

## **1. Definitions and interpretation**

1.1 In these Terms the following definitions apply:

**Supplier or “FG”** means **Fifteen Group Limited**

MH2, Park Hall Business Village

Stoke on Trent, Staffordshire,

ST3 5XA

Company Number: 05711050

VAT number (GB): 883 9807 62 GB

**Customer** means any person to whom FG supplies Goods & Services;

**Goods & Services** refers to both physical Items and also to IT services, communication services, security services, cloud hosting together with bespoke programming which FG is to supply to the Customer in accordance with the description and specific terms as set out on the Quotation; excluded from these Goods & Services are the services of IT Managed Support Agreements, Telecoms Managed Support Agreements, Security Managed Support Agreements, Developer Managed Support Agreements and Fixed Lease Lines for which separate terms and conditions exist.

**Quotation** means the document issued by FG setting out (1) a description of the Goods & Services or Services (2) the Price (3) any other relevant matters and specific terms and conditions.

**Downtime** means any service interruption in the availability to your network, data or in cases of hosting customer visitors unable to access your website or for you to receive emails

**Intellectual property rights** means patents, trademarks, design rights, applications for any of the foregoing, copyright, topography rights, database rights, rights in know-how, trade or business names and other similar rights or obligations, whether register able or not in any country;

**Virus or virus activity** means computer code that copies itself or is copied via internal computer networks, internet or via removable storage, it may destroy, alter or corrupt data, will cause damage to files and/or creates a nuisance or annoyance to the user and includes without limitation computer programs commonly referred to as “worms” “spyware” “malware” or “Trojan horses”;

**Price** means the price for the Goods & Services as set out on the Quotation;

**Terms** means the standard terms set out in these terms and conditions of business;

**Rollback** means returning the Server, PC, Website or telephone system and all related Peripherals back to their original state.

1.2 Any changes to these Terms are valid only if agreed in writing between FG and the Customer.

1.3 Unless authorised in writing by FG, employees’ or agents’ representations concerning the Goods & Services are not valid.

1.4 Any error or omission in any sales brochure, quotation, price list, acceptance or offer, invoice or other material issued by FG (whether typographical, clerical or otherwise) may be corrected by FG without any liability on the part of FG.

1.5 If there is any conflict between the Quotation and these Terms, the Quotation shall prevail.

## **2. Appointment**

2.1 The Customer appoints FG to provide Goods & Services in accordance with the Quotation. The Terms apply to the Goods & Services set out in the Quotation. No other terms will apply to the provision of the Goods & Services.

## **3. The Quotation**

3.1 The quantity, quality & description of the Goods & Services shall be as set out in the quotation.

3.2 It is the sole responsibility of the Customer to ensure the Goods & Services set out on the Quotation meet its requirements.

3.3 FG may make changes to the Goods & Services in order to conform with any legal requirements or which do not materially affect their quality or performance.

3.4 The Customer shall at its own expense supply FG with all necessary materials and information required by FG to provide the Goods & Services in accordance with these Terms. If a failure by the Customer to provide materials or information causes FG to miss a deadline, the FG deadline shall be deemed to be extended by at least the period of the Customer’s delay, if not more if appointment was missed for the installation of business critical services such as electricity, or telecoms.

**3.5 This contract is divisible, each delivery or milestone invoiced made hereunder:**

**a) Shall be deemed to arise from a separate contract, and**

**b) Shall be invoiced separately and any invoice for a delivery shall be payable in full in accordance with the terms of payment provided for herein without reference to and notwithstanding any defect or default in the delivery of any other instalment**

## **4. Price and Payment**

4.1 FG shall invoice the Customer for the Goods & Services normally in arrears. However standard practice is to ask for a small deposit on web services & installations work, this will be made clear on the Quotation.

4.2 Unless the subject of a genuine dispute which needs to be raised within 72 hours of receiving the invoice, the Customer shall pay the Price within 28 calendar days of receipt the invoice.

4.3 The Price does not include VAT, which the Customer shall pay in addition to the Price at the rate prevailing on the date of the invoice.

4.4 Should the Customer fail to make any payment in full on the Due Date under this agreement, FG may charge interest on the outstanding amount. Such interest shall accrue on a daily basis at the rate of 1% per calendar month from the due date until the date of payment, whether before or after judgment.

