

## EMH TECHNOLOGY LIMITED

### TERMS AND CONDITIONS FOR SUPPLY OF GOODS AND SERVICES

This document sets out the terms and conditions ("Terms and Conditions") on which EMH Technology Limited ("Supplier") provides you ("Customer") with any of the services offered by EMH Technology Limited.

#### 1 DEFINITIONS

In this document the following words shall have the following meanings:

- 1.1 "Agreement" means these Terms and Conditions together with the terms of any applicable Specification Document;
- 1.2 "Charges" means the charges set out in the Specification Document(s);
- 1.3 "Customer" means the organisation or person who purchases Goods and Services from the Supplier;
- 1.4 "Customer Data" the data entered or inputted by the Customer or EMH on the Customer's behalf for the purpose of using or in connection with the use of the Services or facilitating the use of the Services;
- 1.5 "Deliverables" means all products of the Services;
- 1.6 "Goods" means the goods to be provided by the Supplier to the Customer under this Agreement and pursuant to any other Specification Documents
- 1.7 "Intellectual Property Rights" means all patents, utility models, trade and service marks, trade names, domain names, right in designs, copyrights, moral rights, topography rights, rights in databases, trade secrets and know-how, in all cases whether or not registered or registrable and including registrations and applications for registration of any of these and rights to apply for the same, and all rights, future rights and forms of protection of a similar nature or having equivalent or similar effect to any of these anywhere in the world. ;
- 1.8 "Services" means the services to be provided by the Supplier to the Customer under this Agreement and pursuant to any other Specification Documents;
- 1.9 "Specification Document" means a statement of work, quotation or other similar document describing the Goods and Services to be provided by the Supplier;
- 1.10 "Supplier" means EMH Technology Limited of Invision House, Wilbury Way, SG4 0TY

#### 2 GENERAL

- 2.1 These Terms and Conditions shall apply to all contracts for the supply of Goods and Services provided by the Supplier to the Customer.
- 2.2 Before the commencement of the Services the Supplier shall submit to the Customer a Specification Document which shall specify the Services and/or Deliverables to be supplied and the Charges payable. The Customer shall notify the Supplier immediately if the Customer does not agree with the contents of the Specification Document. All Specification Documents shall be subject to these Terms and Conditions.

- 2.3 The Supplier shall use all reasonable endeavours to complete the Services within estimated time frames but time shall not be of the essence in the performance of any Services.

### **3 CHARGES AND PAYMENT**

- 3.1 The Supplier shall invoice the Customer in advance for Services provided by the Supplier and shall be payable within 10 days of receipt of invoice.
- 3.2 For Goods, the Customer shall pay the Charges and any expenses to the Supplier and the Supplier shall invoice the Customer on delivery, such invoiced amounts shall be due and payable within 30 days of receipt of invoice.
- 3.3 The Supplier shall be entitled to charge interest on overdue invoices from the date when payment becomes due from day to day until the date of payment at a rate of 3.00% per annum above the base rate of the Bank of England. In the event that the Customer's procedures require that an invoice be submitted against a purchase order to payment, the Customer shall be responsible for issuing such purchase order before the Goods and Services are provided.

### **4 SPECIFICATION OF THE DELIVERABLES**

All Deliverables shall be required to conform to the specification in the Specification Document. For the avoidance of doubt no description, specification or illustration contained in any product pamphlet or other sales or marketing literature of the Supplier and no representation written or oral, correspondence or statement shall form part of the contract.

### **5 DELIVERY**

- 5.1 The date of delivery specified by the Supplier is an estimate only. Time for delivery shall not be of the essence of the contract and the Supplier shall not be liable for any loss, costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods, Services and/or Deliverables.
- 5.2 All risk in the Goods shall pass to the Customer upon delivery.

### **6 TITLE**

Title in the Goods shall not pass to the Customer until the Supplier has been paid in full for the Goods, Services and/or Deliverables.

### **7 CUSTOMER'S OBLIGATIONS**

- 7.1 To enable the Supplier to perform its obligations under this Agreement the Customer shall:
- 7.1.1 co-operate with the Supplier;
  - 7.1.2 provide the Supplier with any information reasonably required by the Supplier;
  - 7.1.3 obtain all necessary permissions and consents which may be required before the commencement of the Services;
  - 7.1.4 maintain the security and confidentiality of any Customer passwords and access credentials; and

- 7.1.5 comply with such other requirements as may be set out in the Specification Document or otherwise agreed between the parties.
- 7.2 The Customer shall be liable to compensate the Supplier for any expenses incurred by the Supplier as a result of the Customer's failure to comply with Clause 7.1.
- 7.3 In the event that the Customer or any third party, not being a sub-contractor of the Supplier, shall omit or commit anything which prevents or delays the Supplier from undertaking or complying with any of its obligations under this Agreement, then the Supplier shall notify the Customer as soon as possible and:
- 7.3.1 the Supplier shall have no liability in respect of any delay to the completion of any project;
- 7.3.2 if applicable, the timetable for the project will be modified accordingly;
- 7.3.3 the Supplier shall notify the Customer at the same time if it intends to make any claim for additional costs.

