

Baker Shepherd Gillespie LLP – Conditions of Business

1. Interpretation

1.1 Definitions. In these Conditions, the following definitions apply:

"Conditions": these terms and conditions, as amended from time to time.

"Consultancy": Baker Shepherd Gillespie LLP, a limited liability partnership registered in England and Wales with company number OC328772, trading as "BSG Ecology".

"Contract": the contract for the supply of Services by the Consultancy to the Client in accordance with these Conditions and any Proposal.

"Client": the person or firm who purchases Services from the Consultancy.

"Deliverables": any reports or other documentation to be produced by the Consultancy for the Client as part of the Services.

"Fee": the amount payable by the Client to the Consultancy for the supply of the Services.

"Intellectual Property Rights": all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any 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 similar or equivalent rights or forms of protection in any part of the world.

"Necessary Consents": all consents licences or permissions of any person having an interest or right in or over the Site who by the lawful exercise of their powers given by such interest or right could prevent or impede the provision of the Services in relation to the Site or which may from time to time be necessary to provide the Services in accordance with the terms of the Contract and to use the Site for the purposes authorised by the Contract.

"Proposal": any description or specification issued or agreed to by the Consultancy in respect of the Services to be provided.

"Services": the services, including any Deliverables, to be provided by the Consultancy to the Client.

"Site": any site of the Client at which the Services are to be provided.

"Statutory Requirements": any statute (including wildlife legislation) or statutory instrument, regulation, rule or order made under any statute or directive having the force of law which affects the provision of the Services or performance of any obligations under the Contract.

1.2 Construction. In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate, unincorporated body, public body or other entity (whether or not having separate legal personality);
- (b) a reference to a party includes its representatives, successors or permitted assigns;
- (c) any phrase introduced by the terms **including, include, in particular** or any similar expression, shall be

construed as illustrative and shall not limit the sense of the words preceding those terms; and

- (d) a reference to **writing** or **written** includes faxes and e-mails.

2. Basis of Contract

2.1 Except to the extent that the Consultancy otherwise expressly agrees in writing, these Conditions apply to all Services provided by the Consultancy to the Client to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. No such terms shall apply to the Contract and none of the Conditions may be varied without the written consent of the Consultancy.

2.2 Any offer by the Consultancy to provide Services is open for acceptance by the Client for the period stated therein or, if no such period is stated, for a period of two months. If the offer is not accepted within that period it shall lapse, unless the Consultancy agrees to a time extension of such period.

2.3 The Contract constitutes the entire agreement between the parties. The Client acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Consultancy which is not set out in writing in any Proposal or in these Conditions, and any illustrations contained in the Consultancy's catalogues or brochures which are issued or published are for the sole purpose of giving an approximate idea of the Services described in them.

3. Supply of Services

3.1 The Consultancy shall perform the Services with all reasonable care and skill. If the Consultancy fails to perform the Services in accordance with the Contract, the Client shall give the Consultancy an opportunity to, at the Consultancy's option, rectify any errors or other faults or to re-perform the Services.

3.2 The Consultancy shall have the right to make any changes to the Services which are necessary to comply with any applicable law, safety requirements, Statutory Requirements and/or Necessary Consents, or which do not materially affect the nature or quality of the Services.

4. Client's obligations

4.1 The Client shall:

- (a) ensure that the terms of the Proposal are complete and accurate and that the Services meet the Client's needs and shall immediately notify the Consultancy of any errors or omissions therein;
- (b) co-operate with the Consultancy in all matters relating to the Services;
- (c) provide the Consultancy, its employees, agents, consultants and subcontractors, with access to the Site, office accommodation and other facilities as reasonably required by the Consultancy;
- (d) provide the Consultancy (for retention by the Consultancy) with such information and materials as the Consultancy may reasonably require in order to supply the Services, including the maps and plans identified in the Proposal in an appropriate form and at an appropriate scale, under their own copyright, together with the OS licence number, and ensure that such information is accurate in all material respects. If the Client fails to provide any necessary information, the Consultancy may where possible obtain such information and shall be

