

xposition: Terms of Trade

1.0 Definitions

In these conditions,

- “Fees” means the sums payable by the Client to xposition for the Consultancy Work as set out in the Proposal plus any Expenses.
- “Client” means the person named on the Proposal or Letter of Agreement for whom xposition has agreed to provide the Consultancy Work in accordance with these Conditions.
- “xposition” is a trading name of Phillip De Caux.
- “Consultancy Work” means the service to be provided by xposition for the Client and referred to in the Proposal or Letter of Agreement.
- “Contract” means the contract for the provision of the Consultancy Work and includes (without limitation) the Letter of Agreement.
- “Document” includes (without limitation) in addition to any document in writing, any electronic data, design or images, any map, plan, graph, drawing or photograph, any film, negative, tape or other device embodying visual images and any disc, tape or other device embodying any other data
- “Expenses” means all expenses reasonably and properly incurred in carrying out the Consultancy Work and shall include (without limitation) all disbursements and costs incurred on behalf of the Client or otherwise in pursuance of the Consultancy Work and all time spent travelling to and from a particular location arising out of the Consultancy Work which shall be charged out at xposition’s standard hourly charge out rate from time to time.
- “Input Material” means any Documents or other materials, and any data or other information provided by the Client relating to the Consultancy Work.
- “Internet Search Engine” means the currently available major search tools used on the internet by consumers to search for and find websites and web pages for persons, firms or companies.
- “Letter of Agreement” means the letter sent to the Client by xposition to agree to carry out the Consultancy Work
- “Output Material” means any Documents or other materials and any data or other information provided by xposition relating to the Consultancy Work.

- “Person” includes an individual Company, firm or other such body of persons.
- “Proposal” means the proposal presented by xposition to the Client.

The headings in these Conditions are for convenience only and shall not affect their interpretation.

Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

In these Conditions where two or more individuals are included in the expression “the Consultant” any obligation provided by them shall be deemed to be made by such persons jointly and severally.

In the event of any conflict or contradiction between these Conditions and any terms contained within the Proposal then the terms contained within the Proposal or Letter of Agreement shall take precedence in connection with the conflicting or contradicting provision in these Conditions.

2.0 Supply of the Input Material

The Client shall at its own expense supply xposition with all necessary Documents or other materials, and all necessary data or other information reasonably required by xposition in order to provide the Consultancy Work in accordance with the Contract. The Client shall ensure the accuracy of all Input Material.

The Client shall at its own expense retain duplicate copies of all Input Material and insure against its accidental loss or damage. xposition shall have no liability for any such loss or damage, however caused.

The Client warrants that it has the authority to provide the Input Material and that such documents and/or information does not infringe any third parties intellectual property rights or otherwise. Where any Input Material supplied by the Client is in breach of any third party’s intellectual property rights or otherwise then the Client shall indemnify xposition against all costs, claims, damages and expenses incurred by xposition as a result of such a breach.

The Client shall provide xposition with access at no cost to such locations and, such information concerning its operation and activities as may reasonably be required by xposition in order to provide the Consultancy Work.

The Client agrees to provide xposition with all licenses or other permissions necessary to enable xposition to carry out the Consultancy Work.

For the avoidance of doubt the Client’s staff shall at all times remain under the direction and control of the Client.

xposition may at any time without notifying the Client make any changes to the Consultancy Work which are necessary to comply with any applicable statutory requirements, or which do not materially affect the nature or quality of the Consultancy Work.

3.0 Acceptance and Supply of Consultancy Work

Upon xposition receiving written confirmation that the Client accepts the Proposal in accordance with these Conditions and wishes xposition to carry out the Consultancy Work and subject to the Client complying with its obligations as set out in these Conditions xposition shall use all reasonable endeavours to provide the Consultancy Work to the Client subject to the Proposal and these Conditions.

Once the Proposal has been accepted by the Client it may not be cancelled (in whole or part) or varied by the Client except with the agreement in Writing of xposition and on terms that the Client shall indemnify xposition in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by xposition as a result of cancellation or variation including (without limitation) any cancellation and/or penalty charges imposed on xposition by any third party.

No variation to the Conditions shall be binding unless agreed in writing between the Client and xposition.

