photocopies to be used only for the purposes authorised under paragraphs (a)(iii), (a)(iv) and (a)(v) below;
- ii) loading or copying on to the Customer’s information technology systems;
- iii) training of the Customer’s employees;
- iv) application of the IF process to other areas of the Customer’s own business only;
- v) other uses with the prior written consent of IF from time to time.

b) Nothing in this licence shall prevent IF from developing, exploiting, using, dealing with or disposing of or manufacturing, assembling, selling, leasing or producing products using the IF Materials as IF sees fit in the absolute discretion of IF.

c) The Customer agrees that the Customer will not release, reveal, sell, dispose of or disclose in any way all or any of the IF Materials to any third party. In the event that the Customer breaches the terms of this paragraph (c) then IF may terminate this licence immediately on notice to the Customer.

d) In the event that this licence is terminated for any reason the IF Materials, including any copies of the IF Materials made by the Customer, shall immediately be returned to IF by the Customer. Any copies of the IF Materials stored on the Customer’s information technology systems, including those stored on CD-ROM format or other non-printed media, shall be destroyed by the Customer.

e) The Customer shall not assign, sub-licence, charge, sub-contract or otherwise transfer any of the Customer’s rights under this licence without the prior written consent of IF.

f) The Customer shall indemnify IF against all claims, demands, actions, costs, expenses (including but not limited to legal costs and disbursements), losses and damages arising from any breach of this Condition 16.

17. Non-Solicitation and Non-Engagement

- a) The Customer and its Group during the term of the performance of the Services and a period of 8 months after expiry or termination however caused shall not directly or indirectly solicit or offer employment or engagement to IF staff who have been employed or engaged in the provision of the Services. For the purposes of this clause “solicit” means the soliciting of such a person with a view to engaging such person as an employee, director, sub-contractor or independent contractor.
- b) In the event that the Customer or its Group is in breach of Condition 17(a) above, the Customer shall pay to IF by way of liquidated damages an amount equal to 20 per cent of the gross annual salary (as at the time of the breach) of the person so solicited, employed or engaged. This provision shall be without prejudice to IF’s ability to seek injunctive relief.
- c) The Customer hereby acknowledges and agrees with the formula specified in Condition 17(b) above as a reasonable estimation of the loss which would be incurred by IF as a result of the loss of the person so employed or engaged.

18. Compliance with Relevant Compliance Requirements

a) The Customer shall:

- 1) comply with all applicable laws, regulations, guidance and sanctions relating to anti-trust, anti-bribery and anti-corruption including but not limited to the Competition Act 1998, Enterprise Act 2002 and Bribery Act 2010 (“Relevant Requirements”);
- 2) have and shall maintain in place throughout the term of the Contract its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements
- 3) ensure that all its employees, agents and subcontractors comply with this Condition 18;
- b) Breach of this Condition 18 may result in immediate termination and the Customer shall indemnify IF for any loss that IF suffers as a result of the Customer’s breach of it.

19. The Contracts (Rights of Third Parties) Act 1999

A Person who is not a party to this Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract.

20. Entire Agreement

a) The Letter and these Conditions shall constitute the whole of the terms agreed between the parties hereto in respect of the subject matter of this Contract and the Customer hereto acknowledges that in entering into this Contract it has not relied on any representations or warranties other than as expressly set out in the Letter, or any pre-contractual statements whatsoever made by IF or any agent or representative of IF and any other said warranties, representations or statements (whether express or implied) are hereby excluded from the terms of the Contract.

b) IF excludes all liability for any reliance that the Customer has placed on any statement, warranty, representation (including any misrepresentation, provided such misrepresentation was not made fraudulently) made by IF in entering into the Contract. The Customer agrees that the only rights or remedies available to it arising out of or in connection with any warranties, statements, promises or representations will be for breach of contract and irrevocably and unconditionally waives any right it may have to any claim, rights or remedies including any right to rescind the Contract which it might otherwise have had.

21. Subcontracting

a) The Customer shall not be entitled to assign, charge, subcontract or transfer the Contract or any part of it without the prior written consent of IF.

b) IF may assign, charge, subcontract or transfer the Contract or any part of it to any person.

22. Law and Jurisdiction

The Contract and any issues, disputes or claims arising out of or in connection with it (whether contractual or non-contractual in nature such as claims in tort, for breach of statute or regulation or otherwise) shall be governed by, and construed in accordance with, the provisions of English law, and shall be subject to the exclusive jurisdiction of the English courts to which the parties to the Contract hereby submit.

23. Force majeure

If the performance of this Agreement or any obligation under it is prevented, restricted or interfered due to any reason outside either party’s reasonable control, including (but not limited to) war, insurrection or riots fire, tempest, floods, storm, Acts of God or other natural causes, explosion or any other circumstances beyond the reasonable control of the party obliged to perform it, the party so affected, upon giving prompt notice to the other party, shall be excused from performance to the extent of the prevention, restriction or interference but the party so affected shall use all reasonable endeavours to avoid or remove such causes of non-performance and shall continue performance under the Contract.