

OXINET LIMITED
(hereinafter "OXINET")
Terms and Conditions Reference OXINET/PS/15

A GENERAL

1.1 Introduction and Construction

These Main Terms shall apply to any agreements for the supply of any Professional Services by OXINET Limited to the Client. Professional Services shall include, but are not limited to, installation, implementation, project consultancy, technical consultancy, application consultancy, and training. These Professional Services terms shall not apply to software maintenance services for which a separate agreement is applicable. Each individual agreement will begin with a Work Authorisation form stating the details specific to that agreement ("the Work Authorisation"). The Work Authorisation, these Main Terms and any designated appendices shall together be called the "Agreement".

1.2 Definitions

In these Main Terms the following words shall have the following meanings:

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| "Agreement" | has the meaning given in clause 1.1; |
| "Confidential Information" | means information marked as confidential or which otherwise ought reasonably to be considered confidential, which shall include but is not limited to the other party's business, trade secrets, Clients, suppliers, and employee personal data; |
| "Client" | Has the meaning given in the Work Authorisation. |
| "Good Computing Practice" | means the exercise of that degree of skill, care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking and under the same or similar circumstances and conditions as OXINET (which in any case includes keeping full security copies of the Software Products, making back-ups of data no less frequently than daily and full virus-checking); |
| "Good Industry Practice" | means the exercise of that degree of skill, care, diligence, prudence and foresight which would ordinarily be expected from a skilled and experienced person performing the role of a consultant engaged to provide services similar to the Professional Services to be provided by OXINET or its Personnel under the terms of this Agreement, and seeking in good faith to comply with its contractual obligations and any relevant law; |
| "Intellectual Property Rights" | means any patents, trade marks, service marks, design rights (in each case whether or not registered or registrable) or applications for any of the foregoing, copyright, database rights, know-how, trade or business names and other similar rights or obligations in each case whether registrable or not in any country (including but not limited to the UK); |
| "Main Terms" | means these terms and conditions; |
| "Notice" | means a notice given in accordance with clause 8.13; |
| "Personnel" | means OXINET's employees, agents and sub-contractors; |
| "Professional Services" | has the meaning given in clause 1.1; |
| "Related Company" | means a subsidiary company as defined in section 736 of the Companies Act 1985 (as amended); |
| "Successor in Business" | means a party who has acquired all or a substantial part of the business relating to the OXINET Standard Products; |
| "Writing" | means in writing and signed by a duly authorised representative of the relevant party (and shall not for the avoidance of doubt include electronic data interchange, electronic mail and similar means of communication). |
| "Work Authorisation" | Has the meaning given in clause 1.1 |

1.3 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) any clause headings are for convenience only and shall not affect the interpretation of the Agreement;
- (b) references to clauses and appendices are to clauses of and appendices to the Agreement;
- (c) references to any other document shall be to that document as amended (in accordance with its terms) at the relevant time;
- (d) words importing the plural shall include the singular and vice versa and words importing the masculine gender shall include the feminine and vice versa; and
- (e) references to any statutes or statutory provisions include any amending or replacement statute or statutory provision and includes any orders, regulations, instruments or other subordinate legislation made under the relevant statute or statutory provision.