## **8 ALTERATIONS TO THE SPECIFICATION DOCUMENT**

- 8.1 The parties may at any time mutually agree upon and execute new Specification Documents. Any alterations in the Services and/or Deliverables to be provided under this Agreement shall be set out in the Specification Document, which shall reflect the changed Services and/or Deliverables and Charges and any other terms agreed between the parties.
- 8.2 The Customer may at any time request alterations to the Specification Document by notice in writing to the Supplier. On receipt of the request for alterations the Supplier shall, within 5 working days or such other period as may be agreed between the parties, advise the Customer by notice in writing of the effect of such alterations, if any, on the Charges and any other terms already agreed between the parties.
- 8.3 Where the Supplier gives written notice to the Customer agreeing to perform any alterations on terms different to those already agreed between the parties, the Customer shall, within 5 working days of receipt of such notice or such other period as may be agreed between the parties, advise the Supplier by notice in writing whether or not it wishes the alterations to proceed.
- 8.4 Where the Supplier gives written notice to the Customer agreeing to perform alterations on terms different to those already agreed between the parties, and the Customer confirms in writing that it wishes the alterations to proceed on those terms, the Specification Document shall be amended to reflect such alterations and thereafter the Supplier shall perform this Agreement upon the basis of such amended terms.

## **9 WARRANTY**

- 9.1 The Supplier warrants that as from the date of delivery the Goods and all their component parts, where applicable, are free from any defects in design, workmanship, construction or materials for a period set out by the manufacturer or hardware vendor.
- 9.2 The Supplier warrants that the Services performed under this Agreement shall be performed using reasonable skill and care, and of a quality conforming to generally accepted industry standards and practices.

- 9.3 Except as expressly stated in this Agreement, all warranties whether express or implied, by operation of law or otherwise, are hereby excluded in relation to the Goods Deliverables and/or Services to be provided by the Supplier.

## **10 INDEMNIFICATION**

- 10.1 The Customer shall indemnify the Supplier against all claims, costs and expenses which the Supplier may incur and which arise, directly or indirectly, from the Customer's breach of any of its obligations under this Agreement.
- 10.2 To the extent that the Deliverables are to be manufactured in accordance with a specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the specification provided by the Customer. This Clause 7.4 shall survive termination of the Contract.

## **11 LIMITATION OF LIABILITY**

- 11.1 The Suppliers accepts liability for death or personal injury that is due to the negligence of the Supplier or its employees, agents or sub-contractors in the performance of this Agreement, which liability shall not be subject to any limitation set forth in this Section 11.
- 11.2 Except in respect of clause 11.1, the total amount of the Supplier's liability to the Customer for all losses, damages, costs, claims and expenses howsoever and whenever arising under this Agreement shall not exceed in aggregate the total amount of Charges paid or payable to the Supplier in the preceding twelve (12) month period.
- 11.3 In no event shall the Supplier be liable to the Customer for any loss of business, loss of opportunity or loss of profits or for any indirect or consequential loss or damage whatsoever. This shall apply even where such a loss was reasonably foreseeable or the Supplier had been made aware of the possibility of the Customer incurring such a loss.

## **12 TERMINATION**

- 12.1 Either party may terminate this Agreement for any reason at any time by giving thirty (30) days written notice to the other party to do so.
- 12.2 Either party may terminate this Agreement forthwith by notice in writing to the other if:
- 12.2.1 the other party commits a material breach of this Agreement and, in the case of a breach capable of being remedied, fails to remedy it within 30 calendar days of being given written notice from the other party to do so;
  - 12.2.2 the other party commits a material breach of this Agreement which cannot be remedied under any circumstances;
  - 12.2.3 the other party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect;

12.2.4 the other party ceases to carry on its business or substantially the whole of its business; or

12.2.5 the other party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets.

12.3 Without prejudice to any other rights to which the Supplier may be entitled, in the event that the Customer terminates this Agreement in accordance with Clause 13.2, the Customer shall be required to pay to the Supplier as agreed damages and not as a penalty the full amount of any third party costs to which the Supplier has committed and in respect of cancellations on less than five working days' written notice the Charges as set out in the Specification Document, and the Customer agrees this is a genuine pre-estimate of the Supplier's losses in such a case. For the avoidance of doubt, the Customer's failure to comply with any obligations under Clause 7.1 shall be deemed to be termination of the Agreement and subject to the payment of the damages set out in this Clause.

