



Why Not

Terms of Business

Introduction

1.1 Why Not UK aims to secure an open and long-term relationship with each of our clients. In order to achieve this it is important that we both know exactly where we stand with regard to the legal relationship between you and us - that is, what the "terms of business" are that underpin our relationship.

1.2 For your guidance, we have set out in this document our basic terms of business (the "Terms"), which will apply to all consulting work we undertake for you - unless, of course, we negotiate variations to these terms or agree that they will not apply.

1.3 These terms should be read in conjunction with the relevant Engagement Letter or proposal document (see Term 2) that will set out the details of the work we are to carry out and that will take precedence over these terms in the event of any inconsistency. Each signed Engagement Letter or proposal document constitutes a separate agreement to carry out the work stated in the Engagement Letter or proposal document on these Terms (as may be modified by the Engagement Letter or proposal document).

Our Services

2.1 We will provide the services set out in the Engagement Letter (or Proposal)¹ (the "Services").

2.2 The Services will be provided in an efficient and timely manner, using the necessary skill and expertise, and to a professional standard. By a 'professional standard', we mean the standard which is generally achieved in our industry by companies providing similar services.

2.3 Where individual members of staff are named in the Engagement Letter we will use our reasonable endeavours to ensure that those individuals are engaged in the provision of the Services. Where we consider it appropriate, we reserve the right to substitute appropriately skilled Why Not UK staff or use approved sub-contractors, but we will normally consult with you before doing so.

Your Obligations

3.1 You agree to pay for the Services at the rates, or in the sums, set out in the budget update document which supported our Proposal and for any other work that we carry out at your request at our normal rates prevailing at the time, or as may be specified in the Proposal.

3.2 You will provide us promptly with such information as may reasonably be required for the proper performance of the Services, including access to appropriate members of your staff.

Premises, use of systems and training

4.1 Where it is envisaged that part of the Services are to be undertaken at your premises or using your systems, we will expect you, without cost to us, to:

- provide our staff with all appropriate office facilities (including the use of phones and computer networks);
- allow our staff authorised access to your relevant computer systems and areas of your sites at which the Services are to be performed;
- ensure that the computer and operating systems and any other software which our staff are asked to use or modify for the

purpose of the Services are either your property or are licensed to you on terms that allow such use and modification.

4.2 We will conform to your normal codes of staff and security practice whilst on your premises - once you have notified us of their terms. In return, you will take all reasonable steps to ensure the health and safety of our staff whilst they are on your sites.

4.3 Where the Engagement Letter indicates that you require us to undertake specialist training in your methods or products, you will provide or arrange such training at your expense, including the cost of time spent on such training.

Confidentiality and Freedom of Information

5.1 Neither of us will use or divulge or communicate to any person (other than where we are required to disclose; by law, by any Court procedure or by any rule or regulation of any governmental or quasi-governmental authority or with the other's written permission): any confidential information concerning the business or affairs of the other of which we may become aware during the course of our relationship and both of us will use reasonable endeavours to prevent the unauthorised publication or disclosure of any such information. This obligation will cease to apply to any information which becomes public knowledge (without unauthorised disclosure). We will also maintain confidentiality between our employees and Associates, with only those directly engaged on your project and their managers, having access to your information.

5.2 If we are required to produce information on your behalf to respond to a formal request under the Freedom of Information legislation, which is over and above the terms of our commission and the outside the scope of our agreement, then we will charge you for that work at our normal charge-out rates.

Intellectual Property Rights

6.1 Where the Services require us to deliver reports or other materials ("Deliverables") to you then, subject to the exceptions mentioned in the next paragraph, the copyright in the final versions of such Deliverables will belong to you on completion of the Services and payment of our final invoice. We will enter into any documentation necessary to assign the copyright at that time.

6.2 The obligation in Term 6.1 is subject to three exceptions. Firstly, it can be overridden by a specific provision in the Engagement Letter. Secondly, any assignment is subject to the exclusion of our know-how (see Term 6.4). Thirdly, there will be excluded from the assignment any parts of the Deliverables which are clearly indicated as being the copyright of a third party (for example, extracts from research information and manufacturers' specifications).

6.3 Why Not UK will also retain a right to compile general industry-papers on subjects which may be, either in whole or in part, the subject of the Services being provided. This may take the form of general industry information, thought leadership papers or best practice examples. In doing so we undertake not to refer to clients by name or to divulge or attribute confidential information without your express consent.

6.4 One of the benefits which we bring to the relationship between us is our accumulated knowledge and experience. Some of this is in the minds of our Directors and staff: some is contained in our methods of work, programmes, methodologies and related documentation. We refer to it all as our know-how. While we will make use of our know-how in providing the Services, we must retain ownership of all rights in it and be free to use it for your benefit, and the benefit of our other clients, in the future. Our know-how (including any which arises in the course of performing the Services) is therefore excluded from the assignment of copyright referred to in Term 6.1 and must not be used in competition with Why Not UK by you or any associate of yours at a later date.