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- entitled to recover the costs of obtaining such information from the Client;
- (e) prepare the Site for the supply of the Services;
- (f) obtain and maintain all Necessary Consents which may be required before the date on which the Services are to start;
- (g) pay the Fee and all other expenses payable by the Client in accordance with the Contract.
- 4.2 The Client warrants that it has authority to use and publicise and/or allow to be used and publicised by a third party including the Consultancy any documents and/or material and/or information which it provides to the Consultancy and/or approves for publication and any such documents are accurate and will not infringe the rights of any third party. The Client agrees to indemnify the Consultancy against all costs, expenses, charges and damages, incurred by the Consultancy as a result of legal action, proceedings or claims brought against the Consultancy as a result of using or publicising of any documents and/or materials which have been provided by and/or approved by the Client for use and/or publication
- 4.3 The Consultancy shall not be liable to the Client, if the Consultancy's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client, its employees, agents or sub-contractors or any failure by the Client to perform any relevant obligation including the Client's failure to pay the Consultancy the sum payable in accordance with Condition 5.
- 5. Payment**
- 5.1 VAT will, where chargeable, be paid on the Fee and all other sums payable under the Contract.
- 5.2 Where the Fee is expressed as an estimate, the Fee shall be calculated in accordance with the Consultancy's fee rates, as set out in the Proposal or (if none) in accordance with the Consultancy's standard rates from time to time.
- 5.3 Unless stated otherwise in the Proposal, the Consultancy shall be entitled to charge the Client, in addition to the Fee, for any expenses reasonably incurred by the individuals whom the Consultancy engages in connection with the Services including travelling expenses, accommodation costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Consultancy for the performance of the Services, and for the cost of any materials and/or provision of data. Travelling expenses will be charged at a rate per mile as set out in the Proposal or (if none) in accordance with the Consultancy's standard rates from time to time.
- 5.4 The Consultancy reserves the right to increase its fee rates by giving notice to the Client with effect from 1 January of each year.
- 5.5 The Fee will be payable on the date or dates set out in the Proposal or as otherwise agreed in writing between the Client and the Consultancy and the Consultancy shall invoice the Client accordingly. If no such payment date or dates have been agreed, the Consultancy may invoice the Client monthly for Services performed.
- 5.6 Invoices will be payable within 30 days of the date of the invoice and time for payment shall be of the essence of the Contract.
- 5.7 Subject to Conditions 5.8 and 5.9 the Client may at any time issue a written request to the Consultancy for the variation of the Services.
- 5.8 If the Consultancy is able to comply with a request by the Client under Condition 5.7 and considers that this would require an increase in the Fee then prior to complying with the request (save in the case of emergency instructions which require immediate action) the Consultancy will so notify the Client and provide to the Client an estimate of the increase in the Fee. Unless the Consultancy receives written notification from the Client that the Client wishes to withdraw the request within fourteen days of the Consultancy providing the revised estimate, the Client will be deemed to have accepted the revised Fee.
- 5.9 If the Client modifies, varies and/or cancels the Services (without prejudice to any other right or remedy of the Consultancy) the Client will accept liability for the cost of all commitments taken on by the Consultancy on the Client's behalf up to the date of the Consultancy being able to act on the Client's new instructions and any necessary increase in the Fee.
- 5.10 If any sum payable under the Contract is not paid within 30 days of the date of the relevant invoice, without prejudice to the Consultancy's other rights under the Contract:
- (a) the Consultancy may suspend the performance of the Services until all outstanding amounts are paid or terminate the Contract in accordance with Condition 10.1;
- (b) the Consultancy reserves the right to charge interest from the due date until payment is made in full, both before and after any judgment, at three per cent per annum over HSBC Bank plc base rate from time to time.
- 5.11 If there is an error in the calculation of the Fee by the Consultancy, whether in the Proposal, the invoice or elsewhere, the Consultancy reserves the right to rectify the error and if necessary issue a further invoice or credit note.
- 5.12 The Client shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law or as otherwise agreed in writing by the Consultancy and the Client shall not be entitled to assert any credit, set-off or counterclaim against the Consultancy in order to justify withholding payment of any such amount in whole or in part. The Consultancy may, without limiting its other rights or remedies, set off any amount owing to it by the Client against any amount payable by the Consultancy to the Client.
- 6. Intellectual Property Rights**
- 6.1 All rights, including Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Consultancy.
- 6.2 Upon payment in full of the Fee and all other amounts payable by the Client under the Contract the Consultancy shall, subject to Condition 6.3, grant the Client a non-exclusive, non-transferable licence to use the Deliverables for the purposes set out in the Proposal or otherwise agreed in writing between the Client and the Consultancy.
- 6.3 The Client acknowledges that, in respect of any third party Intellectual Property Rights, the Client's use of any such Intellectual Property Rights is conditional on the Consultancy obtaining a written licence from the relevant

licensor on such terms as will entitle the Consultancy to license such rights to the Client.

7. Restrictions on use of Services

- 7.1 The Consultancy's advice and any Services provided under the Contract will be given for the sole benefit of and can be relied on by the Client only. No other person may use or rely on the Deliverables without the Consultancy's prior written consent.
- 7.2 The Consultancy's advice and the Deliverables will be prepared for the purposes and on the assumptions, if any, set out in the Proposal. The Consultancy will not be liable for any use the Client may make of the Deliverables for any purpose other than that originally intended.
- 7.3 The Client acknowledges and agrees that the Deliverables will be based on the state, condition and character of the Site and its habitats at the time of the Deliverables' production. The Deliverables will accordingly become less reliable over time as a consequence of a number of factors including changes to the Site and the character of its habitats and species and new species colonising the Site or its surroundings. The appropriateness of the Deliverables and any conclusions within the Deliverables must be qualified accordingly