### **13 INTELLECTUAL PROPERTY RIGHTS**

All Intellectual Property Rights produced from or arising as a result of the performance of this Agreement shall, so far as not already vested, become the absolute property of the Supplier, and the Customer shall do all that is reasonably necessary to ensure that such rights vest in the Supplier by the execution of appropriate instruments or the making of agreements with third parties.

### **14 PRIVACY AND DATA PROTECTION**

14.1 Each of the Supplier and the Customer shall comply with all applicable data protection and privacy laws and regulations in the performance of its obligations set out under this Agreement, principally the General Data Protection Regulation ("GDPR", from the GDPR implementation date) or, until GDPR implementation date, the Data Protection Act 1998 ("Data Protection Laws"). In each case including all other successor legislation and regulation thereto. Where the Supplier processes any personal data on Customer's behalf when performing its obligations under this Agreement and providing the Services, the parties agree that the Customer shall be the data controller and the Supplier shall be a data processor. In respect of Customer Data, it is agreed that:

14.1.1 Supplier will process the personal data in accordance with the Data Protection Laws, the terms of this Agreement and any lawful instructions reasonably given by the Customer from time to time;

14.1.2 Neither the Supplier nor the Customer will transfer Customer Data outside of the EEA, unless required provisions set out in the Data Protection Laws are in place in relation to such international transfer;

14.1.3 Customer shall ensure that it has all required consents in place regarding the use of Customer Data in accordance with the terms of this Agreement;

14.1.4 Should any anyone whose personal data forms any part of Customer Data, require Customer to permanently delete data held about them, or remove their consent to a use of the personal data, Customer Data shall inform Supplier as soon as practicable and Supplier shall either delete such part of the Customer Data from its systems, but for any which is required to be retained for legal, regulatory, compliance or audit purposes, or cease using that element of the

Customer Data for the specified use. For the avoidance of doubt, Supplier shall not be liable for any loss or damage caused or arising out of such request from any person whose data forms part of the Customer Data; and

14.1.5 Each of Supplier and the customer shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

14.2 Customer Data shall be kept as secure as possible. EMH shall not be financially liable to the Customer for any accidental loss or unauthorised public access to any such information.

## **15 FORCE MAJEURE**

Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, the act or omission of government, highway authorities or any telecommunications carrier, operator or administration or other competent authority, or the delay or failure in manufacture, production, or supply by third parties of equipment or services, and the party shall be entitled to a reasonable extension of its obligations after notifying the other party of the nature and extent of such events.

## **16 INDEPENDENT CONTRACTORS**

The Supplier and the Customer are contractors independent of each other, and neither has the authority to bind the other to any third party or act in any way as the representative of the other, unless otherwise expressly agreed to in writing by both parties. The Supplier may, in addition to its own employees, engage sub-contractors to provide all or part of the Services being provided to the Customer and such engagement shall not relieve the Supplier of its obligations under this Agreement or any applicable Specification Document.

## **17 ASSIGNMENT**

The Customer shall not be entitled to assign its rights or obligations or delegate its duties under this Agreement without the prior written consent of the Supplier.

## **18 SEVERABILITY**

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction such provision shall be severed and the remainder of the provisions herein shall continue in full force and effect as if this Agreement had been agreed with the invalid illegal or unenforceable provision eliminated.

## **19 WAIVER**

The failure by either party to enforce at any time or for any period any one or more of the Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all Terms and Conditions of this Agreement.

## **20 NOTICES**

Any notice to be given by either party to the other may be served by email, fax, personal service or by post to the address of the other party given in the Specification Document

or such other address as such party may from time to time have communicated to the other in writing, and if sent by email shall unless the contrary is proved be deemed to be received on the day it was sent, , if given by letter shall be deemed to have been served at the time at which the letter was delivered personally or if sent by post shall be deemed to have been delivered in the ordinary course of post.

**21 ENTIRE AGREEMENT**

This Agreement contains the entire agreement between the parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written. Unless expressly provided elsewhere in this Agreement, this Agreement may be varied only by a document signed by both parties.

**22 NO THIRD PARTIES**

Nothing in this Agreement is intended to, nor shall it confer any rights on a third party.

**23 GOVERNING LAW AND JURISDICTION**

This Agreement (and any non-contractual rights and obligations arising out of or with respect to the subject matter of this Agreement) shall be governed by and construed in accordance with the law of England and the parties hereby submit to the exclusive jurisdiction of the English courts.