

BKR CONSULTANTS LIMITED

Terms and Conditions

1. Interpretation

The following definitions and rules of interpretation apply in these Terms and Conditions.

1.1 Definitions:

BKR: BKR Consultants Limited a company registered in England and Wales with company number 12984462.

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Charges: the charges payable by the Customer for the supply of the Services in accordance with clause 5.

Commencement Date: has the meaning given in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 11.5.

Contract: the contract between BKR and the Customer for the supply of Services in accordance with these Conditions and the terms of the SOW signed or otherwise accepted by the Customer (as set out in clause 2.2).

Customer: the person or firm who purchases Services from BKR.

Customer Default: has the meaning set out in clause 4.2.

Deliverables: the deliverables set out in the relevant SOW including all reports, documents and written guidance produced by BKR.

HMRC: HM Revenue & Customs.

Intellectual Property Rights: copyright and related rights, moral rights, trade marks, business names and domain names, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information, and all other intellectual property rights, in each case whether registered or unregistered.

Services: the services, including the Deliverables, supplied by BKR to the Customer as set out in the relevant SOW.

SOW: a statement of work containing the description or specification of the Services provided in writing by BKR to the Customer.

1.2 Interpretation:

(a) Unless expressly provided otherwise in these Conditions, a reference to legislation or a legislative provision is a reference to it as it is in force as at the date on which a relevant Contract comes into force in accordance with clause 2.2 and shall include all subordinate legislation made as at such date under that legislation or legislative provision.

(b) 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.

(c) A reference to **writing** or **written** includes email.

2. Basis of contract

2.1 The delivery of a signed SOW to the Customer constitutes an offer by BKR to provide the Services in accordance with the relevant SOW and these Conditions.

2.2 A SOW shall be deemed to be accepted when the Customer signs the SOW or otherwise provides written acceptance of the SOW to BKR at which point and on which date a Contract shall come into existence (**Commencement Date**).

- 2.3 These Conditions and the terms set out in the relevant SOW apply to each Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.4 Each SOW shall only be open for acceptance for 30 calendar days from its date of issue to the Customer.
- 2.5 If there is any inconsistency or conflict between any of the terms of these Conditions and the relevant SOW, then the terms of the SOW shall prevail as between the parties.
- 2.6 Any quotation given by BKR shall not constitute an offer.

3. Supply of Services

- 3.1 BKR shall supply the Services to the Customer in accordance with the SOW in all material respects.
- 3.2 BKR shall use all reasonable endeavours to meet any performance dates specified in the SOW, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 BKR reserves the right to amend the SOW if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, or if there are any obvious errors or omissions contained in the SOW and in any such event BKR shall promptly notify the Customer.
- 3.4 BKR warrants to the Customer that the Services will be provided using reasonable care and skill.
- 3.5 Any Deliverables, documentation, information or advice connected to the Services provided by BKR under a Contract shall be for the sole benefit of the Customer, and shall not at any time be passed on to or relied on by a third party unless with the prior written approval of BKR.
- 3.6 All Deliverables, documentation, information or advice connected to the Services provided by BKR relates to and is based on the specific circumstances set out in the relevant SOW (or otherwise provided by the Customer or BKR in writing) and BKR shall not be responsible for the incorrect application by the Customer of such Deliverables, documentation, information or advice.
- 3.7 BKR may submit or prepare applications to HMRC, port authorities or other relevant authorities on the Customer's behalf as part of the Services BKR provides, however BKR does not guarantee the success of such applications and shall not be held liable for any losses arising from such applications being rejected.

4. Customer's obligations

- 4.1 The Customer shall:
 - (a) ensure that any information it provides to BKR for the purposes of the SOW is complete and accurate;
 - (b) co-operate with BKR in all matters relating to the Services;
 - (c) provide BKR, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by BKR;
 - (d) provide BKR with such information and materials as BKR may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
 - (e) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start; and
 - (f) comply with any additional obligations as set out in each SOW.
- 4.2 If BKR's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**");

- (a) without limiting or affecting any other right or remedy available to it, BKR shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays BKR's performance of any of its obligations;
- (b) BKR shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from BKR failure or delay to perform any of its obligations as set out in this clause 4.2; and
- (c) the Customer shall reimburse BKR on written demand for any costs or losses sustained or incurred by BKR arising directly or indirectly from the Customer Default.