4.5 If, because of a factor beyond the control of FG, the cost to FG of providing the Goods & Services increases, FG may before delivery increase the Price of the Goods & Services or cancel the contract.

4.6 The Customer will pay the Price for the Goods & Services. If the Customer wants FG to deliver the Goods & Services, the Customer will pay FG’s reasonable charges for transport, packaging and insurance.

4.7 All amounts due under these Terms shall be paid in full without any deduction or withholding other than as required by law and neither party

shall be entitled to assert any credit, set-off or counterclaim against the other party in order to justify withholding payment of any such amount in whole or in part, this contract is divisible as per point 3.5.

## **5. Delivery of Goods & Services**

5.1 The Customer will collect the Goods & Services from FG’s premises at any time after FG has notified the Customer that the Goods & Services are ready for collection.

5.2 Any dates quoted for delivery of the Goods & Services are approximate and FG shall not be responsible for any delay in delivery of the Goods & Services however caused. Unless agreed in writing in advance by FG time for delivery shall not be of the essence. FG may deliver Goods & Services before the scheduled delivery date.

## **6. Ownership and Responsibility**

6.1 Ownership of any consignment of Goods & Services shall not pass to the Customer until FG has received payment in full of all sums due to it in respect of all consignments of Goods & Services delivered to the Customer.

6.2 Until ownership in the Goods & Services passes to the Customer, the Customer shall:

6.2.1 hold the Goods & Services on behalf of FG, take proper care of them and take all reasonable steps to prevent any damage to or deterioration of them;

6.2.2 Store or keep the Goods & Services separately from other Goods & Services, so as to show clearly that they belong to FG;

6.2.3 Not sell or part with possession of the Goods & Services;

6.2.4 Keep the Goods & Services free from any mortgage, charge, lien or other encumbrance;

6.2.5 Fully Insure the Goods & Services;

6.3 Despite clauses 6.1 & 6.2, FG may bring an action against the Customer for the price of the Goods & Services if the Customer fails to pay for them in full by the Due Date, even though Goods & Services has not passed to the Customer.

6.4 If the customer fails to pay invoices within a reasonable amount of time (normally 21 days past the invoice due date) there have been no disputes raised within 7 day s of invoice or in the cases of dispute no reasonable attempt to resolve issues that would prevent said payment or if a payment plan has failed to be made, then FG will perform a remote or onsite rollback, meaning all works listed on the invoice or associated job sheet will be undone and returned a state prior to the commencement of works listed on invoice or job sheet. All losses of data, operating systems, website, operations or any other material would at this point be inconsequential to FG and you agree not to hold us legally or financially liable for the losses.

6.5 The responsibility for loss or damage to any consignment of the Goods & Services shall pass to the Customer on delivery.

6.6 Each order for the Goods & Services shall constitute a separate contract and any default by FG in relation to any one order shall not entitle the Customer to treat these Terms as terminated.

## **7. Warranties and indemnities**

7.1 FG warrants and represents to the Customer that it will perform its obligations under these Terms with reasonable skill and care. All other warranties are expressly disclaimed to the fullest extent permitted by law.

7.2 FG shall not be liable to the Customer (whether in contract, tort, including negligence and breach of duty, or otherwise at law) for any:

7.2.1 Indirect or consequential loss; and/or

7.2.2 Loss of profits, revenue or goodwill of the Customer.

7.3 FG does not exclude its liability for death or personal injury if caused by its own negligence or for fraud.

## **8. Termination**

8.1 Either party may terminate these Terms immediately by notice in writing if the other party:

8.1.1 Commits a material breach of any of the Terms (including without limitation late payment) and, if such breach is capable of remedy, fails to remedy the breach within 30 days of receiving notice from the terminating party specifying the breach and requiring the breach to be remedied;

8.1.2 Enters into liquidation whether compulsorily or voluntarily (otherwise than for the purposes of a solvent amalgamation or reconstruction);

8.1.3 becomes insolvent;

8.1.4 Ceases or threatens to cease to carry on business;

8.1.5 Compounds or makes any voluntary arrangement with its creditors;

8.1.6 is the subject of a notice of appointment of an administrator, or a notice of intention to appoint an administrator or liquidator;

8.1.7 is unable to pay its debts as they fall due;

8.1.8 Has an encumbrance take possession of, or a receiver or administrative receiver appointed over, all or any part of its assets; or

8.1.9 Takes or suffers any similar action due to debt or if the equivalent of any of the events described at clause 8.1.2 to 8.1.9 inclusive under the law of any jurisdiction occurs in relation to the other party.

