

Bespoke Bids Terms and Conditions of Service



0161 883 1836



bespoke-bids.com



hello@bespoke-bids.com



King Street Buildings
16-18 King Street
Manchester
M26 AG



BESPOKEBIDS

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TERMS AND CONDITIONS OF BUSINESS

These Terms and Conditions (**Conditions**) apply to all orders for the provision of Services that the Client places with Bespoke Bids and sets out all the terms in relation to Bespoke Bids supplying Services to the Client. By agreeing to a Proposal, paying the Fee and/or allowing Bespoke Bids to commence the Services, the Client acknowledges and agrees that it shall be bound by these Conditions.

The Client's attention is drawn specifically to Conditions 4 (Exclusions) and 9 (Liability).

1 DEFINITIONS AND INTERPRETATION

1.1 In these Conditions:

Bespoke Bids means Bespoke Bids Consultancy Limited (company number: 09872438), whose registered office is at:

King Street Buildings

16-18 King Street

Manchester

M26 AG

Contract means any agreement between Bespoke Bids and the Client, for the provision of Services incorporating these Conditions and the Proposal;

Client means the person to whom Bespoke Bids is to provide the Services pursuant to a Contract, as detailed on the Proposal;

Client Materials means information, data, materials, results, reports and suchlike as provided by the Client in relation to the Project;

Client's Personnel means any employees, agents, sub-contractors or consultants engaged by the Client;

Deliverables means any bid, tender, submission, presentation, copy or other deliverables to be supplied by Bespoke Bids to the Client as part of the Services;

Fee means the fee for providing the Services, as set out in the Proposal;

Intellectual Property Rights means patents, trade marks, service marks, registered designs, applications for any of those rights, trade and business names, unregistered trade marks and service marks, copyrights, know-how, rights in designs and inventions, rights in databases and any other rights of the same or similar effect or nature, in each case in any jurisdiction;

Project means the bid, tender, submission or other project of the Client in respect of which the Client has engaged Bespoke Bids to provide the Services;

Project Customer means the customer or tenderer to whom the Client is to submit the Project, or who is in charge of the Project;

Project Deadline means any deadline or timescale for submission of a Project, or other deadline agreed between the Client and Bespoke Bids for the provision of the Services and any Deliverables;

Proposal means the description of the Services to be provided by Bespoke Bids which shall comprise the final and agreed proposal or quotation submitted by Bespoke Bids and which details the needs and requirements of the Client in relation to that Project;

Services means the services which Bespoke Bids is to supply to the Client as detailed in the Proposal, which may include the supply of Deliverables, and subject always to the exclusions in Condition 4; and

VAT means value added tax at the rate prevailing at the time of the relevant supply charged in accordance with the provisions of the Value Added Tax Act 1994.

1.2 In these Conditions:

1.2.1 headings are for identification and indexing purposes only and they shall not affect the construction or interpretation of these Conditions;

1.2.2 words importing the singular meaning shall include the plural meaning and vice versa;

1.2.3 references to **a person** shall include natural persons, corporate or unincorporated bodies (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns and references to **a party** shall mean either Bespoke Bids or the Client as the context requires and **parties** shall mean both of them; and

1.2.4 the words **include**, **included** and **including** will be construed without limitation unless inconsistent with the context and **working days** are all days other than Saturdays, Sundays or English public holidays.

2 APPLICATION

2.1 These Conditions alone shall govern and be incorporated in every Contract for the provision of Services made by or on behalf of Bespoke Bids. They shall apply in place of and prevail over any terms or conditions contained or referred to in any documentation submitted by the Client, in correspondence or elsewhere, or implied by trade custom, practice or course of dealing. Any order or acceptance of the Proposal submitted by the Client will not be deemed to have been accepted by Bespoke Bids unless and until Bespoke Bids confirms acceptance of the Proposal in writing (usually by email).

2.2 Payment of the Fee in full or in part by the Client shall be deemed to constitute unqualified acceptance of these Conditions and a commitment to pay the Fee in full.

2.3 A variation of these Conditions is valid only if it is in writing and signed by a director or authorised representative of Bespoke Bids.

2.4 Any specific terms agreed between the parties and set out in the Proposal shall prevail over the terms in these Conditions.

