

PDMS Limited

Standard Terms & Conditions

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1 Terms of Reference

1.1 Document Purpose

These are the Standard Terms and Conditions for use in PDMS contracts with Clients as at 16/01/2014.

1.2 Change History

Revision	Date	Creator	Authoriser	Summary of changes
1.0	18/10/2008	Helen Ward		Original
1.1	14/12/2011	Gemma Webb		Formatting updated/ old formatting and versioning comments removed
1.2	10/07/2012	Bruce McGregor	Simon Edwards	Updated clause references to match what is issued to customers.
1.3	16/01/2014	Bruce McGregor	Simon Edwards	Changes to wording regarding charges for travel, accom, materials etc
1.4	05/12/2014	Gemma Webb		Stylesheet updated to new branding style only

1 Price

- (a) Unless otherwise stated in the quotation, PDMS staff are charged to the client on a daily basis, at the current standard fee rate for that individual, and expenses incurred including fees such as travel, accommodation and materials will be charged at cost. Where appropriate Value Added Tax at the prevailing rate will be added to all quoted charges.
- (b) If PDMS staff are required to work on-site at the clients premises they will work within the client's normal working day (Monday to Friday inclusive) as applicable to other members of client's staff. If PDMS carry out work outside the PDMS working day, then the charge for this work will be agreed between PDMS and the client prior to any such work being commenced.
- (c) The price for software development may be fixed as agreed in the contract or as defined in the quotation. Beyond the quoted commitment the fees will be charged at the current daily charge rate. PDMS retain the option to modify daily rates after thirty (30) days written notice to the client.

2 Payment

- (a) Unless otherwise agreed in a contract, at the end of each calendar month for the agreed duration of the project PDMS shall submit an invoice for the charges arising during such month. Charges arising during a month will be those based on an hourly rate together with a proportion of any fixed fee assessed by PDMS as reasonable in relation to the proportion of the project completed. Payment shall be made by the client within fourteen (14) days of the date of the invoice, unless an alternative is specified in the agreed specification or contract.
- (b) If the client fails to pay any sum due hereunder unless notified of a dispute, PDMS shall be entitled to charge interest thereon from the date of the applicable invoice until the date payment is made at the rate of two per cent (2%) per annum over the base rate of Barclays Bank PLC from time to time in force.
- (c) All hardware bought on behalf of the client by PDMS remains the property of PDMS until such time as payment has been received in full from the client.

3 Staff

- (a) If staff are required to work on client's premises then it is expected that the normal office services will be extended to the staff at no cost, and that the client extends the same level of obligation to the staff as is required to its own employees in terms of health, safety and personal security.
- (b) PDMS staff shall at all times remain under the direction and control of PDMS.
- (c) PDMS staff shall be entitled to work on assignments either at client's premises or not, at PDMS' discretion.
- (d) PDMS reserve the right to use suitably qualified associates or sub-contracted personnel for the performance of the agreed services.

(e) The client agrees that during the contract and for a period of twelve months after the date of expiry or termination of the contract they shall not offer employment to any PDMS staff without the prior written approval of PDMS.

4 Estimates

(a) PDMS performance when working to an estimate is on a time and materials basis and accordingly any timetable and/or delivery dates relating to the whole and each part of the assignment shall be deemed to be estimates only.

(b) PDMS gives no undertaking to complete the whole or any part of the assignment for a fixed or ascertainable sum unless such sums are referred to in relation to the project and agreed in writing by both parties.

5 Fixed Price Agreements

(a) Should the work to be undertaken be the subject of a fixed price agreement a separate written agreement will define the work to be undertaken and the agreed fee.

(b) These standard terms and conditions will apply unless superseded by the terms agreed in any fixed price agreement.

6 Client Responsibilities

(a) The client will provide PDMS staff with all information concerning client's operations and activities which may be required by PDMS for performance of the services and will use all reasonable endeavours to respond quickly and positively to requests for decisions, approvals and consultations.

(b) Where participation by, or access by PDMS to, the client's own staff is necessary for the performance of the services, the client agrees that such staff shall be available at the times agreed by the parties. In reaching such agreement the client shall endeavour to meet any reasonable timetable proposed by PDMS. Furthermore, where such staff participate in the performance of the services, the client shall ensure that such staff possess the appropriate skills and experience for the tasks assigned to them.

(c) If at any time during the provision of services, the client shall notice or suspect that the wrong assumptions have been made or wrong directions have been taken by PDMS, it shall immediately inform PDMS in writing.

(d) The Client will indemnify PDMS against any actions brought in relation to either:

- i. the accuracy and currency of the details within any software or system constructed by PDMS based on materials and information supplied by the Client and made available to the Client for proof reading,
- ii. or any infringements on copyright, patent or other intellectual property rights owned by a third party for which specific written permission has not been obtained from the owner.

resulting from the actions of the Client.

7 Confidentiality

- (a) Subject to anything to the contrary herein, any information obtained as a result of any assignment will be treated as confidential. Information will be treated as being in the public domain only if the client has given express permission to publicly use the information or if the same information is obtained from a source independent of the client or particular assignment.
- (b) Nothing in this agreement shall be construed to prevent or restrict PDMS from disclosing or using in the course of its business any technical knowledge, skill or expertise of a generic nature acquired by PDMS in the performance of the services.
- (c) PDMS shall only have the right to announce publicly that it is providing services to the client provided the client has first approved the announcement.