8.2 The expiry or termination of these Terms for any reason shall not affect any rights and/or obligations:

8.2.1 Accrued before the date of termination or expiry; or

8.2.2 Expressed or intended to continue in force after and despite expiry or termination.

8.3 The Customer shall not following the termination of these Terms for any reason represent itself as being connected with FG or any member of Fifteen Holdings Limited group of companies.

8.4 On termination of these Terms (for a breach by the Customer) all outstanding or un-invoiced work shall become immediately payable. In respect of outstanding contract terms, the amount totalling the remainder of the contract will be invoiced in full.

## **9. Confidentiality**

9.1 In this clause 9, Confidential Information means all technical, commercial and financial information, product information, trade secrets, know-how and all information relating to the plans, intentions, market opportunities, transactions, affairs and/or business of a party and its Group companies and/or its or their customers and/or suppliers, and the Terms;

9.2 Each party shall keep secret and confidential all Confidential Information of the other and shall not (and shall procure that its employees and/or officers shall not) copy, use or disclose any such

information to any third party, other than as may be necessary to comply with its obligations under these Terms.

9.3 The obligation of confidence shall not apply where the Confidential Information:

9.3.1 Is required to be disclosed by operation of law;

9.3.2 was in the possession of the recipient prior to disclosure by the other party without restriction on disclosure or use;

9.3.3 Is subsequently acquired from a third party without any obligation of confidence;

9.3.4 Is or becomes generally available to the public through no act or default of the recipient; or

9.3.5 Is disclosed on a confidential basis for the purposes of obtaining professional advice.

9.4 This clause 9 shall continue in force notwithstanding the expiry or termination of these Terms, whatever the reason for such termination.

## **10. General**

10.1 Time is not of the essence in relation to the performance of the obligations of FG under these Terms.

10.2 Notices between the Customer and FG relating to these Terms shall be in writing. Notices shall either be delivered personally or sent by first class post or email to their registered office.

Notices if delivered by hand shall be treated as received when delivered, if sent by first class post 48 hours after posting (72 if posted on a Friday).

10.3 These Terms are the entire agreement between the Customer and FG and replaces all previous agreements between them relating to the same subject matter.

10.4 Neither the Customer or FG shall be liable if it breaches these Terms as a result of circumstances which are beyond its reasonable control, provided that as soon as is reasonably practicable it gives notice to the other party. For these purposes acts of omissions by the employees, sub-contractors, developers, agents and representatives of either party are within that party's control.

10.5 Unless these Terms provide otherwise, nothing in it creates a partnership or employment relationship between the Customer and FG or makes one party the agent of the other.

10.6 Neither FG nor the Customer may assign or transfer these Terms or any rights or objections under them without the prior written consent of the other (such consent not to be unreasonably withheld or delayed).

10.7 The Customer and FG confirm that they do not intend any third party to have the right to enforce any provision of these Terms under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

10.8 If any provision of these Terms are found under the laws of any jurisdiction to be invalid, illegal or unenforceable, the validity, legality or enforceability of that provision in that jurisdiction shall not in any way affect the validity, legality or enforceability of all the provisions of these Terms in any other jurisdiction.

10.9 The Customer and FG shall attempt to substitute for any invalid, illegal or unenforceable provision a valid, legal and enforceable provision which achieves to the greatest extent possible the

economic, legal and commercial objectives of the invalid, illegal or unenforceable provision.

10.10 All terms of this agreement which by their nature ought to survive termination will continue to be effective after this agreement has expired or been terminated.

10.11 The laws of Great Britain (England, Scotland & Wales) excluding the Channel Islands and Isle of Man shall govern these Terms. The Customer and FG agree to submit to the exclusive jurisdiction of the courts of Great Britain only.