6.5 We agree that the parts of the Deliverables which are subject to the assignment in Term 6.1 will not, to the best of our knowledge, infringe the intellectual property rights of any third party. If a third party threatens an infringement claim against you, we will indemnify you against the costs of defending that claim (including the costs of any settlement or judgment), provided that you inform us of it as soon as it comes to your knowledge; you let us conduct any relevant negotiations or proceedings on your behalf without interference; you give us (at our expense) all assistance we may reasonably require; and you do not incur avoidable costs without our prior consent. The indemnity contained in this clause does not, of course, apply to any information in the Deliverables which was supplied to us by you or by any of your other contractors or agents or to any changes which are made to the Deliverables by anyone other than Why Not UK. It also does not apply to research information, data and services which we deliver to you as part of the Services but which are not included in a formal Deliverable.

6.6 Where there is an infringement claim of the type referred to in Term 6.5, it may be easier to alter the Deliverables than to contest the claim. For that reason, you will allow us to alter the Deliverables to make them non-infringing or to substitute a non-infringing version. If that cannot practically be done (and we cannot reach a reasonable accommodation on the claim), you will return the offending Deliverables to us and we will refund the proportion of our charges which was attributable to them. You will accept any action which we take under this Term (and our indemnity obligations under Term 6.5) as fully discharging all liability which we may have to you arising from the infringement or alleged infringement.

Payment terms

7.1 As agreed, we will render fee invoices to you for the entire project cost at the outset of the study. You will pay the fees, expenses included in the fee invoice and any associated VAT within 14 days of receipt. We reserve the right to charge interest on outstanding balances at the rate of 2% over the base rate of Nat West Bank from time to time in force. (This rate will also apply after judgment.) Fees and interest will accrue on a daily basis.

Problem resolution

8.1 The proposal document sets out the names of the Why Not UK staff contacts for the project. If you have any cause for complaint in relation to the Services or our staff, you are invited, in the first instance, to report your concerns in confidence to our Project Manager, Christian Nelson. If you do not feel the complaint has been adequately dealt with, or if it is of a nature or seriousness which makes an approach to the Project Manager, you should write to David Hornby.

8.2 If a complaint cannot be resolved to both parties' satisfaction, or if a disagreement arises as to our relationship or agreement, we shall each nominate a senior executive, vested with authority to settle the disagreement, to meet and attempt in good faith to resolve the dispute. The meeting will be held reasonably promptly at the request of either of us in the offices reasonably proposed by the party requesting the meeting.

8.3 In the event of a dispute, or where fees remain unpaid beyond the due date, we reserve the right to suspend provision of the Services until such time as the dispute is resolved or the fees are paid (but see Term 9.1). Suspension of the Services will not affect your obligation to pay us for Services rendered to the date of suspension.

Termination of Agreement

9.1 Each of us may terminate an agreement to which these Terms apply if:

- the other commits any material or persistent breach of its obligations under that agreement (which, in the case of a breach capable of remedy, shall not have been remedied within 30 days of receipt by the party in breach of a notice identifying the breach and requiring its remedy); or
- the other becomes insolvent²; or
- the Services are suspended under Term 8.3 for more than 10 normal working days or the right of termination becomes exercisable under Term 15.

9.2 In addition, you can terminate an agreement made on these terms if any of our staff engaged in providing the Services under that agreement is suspected on reasonable grounds of any fraud, dishonesty, or serious misconduct or is guilty of any unprofessional conduct.

9.3 Termination must be effected by written notice served on the other and will take effect on delivery (or on any later date which is specified in the notice). It will be without prejudice to either of us of our rights accrued before termination.

9.4 If this agreement is terminated for any reason, any sums then due to us will immediately become payable in full.

Limits on our liability

10.1 In this Term we set out, and you accept, the limitations which will apply to our liability to you should you have reason to make a claim against us. The limitations and exclusions are designed to be reasonable, given the duties we are undertaking, the sums to which we are entitled and the availability (and cost) of insurance.

10.2 The obligations expressly undertaken by us under an agreement are all the obligations which we agree to undertake or owe to you in respect of the Services and they replace and exclude, to the full extent permitted by law, any obligations imposed on us by, or implied under, common law or statute. These terms and the Engagement Letter (proposal document) are the only documents governing our relationship and we will have no liability for statements, representations or inferences arising from discussions or documents which pre-date these terms. If any such statements, representations or inferences are of importance to you, you should ensure that they are expressly set out in the proposal document. We do not, however, seek to exclude liability for fraud or fraudulent misrepresentation.

10.3 You recognise that in providing consultancy services and making recommendations to you, we have based our recommendations on our own experience and on the information supplied by you in relation to your business and the market in which you operate. However, statements of expectations or opinion, forecasts (including financial forecasts) or recommendations are not in the nature of a guarantee by us. Their achievement will depend, among other things, on their effective implementation by you and your staff and a series of wider market trends which are beyond our control. In addition, any recommendation or advice given by us during the course of our engagement is given to address the specific circumstances at the time when it is given. We will not update or change any recommendation or advice after that time unless we expressly agree in writing to do so.