2. Professional Services

- 2.1 All Professional Services are provided by OXINET on a time and materials basis. Unless otherwise specified in this Agreement or agreed by OXINET in Writing at the time, all Professional Services provided to the Client by OXINET shall be chargeable in accordance OXINET's then current price list. In no event shall this Agreement be considered a "fixed price" contract.
- 2.2 If the Client requests any Professional Services, OXINET will issue written confirmation of the work to be done and the rate applicable to The Client at the time, unless these are already included on the Work Authorisation. The scope of and rate for the work contained in the written confirmation shall be treated as accepted by the Client if the Client allows the work to commence.
- 2.3 OXINET agrees to provide Professional Services on mutually convenient dates. If specific dates are agreed, and OXINET fails to perform Professional Services on such dates, OXINET will attempt to reschedule the dates and/or Personnel within a reasonable time, but will not be liable for not meeting the original dates. OXINET will supply the Professional Services through any of its appropriately qualified Personnel except where OXINET agrees to supply a specific consultant.
- 2.4 A working day consists of seven and a half (7.5) hours excluding travelling time and lunch, OXINET may charge the Client for overtime worked in accordance with the then current OXINET policy. If OXINET agrees to supply Professional Services on an hourly basis, for example by telephone, the fee shall be the daily rate applicable to The Client calculated pro rata plus any associated costs. Unless otherwise agreed, the maximum permitted number of attendees on a training course provided specifically for The Client is five. The Client will permit OXINET's Personnel sufficient access to its premises to enable OXINET to provide the Professional Services. When working at The Client's premises, The Client shall allow OXINET's Personnel to have the use and benefit of a suitable working area, office facilities and suitable technical equipment.
- 2.5 The Client agrees to pay all reasonable expenses for accommodation, subsistence and travel incurred by OXINET in supplying any Professional Services at premises other than OXINET's, in accordance with OXINET's then current policy.
- 2.6 If the Client orders Professional Services and for any reason cancels or defers the arrangements contained in it, The Client agrees to pay 50% of the fee if the cancellation/deferment takes place between 6 and 10 working days prior to the date of the Service and 100% of the fee, (plus any non-cancellable expenses incurred in advance by OXINET, including but not limited to non-cancellable airplane tickets) if the cancellation/deferment takes place 5 working days or less prior to the date of the Service. In the event of such deferment/cancellation, OXINET will use all reasonable endeavours to redeploy the Professional Services Personnel affected and will only charge this fee if it is unable to redeploy such Personnel on other chargeable work.
- 2.7 OXINET has the right to perform similar Professional Services to third parties, including any competitors of The Client. Any intellectual property which may be created by OXINET during the provision of Professional Services, including, without limitation, ideas, know-how, techniques, enhancements or modifications to OXINET's software source code or documentation, and any software scripts, shall be the property of OXINET. OXINET retains title and full ownership rights to all such intellectual property under the copyright laws of the European Union or any other jurisdiction or under any federal, state, or foreign laws; however, Client shall be granted a perpetual, irrevocable, royalty-free, non-exclusive, non-sublicensable (except to Related Companies), licence to use such intellectual property for its internal business purposes.

3. Warranty

- 3.1 OXINET warrants that it will provide the Professional Services to The Client in accordance with Good Industry Practice.
- 3.2 The Client will promptly notify OXINET of any breach of the above warranty which it requires to be remedied (including, in so far as possible, providing a documented example). OXINET shall at its own expense and within a reasonable time after receiving the notice use reasonable endeavours to remedy the breach in question. OXINET shall always be afforded a reasonable opportunity and a reasonable period of time in which to correct any such breach. Where OXINET is able to remedy the breach, this will be The Client's sole remedy. Where OXINET is not able to remedy the breach within a reasonable time, then normal contractual principles will apply, subject to clause 4.
- 3.3 The warranty given by OXINET to The Client is only that set out in clause 3.1. Therefore, to the fullest extent permitted by law, no additional warranty, condition, undertaking or term, express or implied, statutory or otherwise, as to the condition, performance, satisfactory quality or fitness for purpose of the Professional Services is given by OXINET and all such warranties, conditions, undertakings and terms are excluded.

4. Limit of Liability

- 4.1 Notwithstanding anything to the contrary in this Agreement the liability of either party;
- 4.1.1 for death or personal injury caused by the negligence of either party or their respective Personnel;
 - 4.1.2 for breach of their obligations arising under under Part 1 of the Consumer Protection Act 1987; or
 - 4.1.3 for breach of their obligations arising under Section 12 of the Sale of Goods Act 1979; or
 - 4.1.4 for breach of their obligations arising under Section 2 of the Supply of Goods Act 1979; or
 - 4.1.5 for breach of their obligations arising under Section 8 of the Supply of Goods Act (Implied Terms) Act 1973.or
 - 4.1.6 for fraud (including without limit fraudulent misrepresentation) /or its Personnel.
- shall not be limited (but nothing in this clause confers any right or remedy upon either party to which it would not otherwise be entitled).
- 4.2 The liability of either party in respect of direct physical loss or damage to tangible property of the other party caused by its negligence and/or its Personnel shall not exceed in aggregate one million pounds sterling (£1,000,000).
- 4.3 Except as stated in clauses 4.1 and 4.2 above, OXINET's maximum liability for all claims made under the Agreement, however arising, including (without limitation) due to negligence, breach of contract, misrepresentation (excluding fraudulent misrepresentation) or for any other reason shall be limited to an aggregate sum equal to one hundred and twenty percent of the amount of the fees paid and payable to OXINET by the Client under this Agreement during the 12 months prior to the time the liability arose (for the avoidance of doubt the aggregate liability in respect of the Client shall not include the amount of fees paid and payable to OXINET by the Client)
- 4.4 Subject to clause 4.1 and whether or not either party has been advised of the possibility of such loss or damage neither party shall be liable to the other for:
- 4.4.1 loss of profits, loss of anticipated savings, loss of revenue, loss of data, loss of goodwill and/or loss of business (in each case whether direct or indirect); and/or
 - 4.4.2 any type of special, consequential or indirect loss or damage,
- howsoever caused (including due to negligence, breach of contract and/or misrepresentation other than fraudulent misrepresentation).
- 4.5 OXINET shall comply with Good Computing Practice at all times. OXINET shall not be liable to the Client for any loss arising out of, or which could have been avoided but for, any failure by the Client to keep full and up to date security copies of any software and associated data, or any other failure by the Client to comply with Good Computing Practice.
- 4.6 If OXINET is prevented or delayed from performing any of its obligations under this Agreement by reason of any act, default or omission of the Client and/or its Personnel, then OXINET shall be deemed not to be in breach of any terms of this Agreement which it might otherwise be in breach of as a result of the said act, default or omission.