## **11.00 Terms 11 through to 18 inclusive provide additional conditions relevant to Cloud Hosting Services Only**

### **11.01 Service Level**

FG shall endeavour to make the server and the services, together with the applications and websites available to the Customer 99.00% of the time but because the Services are provided by means of computer and telecommunications systems, FG make no warranties or representations that the Service will be uninterrupted or error-free and therefore FG shall not, in any event, be liable for interruptions of Service or downtime of the server. This liability extends to the loss of any data stored on the hosting server.

FG shall endeavour to use industry standard backup procedures to ensure that the data held on the hosting server is safe and secure but, ultimately it is the responsibility of the customer to ensure that they have copies of their own data should our backups not be sufficient or be corrupt.

We make no warranty as to the integrity of the data that is backed up by us and the process of checking the data is the responsibility of the customer. We will always make backups available to check upon request.

### **12.00 Acceptable Use Policy**

12.01 Our hosting services, server space and/ or websites may used for lawful purposes only and the Customer may not submit, publish or display any content that breaches any law, statute or regulation. In particular the Customer agrees not to:

Use the Services or the Website in any way to send unsolicited commercial email or any similar abuse of the Services;

Send email or any type of electronic message with the intention or result of affecting the performance of any computer facilities;

Publish, post, distribute or disseminate defamatory, obscene, indecent or other unlawful material or information, or any material or information which infringes any intellectual property rights, via the Services or on the Website;

Threaten, abuse, disrupt or otherwise violate the rights (including rights of privacy and publicity) of others;

Engage in illegal or unlawful activities through the Services or via the Website;

Make available or upload files to the Website or to the Services that the Customer knows contain a virus, worm, Trojan or corrupt data;

The Customer has full responsibility for the content of the Website. For the avoidance of doubt, FG is not obliged to monitor, and will have no liability for, the content of any

communications transmitted by virtue of the Services.

If the Customer fails to comply with the Acceptable Use Policy outlined in Clause 11.00 FG shall be entitled to withdraw the Services and terminate the Customer's account.

### **13. Indemnity**

13.1 The Customer agrees to indemnify and hold FG and its employees and agents harmless from and against all liabilities, legal fees, damages, losses, costs and other expenses in relation to any claims or actions brought against the Supplier arising out of any breach by the Customer of the terms of this Agreement or other liabilities arising out of or relating to the Website.

### **14. Limitation of Liability**

14.1 The entire liability of FG to the Customer in respect of any claim whatsoever or breach of this Agreement, whether or not arising out of negligence, shall be limited to the charges paid for the Services under this Agreement in respect of which the breach has arisen, and in no event shall the FG be liable to the Customer for any loss of business, loss of opportunity or loss of profits or for any other 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.

### **15. Cloud Hosting Services Term and Termination**

15.1 This Agreement will become effective from the date of the invoice relating to it, and shall continue for a period of not less than 12 months and thereafter shall continue for further subsequent 12 month periods until terminated by either party by giving at least 1 months' notice prior to the renewal anniversary of the agreement in writing of its intention to terminate the Agreement, with no termination earlier than the initial period.

15.2 FG have the right to either suspend or terminate this agreement with immediate effect by notice in writing to the Customer if the Customer fails to make any payment when it becomes due. Depending on the severity this termination will result in either temporary or permanent loss of all data held, including website and emails.

15.3 Any rights to terminate this Agreement shall be without prejudice to any other accrued rights and liabilities of the parties arising in any way out of this Agreement as at the date of termination.

### **16. Assignment**

16.1 FG may assign or otherwise transfer this Agreement at any time.

16.2 The Customer may not assign or otherwise transfer this Agreement or any part of it without the Supplier's prior written consent.

### **17. Notices**

17.1 Any notice to be given by either party to the other may only be sent by recorded delivery to the address of the other party or such other address as such party may from time to time have communicated to the other in writing.

### **18. Terms of Payment**

18.1 12 months advanced payment made prior to commencement of the hosting service, and with future payment to be paid no later than 7

days prior to renewal date for every year thereafter.

