

**TURNING MOMENT**

**STANDARD TERMS AND CONDITIONS FOR  
THE SUPPLY OF SERVICES**

## 1 DEFINITIONS AND INTERPRETATION

1.1 In these Conditions, unless the context otherwise requires, the following expressions shall have the following meanings:

<b>"Charges"</b>	the amounts payable by the Client to the Supplier for the Services and any related expenses or other outgoings, calculated in accordance with the Supplier's fee schedule as amended from time to time (as set out in the Engagement Letter or as otherwise notified to the Client from time to time);
<b>"Client"</b>	the person, firm or company who purchases the Services from the Supplier;
<b>"Conditions"</b>	these terms and conditions for the supply of the Services;
<b>"Contract"</b>	the contract between the Supplier and the Client for the supply of Services in accordance with these Conditions and consisting of the documents set out in clause 2.3;
<b>"Data Protection Legislation"</b>	all applicable data protection and privacy legislation in force from time to time in the UK including the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder); the UK GDPR (as defined in section 3(10) of the DPA 2018) and the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 2426) as amended; and the guidance and codes of practice issued by the Information Commissioner;
<b>"Deliverables"</b>	the deliverables set out in the Engagement Letter (or as otherwise agreed between the parties) and produced by the Supplier for the Client as part of the Services;
<b>"Document"</b>	includes, without limitation, in addition to any document in writing, any drawing, plan, diagram, design or other image;
<b>"Engagement Letter"</b>	the engagement letter (if any) sent to the Client by the Supplier setting out certain specific information in relation to the Services;
<b>"Force Majeure"</b>	any event or circumstance preventing the Supplier from performing any or all of its obligations pursuant to these Conditions which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the Supplier;
<b>"Indirect Losses"</b>	loss of profits, loss of business, depletion of goodwill or similar losses, loss of anticipated savings, loss of goods, loss of contract, loss of use, loss or corruption of data or information or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses;

<b>"Input Material"</b>	all Documents, information and materials provided by the Client relating to the Services;
<b>"Intellectual Property Rights"</b>	all patents, rights to inventions, utility models, copyright and related rights, trade marks, trade, business and domain names, rights in goodwill or to sue for passing off, rights in design, database rights, rights in computer software, moral rights, rights in confidential information (including know how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all other similar or equivalent rights or forms of protection in any part of the world;
<b>"Pre-existing Materials"</b>	all Documents, information and materials provided by the Supplier to the Client relating to the Services which existed prior to the commencement of the Contract;
<b>"Services"</b>	the services, including the Deliverables, supplied by the Supplier to the Client (as set out in the Engagement Letter or otherwise agreed between the parties); and
<b>"Supplier"</b>	David Anthony Barrett of Westgate, Bishop Auckland, DS13 1NT, trading as "Turning Moment".

1.2 In addition, in these Conditions:

- 1.2.1 a reference to a statute or statutory provision includes a reference to any amendment, extension or re-enactment of it from time to time in force and includes any subordinate legislation made under it;
- 1.2.2 a reference to a person is a reference to any natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.2.3 references to **Clauses** are references to clauses of these Conditions;
- 1.2.4 headings are for convenience only and shall not affect the interpretation of these Conditions;
- 1.2.5 any words following the terms including, include, in particular, for example or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## 2 APPLICATION OF THESE CONDITIONS

2.1 These Conditions shall:

- 2.1.1 apply to and be incorporated into the Contract; and
- 2.1.2 prevail over any inconsistent terms and conditions contained, or referred to, in the Client's order, confirmation of order, acceptance of a quotation, or specification or any other Document supplied by the Client or implied by law, trade custom, practice or course of dealing.