4.0 Charges

All prices quoted in the Proposal are valid for 30 days only or until earlier confirmation by the Client after which time they may be altered by xposition without giving notice to the Client save that where any prices contained within the Proposal (in whole or part) relate to a third party service provision then these prices are accurate at the date the Proposal is given but may be subject to slight variations thereafter.

The Client shall pay xposition the Charges from time to time for all Consultancy Work carried out during this Contract on the dates and times in the Contract and any additional sums which are agreed between xposition and the Client for the provision of the Consultancy Work or which, in xposition's sole discretion, are required as a result of the Client's additional instructions, changes to the remit of the Consultancy Work, lack of instructions, inaccuracy of any Input Material, the ownership thereof or any other cause attributable to the Client.

Where applicable, all Charges quoted to the Client for the provision of the Consultancy Work are exclusive of any Value Added Tax, for which the Client shall be additionally liable at the applicable rate from time to time. xposition will inform the Client in advance any applicable Value Added Tax.

All Charges and Expenses shall be levied by xposition monthly in arrears and shall be payable by the Client (together any applicable Value Added Tax) within fourteen days of receipt of an invoice (save where the parties agree otherwise).

All sums payable by the Client (together with any applicable Value Added Tax) shall be paid to xposition without any set-off or other deduction.

If payment is not made on the due date, xposition shall be entitled, without limiting any other rights it may have, to charge interest on the outstanding amount (both before and after any judgment) at the rate of 5% above the base rate from time to time of National Westminster Bank PLC from the due date until the outstanding amount is paid in full.

5.0 Rights in Output Material

The property and any copyright or other intellectual property rights in any Output Material (which without limitation shall include any scripts or algorithms) which xposition possess shall, unless otherwise agreed in writing between the Client and xposition belong to xposition subject only to the right of the Client to use the Output Material for the purposes of utilising the Consultancy Work.

Any Output Material is supplied (save where agreed in writing) on the condition that it shall not be divulged other than to the Client's officers and employees or those of the Client's parent or subsidiary companies, and the Client's advertising agents and PR consultants and it shall not be divulged to or used by any other third party without xposition's written consent save in the case of disclosure by the Client to the Client's own customers or potential customers for the purpose of attracting or persuading such customers in the course of the Client's bona fide commercial dealings to stock or promote the products or services which are the subject of that Output Material.

The Client shall procure that all its officers and employees and those of its parent and subsidiary companies and its advertising agents and PR consultants who have access to the Output Material shall be made aware of and subject to these obligations.

6.0 Warranties and Liability

xposition warrants to the Client that the Consultancy Work will be provided using reasonable care although it is acknowledged by the parties that for this Contract time shall not be of the essence.

xposition shall have no liability to the Client for any loss, damage, costs, expenses or other claims for compensation arising from any Input Material or instructions supplied by the Client which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of the Client.

Except in respect of death or personal injury caused by xposition's negligence, or as expressly provided in these Conditions, xposition shall not be liable to the Client by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by the negligence of xposition, its servants or agents or otherwise) which arise out of or in connection with the provision of the Consultancy Work or their use by the Client, and the entire liability of xposition under or in connection with the Contract shall not exceed the amount paid by the Client for the provision of the Consultancy Work, except as expressly provided in these Conditions.

xposition shall not be liable to the Client or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of xposition's obligations in relation to the Consultancy Work, if the delay or failure was due to any cause beyond xposition's reasonable control.

It is acknowledged by the Client that:

- all advice and recommendations are made by xposition in good faith on the basis of information, knowledge and technology as at the date the same is given and xposition shall not be liable in any way for any loss or damage which the Client may incur in taking or not taking such advice or implementing or not implementing any recommendations made by xposition;
- xposition makes no express or implied warranty or representation as to the exact improvements that the Client will experience;

7.0 Commencement/Termination

This Contract shall begin on the date the Proposal is accepted and shall continue for an initial period of six months ("Initial Period") and thereafter unless either party gives the other notice not less than one month's prior written notice.

Either party shall be entitled forthwith to terminate this Agreement by written notice to the other if:

- that other party commits any continuing or material breach of any of the provisions of this Agreement and in the case of such a breach which is capable of remedy fails to remedy the same within thirty days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied;
- another party takes possession or a receiver is appointed over any of the property or assets of that other party;
- that other party makes any voluntary arrangement with its creditors or becomes subject to an administration order;
- that other party goes into liquidation (except for the purposes of an amalgamation, reconstruction or other reorganisation and in such

manner that the company resulting from the reorganisation effectively agrees to be bound by or to assume the obligations imposed on that other party under this Agreement).