8 Information Security

- (a) Where the Client is granted access to PDMS information or systems:
- (1) The Client agrees to follow such aspects of the PDMS Information Security Management System as shall be communicated to them as being applicable.
 - (2) PDMS reserve the right to revoke or limit that access authorisation at any time.
 - (3) The Client agrees that only those persons who have been identified to PDMS and authorised will access that information and any extension of access rights will be requested from PDMS before the individual attempts to access the information or system.
 - (4) The Client will report any security incident or potential security incident to PDMS immediately it is discovered and agrees to implement any reasonable corrective action identified as a result of that breach.
 - (5) The client will comply with any reasonable requests from PDMS with regard to security.
 - (6) The Client will at all times comply with all legislation relating to information and systems security which applies in the Client's locality. This includes, but is not restricted to, the requirements of the appropriate Data Protection legislation.
- (b) PDMS shall not be liable for any loss of integrity, confidentiality or availability of the Client's information which is caused by any failure of the Client to maintain appropriate security precautions and standards in respect of such information.

9 Termination

(a) Either party may terminate the services hereunder for its own convenience upon thirty (30) days written notice to the other party.

(b) Either party may terminate the services hereunder forthwith by written notice to the other party if:

(i) the other party shall commit a material breach of any of its obligations under this agreement and shall not have remedied such breach within thirty (30) days of receiving written notice of the breach; or

(ii) the other party shall have become bankrupt or enter into liquidation (other than for reconstruction or amalgamation) or have a receiver appointed of its assets or any part thereof or an administration order is served upon it.

(c) Termination shall not prejudice or affect any right or remedy that shall have accrued or shall thereafter accrue to either party.

10 Limitation of Liability

(a) In the performance of the services PDMS may give advice to client. PDMS shall exercise reasonable skill and care in the performing of services and in giving such advice but shall not be responsible for the accuracy of advice based on information supplied by the client or third parties. Responsibility for decisions taken on the basis of advice given by PDMS shall remain with the client.

(b) Client agrees that PDMS' liability for damages under or in connection with this agreement, howsoever arising, shall in no circumstances exceed in the aggregate the amount of fees charged hereunder for the particular assignment provided however that PDMS shall have no liability whatsoever for damages in respect of loss of profits or contracts or for special, indirect or consequential loss or damage.

11 Force Majeure

Neither party shall be liable in meeting or for failure to meet any of its obligations under this agreement due to any cause outside its reasonable control, including, without limitation, strikes, lock-outs, Acts of God, war, riot, malicious acts of damage, fire, acts of any Government authority, delay of any public transport, failure of the public power supply, failure or the delay of any sub-contractor beyond the sub-contractor's reasonable control or the lack of availability of materials.

12 Notices

All notices, demands or other communications under this agreement shall be given or made in writing and shall be delivered personally or sent by certified or registered mail (airmail, if appropriate), or by facsimile, with a return receipt or transmission confirmation requested. Any notice, demand or other communication given or made in this manner shall be deemed to have been received three (3) days after the date of sending. Notices may be sent by email provided confirmation or receipt is received from the recipient.

13 Intellectual Property Rights

All software written for a client is given to the client under license to possess and use the programs and program documentation. PDMS retain the copyright to any software programs written.

14 Assignment

This agreement and the rights hereunder shall not be assigned without the other parties' prior written consent. PDMS may delegate the performance of any of its obligations hereunder to third parties without the clients consent provided however that PDMS shall remain liable for the performance of the services notwithstanding such delegation. This clause does not apply to maintenance support agreements.

15 Amendments

No amendment, interpretation or waiver of any of the provisions of this agreement shall be effective unless made in writing and signed by the parties to this agreement.

16 Legal Construction

- (a) The parties have read and understand this Agreement and agree that it constitutes the complete and exclusive statement of the agreement between them with respect to the subject matter hereof which supersedes all proposals, representations, understandings and prior agreements, whether oral or written, and all other communications between them relating thereto.
- (b) Clause headings are inserted for convenience of reference only and shall not affect the interpretation of this Agreement.
- (c) The expression "this Agreement" means the quotation for client, these terms and conditions and any other document which is agreed by the parties and expressly designated to form a part of this Agreement for the assignment and services and includes any variation thereto which shall have been agreed in writing by the parties.
- (d) If the scope of any of the provisions of this agreement is too broad in any respect to permit enforcement to its full extent, then the parties agree that such provision shall be

enforced to the maximum extent permitted by law and that such provision shall be deemed to be varied accordingly.

(e) This Agreement shall be governed by Manx Law.

17 Arbitration

Any disputes arising under this Agreement, or any subsequent contract or agreement, shall be submitted to arbitration in accordance with such rules as the parties jointly agree. If the parties are unable to agree on arbitration procedures, arbitration shall be conducted in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce in London by three arbitrators appointed in accordance with the said Rules. The award being final and binding.

This applies also to the decision regarding the competence of the court of arbitration and the validity of the arbitration agreement. Either party may apply to the competent court for a judicial acceptance of the award and an order of enforcement, as the case may be.

18 Warranty

Unless an alternative period is specified in the agreed specification or contract, PDMS will make all changes or corrections required to ensure all software written by PDMS operates as specified in the agreed contract or specification free of charge provided changes or corrections are reported in writing to PDMS within 90 days of the date the software is delivered. Delivery date is the date PDMS install, or deliver by recorded delivery, the copy of software considered as the final copy by PDMS. The client will be notified that the copy delivered is the final copy. A fee will be charged for any faults or changes reported after the warranty period has expired based on the time taken to undertake the change charged at PDMS published daily rate.

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