- 2.2 The Client's order constitutes an offer by the Client to purchase the Services on these Conditions. No offer placed by the Client shall be accepted by the Supplier other than:
- 2.2.1 by the issue of an Engagement Letter by the Supplier or other written acknowledgement issued by the Supplier; or
- 2.2.2 (if earlier) by the Supplier starting to provide the Services,
- when a contract for the purchase and supply of Services on these Conditions will be established. The commencement date of the Contract shall be the date set out in the Engagement Letter (or other written acknowledgement from the Supplier) or (if earlier) the date that the Supplier starts providing the Services.
- 2.3 The Contract shall comprise of the following documents and in the following order of precedence to the extent of any conflict or inconsistency between the same:
- 2.3.1 the Engagement Letter or other written acknowledgement from the Supplier; and
- 2.3.2 these Conditions.
- 2.4 If we enter into a separate contract with you, the terms of that contract will apply to the provision of our services to you, to the exclusion of these Conditions.
- 2.5 The Client's standard terms and conditions (if any) attached to, enclosed with or referred to in any order or any Document shall not govern the Contract.
- 2.6 Any examples, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's marketing materials, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.7 The Contract shall not prevent the Supplier from entering into similar agreements with third parties or from independently developing, using, selling or licensing materials or services which are similar to those provided under the Contract.

## **2 SERVICES**

- 3.1 The Client agrees to purchase and the Supplier agrees to provide the Services in accordance with these Conditions.
- 3.2 The Supplier shall perform the Services in an efficient, professional and workmanlike manner and with reasonable care and skill.
- 3.3 The Supplier shall use reasonable endeavours to meet any performance dates discussed or agreed between the parties, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 3.4 The Supplier shall use all reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirements that apply at the Client's premises and that have been previously communicated to it under **Clause 4.1.5**, provided that it shall not be liable under the Contract if, as a result of such observation, it is in breach of any of its obligations under the Contract.

## **4 THE CLIENT'S OBLIGATIONS**

- 4.1 The Client shall:
- 4.1.1 co-operate with the Supplier in all matters relating to the Services;

- 4.1.2 provide the Supplier, its agents, sub-contractors, consultants and employees, in a timely manner and at no charge, with access to the Client's premises, office accommodation, data and other facilities as reasonably required by the Supplier;
  - 4.1.3 at its own cost provide the Supplier with suitable premises from which the Supplier shall carry out the Services;
  - 4.1.4 provide to the Supplier in a timely manner such Input Material and other information as the Supplier may reasonably require and ensure that it is accurate in all material respects; and
  - 4.1.5 where the Services are supplied at the Client's premises, be responsible (at its own cost) for preparing and maintaining the premises for the supply of the Services, before and during the supply of the Services at those premises and notifying the Supplier in advance of any policies that apply at the premises which the Client requires the Supplier to comply with.
- 4.2 If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Client, its agents, subcontractors, consultants or employees, the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Client arising directly or indirectly from such prevention or delay.
- 4.3 The Client shall be liable to pay to the Supplier on demand all reasonable costs, charges or losses sustained or incurred by the Supplier (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) directly or indirectly arising from the Client's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract.
- 4.4 In the event that the Client or its nominated representative fails to attend an arranged meeting (including telephone or other electronic conference calls), workshop, session, seminar or any other event at which the Client or its nominated representative's presence is required ("**Event**"), the Client shall still be charged for that Event in accordance with the Supplier's fee schedule.

## **5 PRICE AND PAYMENT**

- 5.1 In consideration of the Supplier providing the Services, the Client agrees to pay the Charges.
- 5.2 Charges are exclusive of value added tax and all other applicable taxes, duties and levies.
- 5.3 Unless agreed otherwise, the Supplier shall be entitled to charge the Client for any reasonable expenses incurred in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.
- 5.4 Payment of the Charges and any other sums shall be in pounds sterling and shall be paid within 14 days of the date of the Supplier's invoice. The Client will be provided with a breakdown of the Charges with the invoice.
- 5.5 Any services which the Supplier provides to the Client which are additional to the Services (as set out in the Engagement Letter or otherwise agreed between the parties) shall be subject to additional charges at the Supplier's standard rate.
- 5.6 Time of payment shall be of the essence.
- 5.7 Without prejudice to any other right or remedy that it may have, if the Client fails to pay the Supplier on the due date, the Supplier may:

- 5.7.1 charge interest on such sum from a due date for payment at the annual rate of 2 % above the base lending rate from time to time of Barclays Bank plc accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and the Client shall pay the interest immediately on demand; and/or
- 5.7.2 suspend all Services until payment of all sums due to the Supplier (including any interest accrued or accruing) from the Client on any account with the Supplier has been received in full.
- 5.8 The Supplier may, without prejudice to any other rights or remedies it may have, set off any liability of the Client to the Supplier against any liability of the Supplier to the Client.