3 PROVISION OF SERVICES

- 3.1 The Services will begin on or around the date for provision of the Services as detailed in the Proposal, or such other date as agreed between the parties, and in any event not until Bespoke Bids has received payment of the Fee.
- 3.2 Bespoke Bids will provide the Services to the Client in accordance with the Proposal. The Client shall ensure that the terms of any applicable Proposal are complete, accurate and suitable for its own requirements.
- 3.3 Whilst Bespoke Bids will use reasonable endeavours to meet any dates or timescale set out in the Proposal, including any Project Deadline, the Client acknowledges and agrees that:
- 3.3.1 it is the Client's responsibility to make any specific timescales and deadlines set by the Project Customer known to Bespoke Bids at the outset, and to check that any agreed Project Deadlines are correct on the Proposal (and give the Client sufficient time to meet any specific timescales and deadlines set by the Project Customer taking into account time for the Client to review and approve any Deliverables);
 - 3.3.2 Bespoke Bids will not be responsible for any failure or delay in meeting any Project Deadline which is due to: (i) the act or omission of the Client or the Client's Personnel; (ii) any failure or delay by the Client to provide any Client Materials upon request by Bespoke Bids; or (iii) any failure or delay by the Client to pay the Fee; and
 - 3.3.3 it shall notify Bespoke Bids as soon as reasonably possible of any change to any specific timescales and deadlines for the Project set by the Project Customer.

4 EXCLUSIONS

The Client expressly acknowledges and agrees that:

- 4.1 Bespoke Bids gives no promises, guarantees or warranties whatsoever in relation to any outcome of a Project;
- 4.2 once the Client has confirmed its acceptance to the Proposal and paid the Fee, and Bespoke Bids has agreed to provide the Services, Bespoke Bids has committed time and resources to the Services and therefore the Contract may not be cancelled and the Fee shall be due and payable in full, even if the Project is discontinued for any reason;
- 4.3 the Client is solely responsible for reviewing all terms and conditions in relation to a Project and for interpreting its own requirements for the Services (and Bespoke Bids shall be entitled to assume that the Client has fully read and understood the specification of any Project). Bespoke Bids provides Services based on the Client's instructions, as detailed and agreed in the Proposal, and shall not be responsible for reviewing, understanding, interpreting or making further enquiries in respect of, any Project. Bespoke Bids may raise queries with the Client and the Client shall use its best endeavours to provide answers to Bespoke Bids (it being at the Client's discretion whether or not it chooses to seek clarification from the Project Customer);
- 4.4 the Client is solely responsible for ensuring that it complies with all criteria, requirements, standards and conditions in any Project. Bespoke Bids may provide advice on compliance requirements if appropriate, but shall in no way be responsible for any failure by the Client to comply with any criteria, requirements, standards and conditions in a Project;

- 4.5 Bespoke Bids will not provide any advice in relation to any financial proposals in relation to a Project. All financial proposals, pricing models or mechanisms, assumptions and suchlike are the sole responsibility of the Client and outside the scope of the Services;
- 4.6 final and absolute responsibility for the submission of the Project to the Project Customer lies solely with the Client;
- 4.7 Bespoke Bids does not operate any form of outcome or satisfaction based fee model (including any conditional fee agreement, success fee, no-win/no-fee or otherwise) whereupon the payment of all or part of the Fee is dependent upon the success of the Project and/or satisfaction of the Client. All Fees must be paid in full regardless of the outcome of any Project; and
- 4.8 it has not relied on any statement, promise or representation made or given by or on behalf of Bespoke Bids which is not set out in the Contract.

5 CLIENT'S OBLIGATIONS

- 5.1 To enable Bespoke Bids to perform its obligations under the Contract, the Client shall (and where applicable, shall procure that the Client's Personnel shall):
- 5.1.1 co-operate fully with Bespoke Bids and provide Bespoke Bids with any information and Client Materials that it reasonably required to provide the Services;
 - 5.1.2 obtain all necessary licences, permissions and consents which may be required before commencement of the Services; and
 - 5.1.3 notify Bespoke Bids as soon as possible in respect of any issues which may impact on, prevent or cause a delay to Bespoke Bids' performance of the Services, including any change to timescales and deadlines set by the Project Customer, any non-availability of the Client's Personnel and any notifications or clarifications received from the Project Customer in relation to the Project.
- 5.2 If Bespoke Bids' performance of the Services or its obligations under the Contract is prevented or delayed by any act or omission of the Client or the Client's Personnel (including any breach of its obligations under this Condition 5 or any delay in providing Client Materials or any failure or delay by the Client in responding to communications by Bespoke Bids) Bespoke Bids shall not be liable for any costs, charges, losses or other liability sustained or incurred by the Client arising directly or indirectly from such prevention or delay, and the Client shall remain liable for payment in full of the Fee. In the event that any such prevention or delay causes Bespoke Bids to incur additional costs or expenses (for example additional people charges), Bespoke Bids shall be entitled to claim these from the Client in addition to the Fee.