5. Charges and payment

- 5.1 The Charges for the Services shall be calculated in accordance with the relevant SOW.
- 5.2 BKR reserves the right to increase the Charges relating to any Contract where the provision of Services is for a period of 12 months or more, such increase shall occur with immediate effect following each anniversary of the relevant Contract.
- 5.3 BKR shall invoice the Customer on completion of the Services, unless the SOW provides for staged payments.
- 5.4 The Customer shall pay each invoice submitted by BKR:
 - (a) within 14 days of the date of the invoice or in accordance with any credit terms agreed by BKR and confirmed in writing to the Customer (the 'due date'); and
 - (b) in full and in cleared funds to a bank account nominated in writing by BKR, and
 - (c) time for payment shall be of the essence of the Contract.
- 5.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time ("VAT"). Where any taxable supply for VAT purposes is made under the Contract by BKR to the Customer, the Customer shall, on receipt of a valid VAT invoice from BKR, pay to BKR such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.6 If the Customer fails to make a payment due to BKR under the Contract by the due date, then, without limiting BKR's remedies under clause 9, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 5.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 5.7 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 5.8 If BKR's Services include confirmation of product commodity codes and such codes are subsequently disputed by HMRC, or the guidance in relation to the relevant product changes, any additional work in reassessing products or challenging any determination by HMRC or similar work in relation to products shall be additional work that will be charged on a time basis at our prevailing standard rates.

6. Intellectual property rights

- 6.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by BKR.
- 6.2 BKR grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to copy and modify the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business.

6.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 6.2.

7. Data protection

The parties shall comply with their data protection obligations as set out in **Schedule 1**.

8. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

- 8.1 References to liability in this clause **8** include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 8.2 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
- 8.3 Nothing in this clause **8** shall limit the Customer's payment obligations under the Contract.
- 8.4 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation; and
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 8.5 Subject to clause **8.2** (No limitation in respect of deliberate default), and clause **8.4** (Liabilities which cannot legally be limited), BKR's total liability to the Customer in respect of all breaches of duty or contract occurring within any contract year shall not exceed the cap.
- 8.6 In Clause 8.5:
- (a) **cap**. The cap is the greater of £150,000 and 200% of the total charges in the contract year in which the breaches occurred.
 - (b) **contract year**. A contract year means a 12-month period commencing with the Commencement Date or any anniversary of it; and
 - (c) **total charges**. The total charges means all sums paid by the Customer and all sums payable under the Contract in respect of services actually supplied by BKR whether or not invoiced to the Customer.
- 8.7 The caps on BKR's liabilities shall be reduced by amounts awarded by a court or arbitrator, using their procedural or statutory powers in respect of costs of proceedings or interest for late payment.
- 8.8 Subject to clause **8.2** (No limitation in respect of deliberate default), clause **8.3** (No limitation of customer's payment obligations) and clause **8.4** (Liabilities which cannot legally be limited), this clause **8.7** sets out the types of loss that are wholly excluded:
- (a) loss of profits;
 - (b) loss of sales or business;
 - (c) loss of agreements or contracts;
 - (d) loss of anticipated savings;
 - (e) loss of use or corruption of software, data or information;
 - (f) loss of or damage to goodwill; and
 - (g) indirect or consequential loss.
- 8.9 BKR has given commitments as to compliance of the Services with relevant specifications in clause **3**. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

- 8.10 Unless the Customer notifies BKR that it intends to make a claim in respect of an event within the notice period, BKR shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire thirty days from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 8.11 BKR shall not be responsible for reporting to HMRC or any other relevant authority any historic instances of the Customer's non-compliance with UK customs duty rules (or rules imposed under any other relevant authority) which are discovered by BKR whilst carrying out the Services under the Contract, including any incorrect sums of customs duty or VAT paid to HMRC prior to the commencement of the Contract.
- 8.12 Where BKR's Services include submissions to HMRC to confirm trade tariffs (including commodity codes) over certain products we cannot guarantee that HMRC's interpretation of the relevant rules and legislation corresponds with BKR's interpretation. BKR cannot be held liable for any adverse rulings or determination by HMRC made following any advice, guidance, applications or submissions made by BKR.
- 8.13 Our advice is based on our interpretation of the applicable rules, legislation and guidance issued by relevant authorities from time to time. Whilst BKR take all reasonable efforts to ensure all advice provided is correct it is provided on a guidance only basis. BKR cannot guarantee HMRC or any other relevant authority will agree with our interpretation of the relevant rules.
- 8.14 This clause 8 shall survive termination of the Contract.