## **6 INTELLECTUAL PROPERTY RIGHTS**

- 6.1 All Intellectual Property Rights created, devised, developed or discovered during the provision of the Services (including in the Deliverables) and in the Pre-existing Materials shall belong to and remain the absolute property of the Supplier.
- 6.2 The Supplier grants to the Client, or shall procure the direct grant to the Client of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to copy the Deliverables and Pre-existing Materials (excluding the Input Materials) for the purpose of receiving and using the Services and the Deliverables for its internal business purposes.
- 6.3 The Client shall not sub-license, assign or otherwise transfer the rights granted in clause 6.2.
- 6.4 All Intellectual Property Rights in any Input Materials shall remain the property of the Client.
- 6.5 The Client grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any Input Materials for the term of the Contract for the purpose of providing the Services to the Client.

## **7 CONFIDENTIALITY AND DATA PROTECTION**

- 7.1 The Client shall keep in strict confidence all technical or commercial know how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Client by the Supplier, its employees, agents, consultants or sub-contractors and any other confidential information concerning the Supplier's business which the Client may obtain ("**Confidential Information**").
- 7.2 The Client may disclose Confidential Information:
- 7.2.1 to its employees, officers, agents or sub-contractors who need to know such information for the purposes of carrying out the Client's obligations under the Contract;
- 7.2.2 as may be required by law or any regulation.
- 7.3 The Client may not use any Confidential Information for any purpose other than to perform its obligations under the Contract.
- 7.4 The Supplier and the Client agree to comply with all relevant requirements of the Data Protection Legislation.

## **8 TERMINATION**

- 8.1 The Supplier shall be entitled to terminate the Contract for any reason whatsoever by giving the Client 1 months' written notice.

- 8.2 The Supplier shall be entitled, without prejudice to any other rights or remedies available to it under or in connection with these Conditions, to terminate the Contract immediately by notice in writing to the Client for any of the following reasons:
- 8.2.1 the Client is in material breach of any of its obligations under these Conditions and that breach cannot be remedied;
  - 8.2.2 the Client is in material breach of any of its obligations under these Conditions which can be remedied, but the Client fails to do so within 30 days starting on the day after receipt of notice from the Supplier;
  - 8.2.3 the Client fails to pay any amount due under the Contract on the due date for payment;
  - 8.2.4 the Client takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
  - 8.2.5 the Client suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business;
  - 8.2.6 the Client's financial position deteriorates to such an extent that in the Supplier's opinion, the Client's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
  - 8.2.7 the Client is unable to pay its debts as they fall due.
- 8.3 Any expiry or termination of the Contract for whatever reason shall not effect any rights or liabilities which have accrued on or before the date of termination or expiry and the termination or expiration of the Contract shall not relieve any party of any obligation under these Conditions which is expressed or which by implication is intended to continue after such termination or expiration.
- 8.4 On termination of the Contract for any reason, the Client shall immediately pay the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt.
- 8.5 On termination of the Contract (howsoever arising) **Clauses 7, 9 and 10** shall survive and continue in full force and effect.

## **9 LIABILITY**

- 9.1 This **Clause 9** sets out the entire liability of the Supplier (including any liability for the acts or omissions of its employees, agents, consultants, and sub-contractors) to the Client in respect of:
- 9.1.1 any breach of the Contract;
  - 9.1.2 any use made by the Client of the Services or any part of them;
  - 9.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract; and