6 CLIENT MATERIALS AND DELIVERABLES

- 6.1 The Client acknowledges and agrees that in order for Bespoke Bids to provide the Services and supply the Deliverables to the Client, Bespoke Bids requires Client Materials. The Client must provide all Client Materials required by Bespoke Bids in order for Bespoke Bids to provide the Services. The Client shall be solely responsible for the accuracy, completeness and regulatory compliance of all information about the Client and/or the Client's products or services that the Client provides to Bespoke Bids pursuant to the Contract and the Client acknowledges and agrees that Bespoke Bids relies on this information to be accurate, complete and compliant in all respects with all applicable laws and regulations in order for the Bespoke Bids to provide the Services. Bespoke

Bids shall not be liable for any errors, misstatements or omissions in any information or material produced by Bespoke Bids (including in any Deliverables) in respect of the Services, to the extent such error, misstatement or omission was caused by any Client Materials (or lack thereof) provided by the Client about the Client or its products or services. In addition, Bespoke Bids will not be liable for any failure or delay to provide the Services to meet any Project Deadline to the extent such failure or delay was caused by the Client's failure or delay to provide any Client Materials or co-operation reasonably requested by Bespoke Bids.

6.2 All Deliverables prepared by Bespoke Bids will be submitted to the Client for review and approval. The Client must review and approve all such Deliverables and sign them off before they are submitted as part of any Project. Bespoke Bids will in no way be liable for any errors, misstatements or omissions in any Deliverables which ought to have been picked up by the Client during a proper review and approval. Notwithstanding the foregoing, or anything else in these Conditions, Bespoke Bids may in its discretion submit the Deliverables as part of a Project without obtaining final sign off by the Client (or confirmation from the Client that it wishes Bespoke Bids to submit the Deliverables) in the event that: (i) the Client has not responded to Bespoke Bids' reasonable attempts at contacting the Client for sign-off or confirmation; and/or (ii) Bespoke Bids reasonably believes that the Client will miss the Project Deadline for submission of the Deliverables if it does not do so, but in any event if Bespoke Bids does not submit the Deliverables because it has not received sign-off or confirmation to submit them from the Client it shall not be liable to the Client.

6.3 The Client represents, warrants, and covenants that: (i) it is the sole author of all the Client Materials and has the legal right to provide such works to Bespoke Bids in the provision of the Services; and (ii) none of the Client Materials infringe or will infringe any Intellectual Property Rights or other proprietary rights of any third party. The Client shall be liable for and covenants with Bespoke Bids to fully indemnify, defend and hold harmless Bespoke Bids for and against all and any damages, losses, liabilities, claim, actions, costs and expenses (including legal costs and out of pocket disbursements properly incurred), proceedings, demands and charges, regardless of whether based in whole or in part on strict liability, wilful or intentional misconduct, or ordinary or gross negligence of Bespoke Bids, or otherwise, which Bespoke Bids may suffer or incur (whether directly or indirectly) as a result or as a consequence of, or arising out of or in connection with any claim that the Client Materials infringe or will infringe the Intellectual Property Rights or proprietary rights of any third party.

7 CHANGES TO THE SERVICES

7.1 During the provision of the Services Bespoke Bids may recommend and/or the Client may request changes or additions to the Services. In these circumstances, any changes or additions to the Services will be agreed in writing between the parties, such agreement not to be unreasonably withheld or delayed. Bespoke Bids shall advise the Client of any change to the Fee and the timescale for the provision of the Services that apply to such changed or additional Services, and any other terms and conditions particular to the provision of such changed or additional Services. If these are agreed, the additional services shall be deemed to be included in the definition of Services and provided in all other respects on these Conditions.

7.2 Bespoke Bids may make any changes to the Services from time to time: (i) needed to comply with applicable law; and/or (ii) which do not materially affect the nature or quality of the Services.

8 FEE AND PAYMENT TERMS

8.1 The Fee for the provision of Services shall be set out in the Proposal and shall be subject to adjustment in accordance with Condition 7. Unless otherwise specified, VAT and any other tax, duty or levy shall be payable by the Client in addition to the Fee.