10.4 Our liability to you in respect of damages, losses, costs and claims suffered by you, whether arising in contract or in tort or otherwise, under or in connection with an agreement or the Services ("Claims") will be subject to the following limitations:

- for direct physical injury or death, our liability will not be subject to any financial limit;
- for direct damage to property, our liability will be subject to a limit of £5,000,000 for any one event or series of connected events;
- (subject to Term 11.1) for any other type of Claim, our aggregate liability for all such Claims will be subject to a limit



equal to 100% of the total fees payable to us under the Engagement Letter in question to a maximum of £1,000,000.

10.5 We will not, in any circumstances, be liable for any Claims:

- unless, and to the extent that, the Claims in question are attributable to the negligence or wilful misconduct of our Company or our staff, or to a breach by us of any of these terms
- where, or to the extent that, the Claims in question are for, or in the nature of, loss of profit, loss of business, loss of data or indirect or consequential loss.

10.6 The limitations and exclusions set out above are agreed to protect not only Why Not UK itself but also all other Why Not UK Persons who are or might be the subject of Claims and, for the purpose of receiving the benefit of such limitations and exclusions, Why Not UK is acting as the trustee of all other Why Not UK persons. References in this Term 10 to 'our liability' or 'us' (or similar expressions) are to be understood as including all Why Not UK persons.

Indemnities

11.1 The financial limitations in Term 10.3 will not apply to any liability to you which arises under the intellectual property rights indemnity in Term 6.4.

11.2 In return, you will indemnify us (without limit but on equivalent terms as to notice of claims, conduct of actions, etc.) against any claims which any third party might bring against us arising out of our use (in accordance with this agreement) of your premises or systems or any materials which you provide to us for the purposes of providing the Services.

11.3 It is possible that the Services might, with your knowledge, be provided under this agreement to, or for the benefit of, a party other than you (a "Third Party Beneficiary"). If we were to assume direct or indirect liability to parties with whom we were not in contract, that might negate the limitations agreed above. You therefore agree to indemnify us against any claims in respect of the Services or this Agreement brought by Third Party Beneficiaries.

Information

12.1 You have agreed to ensure that any information which we may require for the purpose of providing the Services set out in the proposal document is made available to us, as and when we may

reasonably require. You will appreciate that we cannot be held responsible or liable if information material to our task is deliberately withheld or concealed from us or fraudulently represented to us.

Oral presentations

13.1 In the course of providing the Services, we may present our observations, advice or findings orally, with or without slides. The data will be in summary form and verified only to the extent indicated. We may use examples or data which are designed for illustration purposes only and to facilitate discussion. If specific aspects of what we say or present by way of slides is relevant to the decision making process, you will let us know and we shall follow this up with a letter of clarification or written report on the specific aspects you identify. This will supersede the oral presentation of our observations, advice and findings, in that respect.

Force Majeure

14.1 Neither of us will be liable to the other for any delay in or failure to perform its obligations (other than a payment of money) as a result of any cause beyond its reasonable control, including but not limited to any industrial dispute. If such delay or failure continues for more than 20 normal working days, either of us will be entitled to terminate this Agreement by notice.

General Provisions

15.1 No variation of the agreement constituted by the proposal document and these Terms will be valid unless confirmed in writing by authorised signatories of both parties on or after the date of signature of the proposal document in question.

15.2 Any notice given under this Agreement by either party to the other must be in writing and may be delivered personally or by first class post to the other's address stated in the Engagement Letter. Notices sent by post will be deemed to have been given 2 working days after the date of posting. Either party can change its address for service to another address within the UK by giving reasonable notice to the other.

15.3 Our Agreement is governed by English Law and we each submit to the exclusive jurisdiction of the English Courts, unless this contract relates solely and specifically to business being carried out wholly within Scotland or The Republic of Ireland, where Scottish or Irish law will prevail, as appropriate.



Notes

These notes are an integral part of the Terms:

¹ The Engagement Letter (or Proposal) may include such matters as the following:

- the title and description of the engagement;
- the nature of the work and our responsibilities;
- a description of any Deliverables;
- any specific responsibilities which you undertake in order to allow us to provide the Services;
- the time schedule for undertaking and completing the Services;
- the time and other resources which we will commit to achieve the performance of the Services;
- the amount and/or method of calculation of our charges for the Services;
- the schedule for invoicing and payment
- the names of the Project Manager, the Project Director and any other key staff;
- any requirement for training in your methods of business (and our rates while receiving such training); and
- any special terms relevant to the engagement.

² A party will be deemed to have become insolvent if it convenes a meeting of its creditors or if a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors, or if the other shall be unable to pay its debts within the meaning of Section 123 or Section 268 of the Insolvency Act, 1986 or if a trustee, receiver, administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the other, or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other, or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction).

We look forward to working with you.