9. Termination

- 9.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party one month's written notice.
- 9.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
 - (b) the other party 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;
 - (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 9.3 Without affecting any other right or remedy available to it, BKR may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 9.4 Without affecting any other right or remedy available to it, BKR may suspend the supply of Services under the Contract or any other contract between the Customer and BKR if:
- (a) the Customer fails to pay any amount due under the Contract on the due date for payment;

- (b) the Customer becomes subject to any of the events listed in clause 9.2(c) or clause 9.2(d), or BKR reasonably believes that the Customer is about to become subject to any of them; and
- (c) BKR reasonably believes that the Customer is about to become subject to any of the events listed in clause 9.2(b).

10. Consequences of termination

- 10.1 On termination or expiry of the Contract:
 - (a) the Customer shall immediately pay to BKR all of BKR's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, BKR shall submit an invoice, which shall be payable by the Customer immediately on receipt; and
 - (b) the Customer shall return any Deliverables to BKR which have not been fully paid for. If the Customer fails to do so, then BKR may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 10.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 10.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

11. General

- 11.1 **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- 11.2 Assignment and other dealings.
 - (a) BKR may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
 - (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of BKR.
- 11.3 Confidentiality.
 - (a) Each party undertakes that it shall not at any time during the Contract, and for a period of two years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.3(b).
 - (b) Each party may disclose the other party's confidential information:
 - (i) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11.3; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
 - (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

- 11.4 Entire agreement.
- (a) 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.
 - (b) 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.
 - (c) Nothing in this clause shall limit or exclude any liability for fraud.
- 11.5 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 11.6 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 11.7 **Severance.** 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 the Contract. If any provision or part-provision of the Contract is deleted under this clause 11.7 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.
- 11.8 Notices.
- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by email to its main email address.
 - (b) Any notice or communication shall be deemed to have been received:
 - (i) if delivered by hand, at the time the notice is left at the proper address;
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
 - (iii) if sent by email at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 11.8(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
 - (c) This clause 11.8 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
- 11.9 Third party rights.
- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
 - (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

- 11.10 **Governing law.** 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 and Wales.
- 11.11 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales 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.

1. Definitions

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures: as defined in the Data Protection Legislation.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

Domestic Law: the law of the United Kingdom or a part of the United Kingdom.

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

2. Data Protection

- 2.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 2 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 2.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and BKR is the Processor.
- 2.3 Without prejudice to the generality of clause 2.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to BKR and/or lawful collection of the Personal Data by BKR on behalf of the Customer for the duration and purposes of this agreement.
- 2.4 Without prejudice to the generality of clause 2.1, BKR shall, in relation to any Personal Data processed in connection with the performance by BKR of its obligations under this agreement:
- (a) process that Personal Data only on the documented written instructions of the Customer unless BKR is required by Domestic Law to otherwise process that Personal Data. Where BKR is relying on Domestic Law as the basis for processing Personal Data, BKR shall promptly notify the Customer of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits BKR from so notifying the Customer;
 - (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
 - (d) not transfer any Personal Data outside of the UK unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - (i) the Customer or BKR has provided appropriate safeguards in relation to the transfer;

- (ii) the data subject has enforceable rights and effective legal remedies;
- (iii) BKR complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
- (iv) BKR complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- (e) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Customer without undue delay on becoming aware of a Personal Data Breach;
- (g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Domestic Law to store the Personal Data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 2.

2.5 Either party may, at any time on not less than 30 (thirty) days' notice, revise this clause 2 by replacing it with any applicable controller to processor standard clauses or similar terms adopted under the Data Protection Legislation or forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).