- 8.2 Bespoke Bids shall be entitled to charge the Client for any charges outside the Fee stated on the Proposal, in respect of any: (i) Deliverables and/or services additional to those set out in the Proposal; (ii) costs and expenses as set out in Condition 5.2; (iii) change to the Project Deadlines (for example, expedited delivery), such additional charges will be based on Bespoke Bids' standard rates applicable at the time.
- 8.3 The Client shall pay to Bespoke Bids the Fee upfront in advance prior to Bespoke Bids commencing the Services.
- 8.4 Bespoke Bids shall be entitled to invoice the Client for: (i) the Fee as soon as the Proposal is accepted by both parties. All payments due under the Contract shall be made in pounds sterling in full without deduction or set-off within [14 days] of the date of Bespoke Bids' invoice or as otherwise set out in the Proposal. Time of payment is of the essence of a Contract. No payment shall be deemed to have been received until Bespoke Bids has received cleared funds.
- 8.5 In the event that the Client fails to pay any amount due to Bespoke Bids by the due date for payment Bespoke Bids may: (i) suspend provision of the Services to the Client without liability; (ii) amend any Project Deadline; and/or (iii) claim interest at the rate of five per cent. (5%) above the base lending rate from time to time of The Bank of England accruing daily from the due date until receipt by Bespoke Bids of the full amount.

9 LIABILITY

- 9.1 Subject to Conditions 9.2 to 9.4, Bespoke Bids' aggregate liability to the Client under a Contract whether for negligence, breach of contract, breach of statutory duty, misrepresentation, restitution or otherwise shall in no circumstance exceed the Fee of the Services to be provided under the relevant Contract.
- 9.2 All conditions, warranties and representations expressed or implied by statute, common law or otherwise in relation to the Services (save for the conditions implied by Section 2 of the Supply of Goods and Services Act 1982) are excluded from the Contract to the fullest extent permitted by law.
- 9.3 Nothing in these Conditions excludes or limits Bespoke Bids' liability: (i) for death or personal injury caused by Bespoke Bids' negligence; (ii) for fraud or fraudulent misrepresentation; or (iii) for any matter which it would be illegal for Bespoke Bids to exclude or attempt to exclude its liability.
- 9.4 Subject to Condition 9.3, Bespoke Bids is not liable for: (i) any indirect, special or consequential liabilities; (ii) any pure economic loss; (iii) any loss of anticipated profits, revenue or anticipated savings; (iv) any loss of contracts, business or opportunity; (v) any loss of goodwill or reputation; or (vi) any loss of management time, howsoever caused.

10 FORCE MAJEURE

If Bespoke Bids is prevented, hindered or delayed from or in providing the Services in accordance with these Conditions by an event which is beyond Bespoke Bids' reasonable control including acts of terrorism, insurrection, riots, civil unrest and military action, the exercise of emergency powers by any local, regional or national governmental authority, fire, flood, earthquake, storm and other natural disasters, industrial action, strikes and lock-outs, blockage or embargo or the failure or delay of supplies of power, fuel, transport, equipment, telecommunications systems, Internet or other Deliverables and/or services (including any third party materials) (a **Force Majeure Event**) Bespoke Bids may, at its option: (i) suspend the provision of the Services while the Force Majeure Event continues; (ii) if Bespoke Bids has insufficient capacity and/or resources to meet its commitments, apportion available capacity and/or resources between its Clients as it decides; or (iii) terminate

any Contract so affected with immediate effect by written notice to the Client, and Bespoke Bids will not be liable for any loss or damage suffered by the Client as a result.

11 TERM AND TERMINATION

11.1 The Contract shall continue (unless terminated earlier in accordance with Condition 10 or 11.2), until delivery of the Deliverables by Bespoke Bids to the Client.

11.2 Bespoke Bids may: (i) require immediate and upfront payment of the Fee; and/or (ii) terminate a Contract with immediate effect by notice to the Client, if the Client:

11.2.1 is in material breach of an obligation under a Contract (including any failure to pay any sum by the due date) and, if the breach is capable of remedy, the Client has failed to remedy such breach within a period of 10 days after being given notice by Bespoke Bids to remedy the breach; or

11.2.2 is unable to pay its debts when they fall due, ceases or threatens to cease to carry on business, suffers any event which could be reasonably considered to indicate that it is insolvent or may become so including, insolvent liquidation, declaration of bankruptcy, presentation of a bankruptcy or a winding up petition, appointment of or notice of intent to appoint an administrator, receiver or similar over any of its assets or undertaking, or the Client suffers any analogous event in any jurisdiction in which it is incorporated or resident.

11.3 Upon the expiry or termination of a Contract for any reason:

11.3.1 Bespoke Bids shall be entitled to invoice the Client for the balance of the Fee and any other outstanding sums due which the Client shall pay within 10 days of the date of invoice (and Bespoke Bids shall be entitled to withhold delivery of the Deliverables or any work in progress until it has received the Fee in full); and

11.3.2 each party shall within five working days from receipt of a request by the other party return to the other party all original and copy documentation containing Confidential Information of the other party (including in the case of the Client, Client Materials).