A breach shall be considered capable of remedy if the party in breach can comply with the provision in question in all material respects.

Any waiver by either party of a breach of any provision of this Agreement shall not be considered as a waiver of any subsequent breach of the same or any other provision.

8.0 Confidentiality

Both parties undertake to treat as confidential and keep secret all information (written and oral) conveyed to the party in relation to these Conditions ("Confidential Information").

Both parties shall not without the prior written consent of the other party divulge any part of the Confidential Information to any person except:

- either parties employees agents and sub-contractors and then only to those persons who need to know the same for the purposes of either parties' rights under this Agreement;
- either parties auditors and any other persons or bodies having a right duty or obligation to know the business of either party and then only in pursuance of such right duty or obligation;
- where that information is already known or in the possession of that person or which is publicly available at the time of disclosure other than by a breach of confidence by either party.

Both parties shall promptly inform the other party if it becomes aware of any breach of confidence by any person and shall give the other party all reasonable assistance in connection with any proceedings which the other party may institute against such person.

9.0 Non Solicitation

The Client shall not during the term of the Consultancy Work and for a period of twelve months after expiry or termination howsoever caused solicit xposition's staff who have been employed or engaged in the provision of the Consultancy Work. For the purposes of this clause "solicit" means the soliciting of such person with a view to engaging such person as an employee director sub-contractor or independent contractor.

In the event that the Client is in breach of clause 9.1 above then the Client shall indemnify xposition against all costs claims and expenses that are incurred as a result of such breach including (without limitation) the costs incurred in employing a substitute person and training the said person to a similar standard to the person who has been solicited. This provision shall be without prejudice to xposition's ability to seek injunctive relief.

10.0 Requested Enhancements, Amendments, Modifications or Changes

If the Client desires to amend modify, enhance or change any part of the Proposal any time during the term of the Contract the Client shall send to xposition a request giving details of the proposed changes, modifications, enhancements or amendments (as appropriate). xposition shall then notify the Client by way of a change control note setting out the terms upon which it will implement the amendments, modifications, enhancements or changes (as appropriate) and the additional charge.

If the parties agree a change control note it shall be treated as an amendment to this Contract. A change control note shall be of no effect unless agreed in writing which for the purposes of this clause 11 only shall be satisfied if by electronic communication the Client sends and xposition receives a message agreeing the conditions proposed by xposition in the change control note to carry out the required amendment, modification, enhancement or change (as appropriate).

11.0 General

xposition agrees that all personnel performing the Consultancy Work to the Client shall be its employees.

These Conditions (together with the terms, if any, set out in the [Specification]) constitute the entire agreement between the parties, supersede any previous agreement or understanding and may not be varied except in writing between the parties. All other terms and conditions, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.

Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

No failure or delay by either party in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by either party of any breach of the Contract by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.

If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.

xposition shall be entitled to assign or otherwise transfer or use the services of a subcontractor agent or otherwise in order to carry out any of its rights and obligations under these Conditions.

The Client shall not be entitled to assign or otherwise transfer the benefit (subject to the burden) of these Conditions nor any of its rights or obligations hereunder (in whole or in part) without the prior written consent of xposition.

xposition shall be entitled to publicise the fact that the Client is a customer of xposition.

English law shall apply to the Contract, and the parties agree to submit to the non-exclusive jurisdiction of the English courts. 11.9 Neither of the parties to these Conditions shall be responsible to the other party for any delay in performance or non-performance due to any causes beyond the reasonable control of the parties hereto, but the affected party shall promptly upon the occurrence of any such cause so inform the other party in writing, stating that such cause has delayed or prevented its performance hereunder

Nothing in this Agreement shall constitute, or be deemed to neither constitute, a partnership between the parties nor, except as expressly provided, shall either party be deemed to be the agent of the other.

Save as expressly permitted it is not intended that a third party has a right to enforce a provision of these Conditions under the Contracts (Rights of Third Parties) Act 1999.

Approved by: Phillip De Caux
On: 30th June 2006