- 9.1.4 every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 9.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 9.3 Nothing in these Conditions limits or excludes the liability of the Supplier for any liability that cannot be legally limited including:
- 9.3.1 death or personal injury caused by negligence;
- 9.3.2 fraud or fraudulent misrepresentation; and
- 9.3.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 9.4 The Supplier shall not be liable to the Client under any circumstances whatsoever (including for breach of contract, tort including negligence, breach of statutory duty or otherwise) for any Indirect Losses suffered by the Client.
- 9.5 Subject to **Clause 9.3 and 9.4**, the Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance, or contemplated performance, of the Contract ("**Default**") shall be limited to the sums paid by the Client for the Services during the year in which the Default occurs.
- 9.6 Unless the Client notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Client became, or ought reasonably to have become, aware of the event having occurred and shall expire three (3) months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

## **10 DISCLAIMER**

- 10.1 Whilst the information provided by the Supplier or any of its employees, consultants, agents or sub-contractors (whether provided orally or in any report, results or other output or otherwise) shall be given in good faith, no representation or warranty, express or implied, is or will be made and no responsibility or liability is or will be accepted by the Supplier or any of its respective employees, consultants, agents or sub-contractors in relation to the accuracy, completeness or suitability for any purpose of the information or data provided and any such liability is expressly denied.
- 10.2 The Client acknowledges that it is solely responsible for the outcome of any decision made by it as a consequence of the provision of the Services.

## **11 FORCE MAJEURE**

If the Supplier is prevented or delayed in its performance of any of its obligations under these Conditions by Force Majeure, it may notify the Client of the circumstances giving rise to Force Majeure. The Supplier shall not be liable for delay in performing or failure to perform its obligations under these Conditions if such a delay or failure results from Force Majeure. Such delay or failure shall not constitute a breach of these Conditions and the time for its performance shall be extended by a reasonable period agreed between the parties.

## **12 GENERAL**

- 12.1 The Client agrees to be bound by any terms and conditions that accompany any psychometric assessments, reports or tests or similar that the Supplier uses as part of the Services.



- 12.2 Delay in exercising, or a failure to exercise, any right or remedy in connection with these Conditions shall not operate as a waiver of that right or remedy. A single or partial exercise of any right or remedy shall not preclude any other or further exercise of that right or remedy, or the exercise of any other right or remedy. A waiver of a breach of these Conditions shall not constitute a waiver of any subsequent breach.
- 12.3 All notices (and all other documents) to be served under these Conditions (in addition to any requirements as to notices set out in the latter) shall be in writing and shall be delivered or sent, to its registered office or principal address, as applicable, or to such other addresses as a party may have notified in writing to the other.
- 12.4 A notice shall be delivered by hand or sent by prepaid first class recorded delivery.
- 12.5 A notice shall be deemed to have been received:
- 12.5.1 if delivered by hand between 9.00 am and 5.00 pm on a Business Day (such time period being referred to in this **Clause 12** as "**Business Hours**") when so delivered, or if delivered by hand outside Business Hours, at the next start of Business Hours;
- 12.5.2 if sent by first class recorded delivery post on a Business Day, at 9.00 am on the second Business Day after posting, or, if the notice was not posted on a Business Day, at 9.00 am on the third Business Day after posting.
- 12.6 In proving service of a notice, it shall be sufficient to prove that delivery was made or that the envelope containing that notice was properly addressed and posted.
- 12.7 No amendment or variation of these Conditions shall be valid unless it is previously agreed in writing between the Supplier and the Client.
- 12.8 Nothing in these Conditions shall constitute or be deemed to constitute a partnership or other form of joint venture between the parties or constitute or be deemed to constitute either party the agent or employee of the other for any purpose whatsoever.
- 12.9 No person who is not a party to the Contract is entitled to enforce any of its terms, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 12.10 The Contract shall be personal to the Client. The Client shall not assign, novate, sub-contract or otherwise dispose of the Contract or any part thereof without the prior written consent of the Supplier which may be withheld at the Supplier's discretion. The Supplier shall be entitled to assign the Contract. The Supplier shall give notice of any assignment to the Client.
- 12.11 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 12.12 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract. Nothing in this clause shall limit or exclude any liability for fraud.
- 12.13 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Contract. If any provision or part-provision of this Contract is deleted under this clause 12.13, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 12.14 The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and

construed in accordance with the law of England. Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.