5. Payment

- 5.1 All amounts payable to OXINET by the Client under this Agreement are (except where specifically agreed to the contrary) exclusive of Value Added Tax and any other relevant taxes that may be applicable during the term of this Agreement. The Client shall pay to OXINET all fees provided for under this Agreement in full and free from any deductions, rights of set-off, or counterclaims.
- 5.2 All payments which are to be made by the Client to OXINET under this Agreement shall be made within 14 days of the date on which OXINET submitted the relevant invoice to The Client.
- 5.3 In the event of late payment:
- i) OXINET reserves the right (in addition to its other rights) and after Notice to The Client to charge interest from the due date at an annual rate of eight per cent above the Bank of England bank rate on the outstanding balance until payment is received in full by OXINET and to recover from The Client all costs and expenses incurred in the recovery of the overdue money from The Client; and
 - ii) OXINET will be under no obligation to supply Professional Services while any invoice remains unpaid 14 days after the due date until all outstanding sums due to OXINET from The Client have been paid to OXINET by The Client.
- If all or any part of any invoice is the subject of a genuine and reasonable dispute, The Client shall provide written details of the amount disputed and the cause of the dispute and shall pay to OXINET any undisputed amount(s) as they become due. The parties shall in good faith attempt to resolve the dispute as to the unpaid amount in accordance with the procedure set out in clause 8.9 during which time, if The Client has complied in full with this clause 5.3, OXINET shall not have the right to charge interest or to withhold Professional Services in respect of that disputed amount.
- 5.4 Unless specifically stated otherwise in this Agreement, all fees are non-refundable.

6. Confidential Information

- 6.1 Neither party shall use or disclose any Confidential Information of the other party except as necessary for the performance of this Agreement, or as required by law (having first given detailed Notice to the other party of each such disclosure of Confidential Information proposed to be made).
- 6.2 The Client acknowledges that any documentation and training materials are Confidential Information of OXINET, or, where appropriate, a third party and will be treated as Confidential Information of OXINET for the purposes of clause 6.1 above.
- 6.3 This clause shall not prevent the disclosure or use by either party of any information which is or becomes public knowledge, through no fault of that party.

6.4 The obligations in this clause 6 shall survive termination of this Agreement.

7. Termination

- 7.1 Either party may terminate this Agreement if the other party materially breaches this Agreement by failure, neglect or refusal to comply with any of the material terms and conditions of this Agreement and the defaulting party has failed to remedy that breach within 30 days of the date of notice from the non-defaulting party specifying the breach.
- 7.2 The Client may terminate this Agreement at any time by giving OXINET 30 days written notice. However, The Client may have contracted to receive and pay for a minimum number of days of Professional Services in exchange for a discounted price. If The Client terminates this Agreement under these circumstances before OXINET has supplied the minimum number of days, then OXINET is permitted to charge The Client the lower of (i) the remaining number of days at the rate agreed under this Agreement and (ii) the difference, if any, between the actual daily rate payable under this Agreement and the standard daily rate in accordance with OXINET's then current price list in respect of all the Professional Services actually purchased by The Client under this Agreement, and.
- 7.3 Termination will not affect the existing rights and/or liabilities of either party, including without limitation, payment of any fees which have fallen due or relate to Professional Services already provided, or fall due under clause 7.2 above.