11.4 Termination of a Contract shall be without prejudice to the accrued rights and liabilities of the parties and shall not affect any continuing obligations of the parties under this Agreement. Without prejudice to that generality, the provisions of Conditions 8, 9, 11, 12, 13 and 14 shall survive the termination of a Contract for any reason, or the expiry of a Contract.

12 CONFIDENTIAL INFORMATION

Each party (the **Receiving Party**) shall treat any Confidential Information relating to the other party (the **Disclosing Party**) as strictly confidential except to the extent that such Confidential Information can be proved to be within the public domain at the time of disclosure other than as a result of any breach of these Conditions. The Receiving Party shall not disclose such Confidential Information to any third party nor use it for any purpose except as is strictly necessary for the performance of its obligations under the Contract. For the purpose of these Conditions, **Confidential Information** means all information disclosed (whether in writing, orally or by another means and whether directly or indirectly) by the Disclosing Party to the Receiving Party or otherwise acquired by the Receiving Party in connection with these Conditions or its subject matter whether before or after the commencement of the Contract including information relating to the Disclosing Party's services, products,

operations, processes, plans or intentions, product information, know-how, trade secrets and other Intellectual Property Rights, market opportunities, business affairs, financial information and other confidential information, and shall include the Deliverables and Client Materials.

13 INTELLECTUAL PROPERTY RIGHTS

13.1 Subject to Condition 13.2, all right, title and interest in and to any Intellectual Property Rights created by or on behalf of Bespoke Bids during the provision of the Services, including in any Deliverables shall be the property of and vest in Bespoke Bids (unless otherwise agreed in writing), provided that Bespoke Bids shall grant the Client a non-transferable, royalty-free licence to use such Intellectual Property Rights subject to payment in full of the Fee.

13.2 All right, title and interest in and to any Intellectual Property Rights owned by or licensed to a party prior to the Contract is and shall remain the exclusive property of the party owning it (or, where applicable, the third party from whom it's right to use such Intellectual Property Rights has derived).

14 GENERAL

14.1 A notice under or in connection with a Contract shall be in writing and shall be delivered personally, sent by recorded or registered delivery post or by email to the other party at its last known address or the email address given in the Proposal. In the absence of evidence of earlier receipt, service of a notice is deemed to have been effected: (i) if delivered personally, when left at the address referred to in this Condition 14.1; (ii) if sent by Special Delivery 9.00am next day post, by 9.00am the next day; (iii) if sent by pre-paid first class post or 24 Signed For, on the second working day after posting it; or (iv) if sent by e-mail at the time of transmission if sent between 9.00am and 5.00pm on a working day, otherwise at 9.00am on the next working day.

14.2 The Client shall not, without the prior written consent of Bespoke Bids, at any time from the date of the Contract to the expiry of six months after the last date of supply of the Services, solicit or entice away from Bespoke Bids or employ (or attempt to employ) any person who is, or has been, engaged by Bespoke Bids' in relation to the Services.

14.3 Unless otherwise stated in these Conditions, a Contract (and any documents referred to in it) constitutes the entire understanding between the parties in relation to its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of the Contract. No party has relied on any warranty or representation except as expressly set out in the Contract.

14.4 The Client may not assign or transfer or purport to assign or transfer any of its rights or obligations under a Contract without first having obtained Bespoke Bids' written consent. Bespoke Bids may assign a Contract or any part of it to any person.

14.5 If any Condition of a Contract, (or part of a Condition), is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other Conditions shall remain in force.

14.6 If any invalid, unenforceable or illegal Condition of a Contract would be valid, enforceable or legal if some part of it were deleted, the Condition shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

14.7 Nothing in a Contract is intended to confer on any person any right to enforce any Condition of a Contract which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999.

- 14.8 Nothing in a Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 14.9 The failure by Bespoke Bids to exercise or delay by Bespoke Bids in exercising any right, power or remedy provided by a Contract or by law does not constitute a waiver of such right, power or remedy or a waiver of any other rights, powers or remedies. No single or partial exercise of a right, power or remedy provided by a Contract shall prevent any further exercise of the right, power or remedy or the exercise of another right, power or remedy.
- 14.10 Each right or remedy of Bespoke Bids under a Contract is without prejudice to any other right or remedy of Bespoke Bids whether under the Contract or not.
- 14.11 A Contract is governed by, and shall be construed in accordance with, the laws of England and Wales and the courts of England and Wales shall have exclusive jurisdiction to hear and decide any suit, action or proceedings, and to settle any disputes, which may arise out of or in connection with a Contract.