8. Limitation of liability

- 8.1 Nothing in these Conditions shall limit or exclude the Consultancy's liability for:
- (a) death or personal injury caused by its negligence; or
- (b) fraud or fraudulent misrepresentation.
- 8.2 Subject to Condition 8.1:
- (a) the Consultancy shall not be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract including any losses that may result from a deliberate breach of the Contract by the Consultancy, its employees, agents or subcontractors; and
- (b) the Consultancy's total liability to the Client in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, a deliberate breach of the Contract by the Consultancy, its employees, agents or subcontractors shall not exceed the greater of (i) the total amounts payable by the Client under the Contract and (ii) £100,000 or such other amount agreed between the Client and the Consultancy in writing.
- (c) the Consultancy's liability under this Contract shall be limited to that proportion of the costs and losses which it would be just and equitable to require the Consultancy to pay having regard to the extent of the Consultancy's responsibility for the same and on the basis that any contractor and/or consultants and the Client who are involved in the overall project shall be deemed to have entered into an agreement with the Client in similar terms to the Contract (*mutatis mutandis*) and shall be deemed to have paid their just and equitable proportion of costs and losses having regard to their responsibility to the Client.
- 8.3 Except as expressly set out in any Proposal and these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 8.4 This Condition 8 shall survive termination of the Contract howsoever caused.

9. Restrictive Covenant

- 9.1 In order to protect the confidential information and business connections of the Consultancy, the Client covenants with the Consultancy that it shall not (and shall procure that no other person who is a subsidiary or holding company of the Client or otherwise directly or indirectly associated with or connected to the Client shall) for the duration of the Contract and for a period of 12 months after the termination or expiry of the Contract, solicit or entice away (or attempt to solicit or entice away) from the employment of or engagement by the Consultancy, any person who is or was employed or engaged in providing the Services to the Client to a material extent without the prior written approval of the Consultancy (such approval to be provided at the absolute discretion of the Consultancy).

10. Termination

- 10.1 Without limiting its other rights or remedies, the Consultancy may terminate the Contract with immediate effect by giving written notice to the Client, if
- (a) the Client fails to perform any of its obligation under the Contract, including the failure to pay any amount due under the Contract on the due date for payment;
- (b) there is a change in Statutory Requirements and the Consultancy's provision of the Services would be in breach of these Statutory Requirements; or
- (c) the Consultancy becomes aware or reasonably suspects that the Client is in breach of or is about to breach any applicable Statutory Requirements (including wildlife legislation).
- 10.2 Without limiting its other rights or remedies, the Consultancy may terminate the Contract by giving one month's written notice to the Client or with immediate effect if:
- (a) the Client suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (b) the Client commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of the Client with one or more other companies or the solvent reconstruction of the Client;
- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Client (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Client with one or more other companies or the solvent reconstruction of the Client;
- (d) the Client (being an individual) is the subject of a bankruptcy petition or order;
- (e) a creditor or encumbrancer of the Client attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within days;

- (f) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Client (being a company);
- (g) a floating charge holder over the assets of the Client (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over the assets of the Client or a receiver is appointed over the assets of the Client;
- (i) any event occurs or proceeding is taken with respect to the Client in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Condition 10.2(a) to Condition 10.2(h) (inclusive);
- (j) the Client suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- (k) the Client (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

11. Consequences of termination or expiry

On termination or expiry of the Contract for any reason:

- (a) the Client shall immediately pay to the Consultancy all of the Consultancy's outstanding unpaid invoices and interest and, in respect of Services performed but for which no invoice has been submitted, the Consultancy shall submit an invoice, which shall be payable by the Client immediately on receipt;
- (b) the Client shall return any Deliverables which have not been fully paid for;
- (c) the accrued rights, remedies, obligations and liabilities of the parties as at termination or expiry shall not be affected, 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; and
- (d) Conditions which expressly or by implication have effect after termination or expiry shall continue in full force and effect.

12. General

12.1 Force majeure:

- (a) For the purposes of this Condition 12, "Force Majeure Event" means an event beyond the reasonable control of the Consultancy including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Consultancy or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- (b) The Consultancy shall not be liable to the Client as a result of any delay or failure to perform its obligations under the Contract as a result of a Force Majeure Event.
- (c) If the Force Majeure Event prevents the Consultancy from providing any of the Services for more than four weeks, the Consultancy shall, without limiting its other rights or remedies, have the right to terminate the Contract immediately by giving written notice to the Client.

12.2 Assignment and subcontracting:

- (a) The Consultancy may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- (b) The Client shall not, without the prior written consent of the Consultancy, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

12.3 Waiver:

- (a) A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- (b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

12.4 Severance:

- (a) If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

12.5 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between the Consultancy and the Client, nor constitute the Consultancy or the Client the agent of the other for any purpose. Neither the Consultancy nor the Client shall have authority to act as agent for, or to bind, the other in any way.

12.6 Third parties: Subject to Condition 12.7, a person who is not a party to the Contract shall not have any rights under or in connection with it.

12.7 Liability: The Client acknowledges that the Consultancy is a registered limited liability partnership and agrees not to bring any claims personally against any former, present or future individual employee, consultant, partner or member of the Consultancy ('the Personnel') for any loss resulting from acts or omissions in the performance of the Services or any other breach of the Contract. Notwithstanding any provision to the contrary herein, any one or more of the Personnel may enforce the provisions of this Condition personally.

12.8 Governing law and jurisdiction: The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.