8. General

- 8.1 A delay or failure by either party to exercise any right shall not be treated as a waiver of any such right or any other rights. A consent by either party to a breach of any express or implied term of this Agreement shall not constitute a consent to any subsequent breach.
- 8.2 If any provision of this Agreement is determined to be invalid, unlawful or unenforceable, such provision shall to that extent be severed from the remainder of this Agreement which shall continue to be valid and enforceable to the fullest extent permitted by law.
- 8.3 Except as set out in Clause 8.4 neither party shall have the right to transfer (i.e. assign) the whole of the Agreement to a third party without the agreement of the other party in Writing, which shall not be unreasonably withheld.
- 8.4 OXINET may at any time having given Notice to The Client transfer all or any part of its rights, duties or obligations to any Related Company of OXINET or its Successor In Business.
- 8.5 Except for the payment of fees by The Client, neither party shall be responsible for any failure or delay in complying with any of its obligations under this Agreement if such failure or delay results from circumstances beyond that party's reasonable control. Each party shall be excused performance of such obligations to the extent that such circumstances prevail.
- 8.7 The Client hereby acknowledges that it has not been induced to enter into this Agreement by any prior representations whether oral or in writing, except as specifically contained, or referred to, in this Agreement and The Client hereby waives any claim for breach of any such representations (other than fraudulent misrepresentations) which are not so specifically mentioned..
- 8.8 For the purpose of Section 1(2) of the Contracts (Rights of Third Parties) Act 1999 the parties state that they do not intend any term of this Agreement to be enforced by any third parties (including without limitation The Client's Related Companies) but any third party right which exists or is available independently of the Act is preserved.
- 8.9 If there is a disagreement or dispute regarding this Agreement, the parties shall in the first instance attempt to resolve this between a representative from OXINET and one from the Client. If the matter remains unresolved for a period of 14 days, there shall be a meeting between a director of OXINET and a director of the Client within a further 21 days. Only if the matter remains unresolved at the end of this 35 day period shall either party be entitled to refer the matter to the courts, provided that nothing in this clause shall prevent either party from seeking a preliminary injunction or other judicial relief at any time if in its judgement such action is necessary to prevent irreparable damage.
- 8.10 This Agreement may only be amended by agreement between the parties in Writing.
- 8.11 The parties shall at all times comply with the Data Protection Act 1998 (as amended or updated from time to time) ("DPA") as a data controller or data processor (as relevant) in respect of personal data that each party provides to this other in connection with this Agreement and the provision of the Professional Services. Terms defined in the DPA have the same meaning in this clause 8.11.
- 8.12 This Agreement and any matters relating to it shall be interpreted under the laws of England and Wales and the parties submit to the exclusive jurisdiction of the English Courts, except that either party may enforce a judgement of the English Courts anywhere in the world as may be appropriate to the parties.
- 8.13 Any notices, requests or demands shall be in Writing and sent by fax with a confirmation copy sent by courier or any form of registered/recorded post or delivered by one party to the other at the most recently specified address. Notices shall be deemed to have been received:
- i) if sent by fax with a confirmed receipt of transmission of all pages from the receiving machine, on the day when the fax was transmitted (or, if not a working day in the UK, the next working day in the UK);
 - ii) if sent by courier, on the day when the recipient signs the courier's confirmation note (or, if not a working day in the UK, the next working day in the UK);
 - iii) if sent by registered/recorded post within the UK, on the second working day in the UK after the despatch by prepaid registered/recorded post.

- 8.14 During the term of this Agreement and for six months after its expiration or termination, both parties undertake that they shall not, without the prior written consent of the other party (whether by the relevant party, its employees, agents, third parties or otherwise howsoever) employ or solicit for employment, or solicit to provide services, as an employee, independent contractor or consultant any:
- i) employee
 - ii) independent contractor or
 - iii) consultant

of the other party, at the relevant time, who has been introduced to the first party as a result of this Agreement, and with whom the first party has had contact under this Agreement in the previous six month period.

Each party acknowledges that a breach by it of the provisions of this clause 8.14 requires the expenditure of time and expense by the other party in replacing any such employee for which the other is entitled to recover as liquidated damages an amount equal to 50% of the gross annual salary or fee of the individual concerned as at the time of the breach. This provision shall be without prejudice to the other party's right to seek injunctive relief.

- 8.15 This Agreement may be executed in counterpart form and facsimile or electronic transmission of the actual signature itself shall be treated as if it were the original.
- 8.16 This Agreement (including any Schedules and any Appendices hereto attached) contains the entire agreement of the parties with respect of the subject matter of this Agreement and in particular no other terms and conditions (including any set out in any purchase order issued by The Client) or prior representations of OXINET or the Client shall apply unless agreed in Writing by OXINET and the Client. This Agreement supersedes all previous communications representations, understandings and agreements, either oral or written between the parties (including without limitation all previous communications, representations, understandings and agreement, either oral or written, made by the parties' agents, representatives and/or employees) with respect to the said subject matter except in respect of any fraudulent misrepresentation made by either party.