### **19. Terms 19 through to 23 inclusive provide additional conditions when taking on any type of Ad-Hoc Service Support**

19.1 These additional terms and conditions apply alongside our general terms and conditions of business and come into effect when you take on any type of IT, Communications or Security support outside the scope of a managed services agreement, ad hoc, or in any other manner from FG via either telephone, post, remotely, online or in person from any person employed, or contracted by FG

### **20. Service Provision**

20.1 Service Level agreements are for Managed Support Agreement business use only, we do not offer any form of SLA for ad-hoc support in addition personal IT assistance also fall out of these parameters

20.2 When ordering this service you are agreeing to the immediate provision of the service and you are not able to cancel it under the Consumer Protection (Distance Selling) Regulations 2000.

20.3 This service is not a substitute for you taking appropriate steps to maintain and safeguard your computer systems using regular backups, running up-to-date anti-virus products and adopting other relevant security and maintenance procedures. It also does not cover beta versions of software, pirated software or 3rd party software not published by Microsoft or Apple Macintosh.

20.4 In providing this service we will use our best efforts to provide remote and on-site support within the timescales agreed with you. However unless a specific Service Level Agreement has been signed between us all dates and times are estimates and we cannot guarantee that we will always meet them.

20.5 If as part of this service you are required to install any software, then you agree to install and keep this software or/ and software licences in a safe place at your place of business. If you refuse to install this software this may mean that we have to offer a reduced level of service or withdraw the service completely.

### **21. Manual Backup Testing**

21.1 The Manual Backup testing service is provided to customers who wish us to test restore their backup data to check the integrity of the data held.

21.2 This service does not negate the need for the Customer to have sufficient control over the integrity of their own data and does not warranty that the data tested by FG will not degrade after the point of testing.

21.3 FG shall at no point be liable for the data of the customer unless expressly set out in writing by one of the Directors of FG.

### **22. AD HOC Support (No MSA Contract)**

22.1 Ad-hoc on-site services are provided to the customer at the relevant hourly rate as described in our quotation but for the avoidance of doubt shall not be less than £65.00 excluding VAT per hour.

22.2 The minimum charge is 1 hour (either onsite or remote support) and will normally

attract an additional call out fee that is worked out by the distance from our Stoke on Trent office

22.3 Our engineer or approved contractor will carry our fault diagnosis, repair, configuration and installation of the computer hardware as described in this agreement.

22.4 Remote control support is offered at £65.00 per incident or £65.00 per hour or part thereof if the incident exceeds an hour's fix time.

22.5 Site visits are available Monday-Friday 9:00am – 5.00pm excluding bank holidays.

22.6 Visits are usually made within 72 hours of agreeing to your request.

22.7 You must give access at the time of the agreed visit. Failure to do so may require in us charging for the missed appointment.

22.8 If your fault cannot be rectified on site we will give you the option to have the fault rectified off site.

22.9 If your hardware requires repair we will provide you with a quotation to carry out this repair if it is an item that we can obtain parts for.

22.10 If we replace your main hard drive we will install the original operating system onto your machine provided that you have the relevant licence key(s) and disks.

22.11 If your hardware is faulty and under warranty we will endeavour to liaise with the equipment manufacturer on your behalf. We will not repair any equipment under warranty.

22.12 The prices for this service does not include any parts required.

23. You agree:

23.1 To allow our engineers or approved contractor to have access to your computer systems for the entire time needed to facilitate a fix.

23.2 To install or allow us to install our remote control software to yours PC's and servers to allow remote control support and also approved business grade anti-virus protection to all systems (subject to any software license fees)

23.3 To have technical details regarding your systems recorded on our databases.

23.4 To allow us to create any administration accounts that we may require

23.5 To provide access, power & light to any areas we may need to get to within your organisation to allow an engineer to work.

23.6 Although every endeavour will be made to provide swift fixes to all issues we do not guarantee that we will be able to fix all faults reported to us, or that we will be able to advise you on all issues raised.

23.7 We are not liable for failures in any of the supported applications and operating systems. We recommend that you perform regular backups as we cannot accept any liability for loss or corruption of your data.

23.8 If a fault is due to an item not covered by the remote support sections of this agreement it is your responsibility to arrange an on-site visit with us or via a third party.

### **24. Modification**

24.1 We reserve the right to modify these terms without prior notice however the terms agreed with your quotation will always prevail unless amended in writing at a later date and agreed by both FG and the Customer.