



Argand Solutions General Terms & Conditions



ARGAND SOLUTIONS GENERAL TERMS AND CONDITIONS

The following terms and conditions constitute Our General Terms and Conditions of business (hereafter the "Agreement") and shall apply to any agreement entered into by Us, unless otherwise agreed in writing by the parties.

1. Definitions and Interpretation:

1.1 The definitions and rules of interpretation in this section apply in the Agreement.

Confidential Information: all information marked "In Confidence" or is otherwise of a confidential nature concerning the trade secrets or business dealings, methods of business, customers, clients, market information, transactions or affairs of a party, including information developed by the parties during the Agreement, and any information (whether encrypted, in copy or any media) which by its nature the recipient ought to reasonably conclude is confidential information of the other.

Document: includes, in addition to any document in writing, any drawing, map, blue-print, plan, diagram, design, picture or image, tape, disk or other device or record embodying information in any form.

Force Majeure/Event: any force majeure event (i.e. beyond the reasonable control of a party) in relation to the Agreement and as described in more detail at clause 4.

Insurance: means the insurances required to be put in place by a party or if none are specified adequate insurances to cover the party's risks and liabilities under the Agreement.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, topography rights, 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, code, database 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.

VAT: value added tax chargeable under English law for the time being.

1.2 Any reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 A reference to writing or written includes faxes and email (where a return receipt or reply is provided to the email). Where the words include(s), including or in particular are used in the Agreement, they are deemed to have the words without limitation following. Where the context permits, the words other and otherwise are illustrative and shall not limit the sense of the words preceding them.

2. Confidentiality

2.1 The parties shall keep in strict confidence and secure all Confidential Information disclosed by one party to the other, whether technical, financial, operational, regulatory or otherwise including technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed by a party or its employees, agents, consultants or subcontractors. Each

party shall restrict disclosure of such Confidential Information to those on their staff/project team and to such of its other employees, agents, consultants or subcontractors, as need to know it for the purpose of discharging that party's obligations under the Agreement.

3. Publicity

- 3.1 No public announcement, article, interview, promotion, press release or other such publicity in connection with the Agreement shall be made by a party, without Our prior written approval.

4. Force Majeure and Force Majeure Events

- 4.1 We reserve the right to defer the date for performance of Our obligations under the Agreement or to terminate the Agreement (in full or part) on reasonable notice (acting in good faith) or otherwise obtain relief from Our obligations hereunder, if We are prevented from, or delayed in, carrying on Our business due to a Force Majeure Event, which shall include acts, events, omissions or accidents beyond Our reasonable control, including, but not limited to strikes, lockouts or other industrial disputes (whether involving Our workforce or any other party), failure of a utility service or transport network, war, riot, civil commotion, malicious damage, compliance with any law, regulation or rule, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers/subcontractors, or such similar events. In the event of termination of the Agreement due to Force Majeure the parties shall pay Us all sums then due and in relation to any services, equipment or materials provided by Us to the date of such termination.

5. Termination Rights

- 5.1 We may terminate the Agreement immediately (without liability) on giving written notice to the relevant party to the Agreement with us if:
- 5.1.1 that party commits a material breach of any of the terms of the Agreement and (if such a breach is remediable) fails to remedy that breach within thirty (30) days of the party being notified in writing of the breach; or
 - 5.1.2 that party repeatedly breaches any of the terms of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention to give effect to the Agreement; or
 - 5.1.3 that party suspends, or threatens to suspend, payment of its debts, is unable to pay its debts as they fall due, 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 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of the party; or that party suspends or ceases, or threatens to suspend/cease, to carry on all or a substantial part of its business; or there is a change of control of the party to the Agreement with us (as defined in section 574 of the Capital Allowances Act 2001),

6. Effects of Termination

6.1 On termination of the Agreement for any reason:

6.1.1 the party to the Agreement shall pay any outstanding sums then due to Us;

6.1.2 each party shall immediately deliver to the other (as relevant) all Confidential Information of the other party, and all copies of information and data provided for the purposes of the Agreement, and shall certify on demand that it has not retained any copies of Confidential Information or other information, except for one (1) copy which a party may use for audit purposes only; and

6.1.3 the accrued rights and liabilities of the parties as at termination and any clauses expressly or impliedly intended to survive, shall continue in full force and effect.

7. Intellectual Property Rights

7.1 Unless otherwise expressly agreed by the parties in writing, We do not transfer, assign or licence any of Our Intellectual Property Rights to any party (including any third party) pursuant to the Agreement. No party to the Agreement shall use the trade marks or brand names of another party without that party's prior written consent.

7.2 No party shall take any action that might invalidate the Intellectual Property Rights owned by or licensed to another party.

8. Assignment

8.1 The parties to the Agreement shall not, without Our prior written consent, assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of their rights or obligations under the Agreement, except that We may, at any time, assign, transfer, charge, mortgage, subcontract or deal in any other manner with any of Our rights or obligations.

9. Notices

9.1 A notice given to a party under the Agreement:

9.1.1 shall be in writing in English and shall be signed by/ on behalf of the party giving it;

9.1.2 shall be sent for the attention of the person, at the address or fax number specified in Agreement (or to such other address, fax number or person as that party may notify to the other, in accordance with the provisions of this clause 9); and shall be:

9.1.2.1 delivered personally; or

9.1.2.2 by commercial courier; or

- 9.1.2.3 sent by fax; or
- 9.1.2.4 sent by pre-paid first-class post or recorded delivery; or
- 9.1.2.5 sent by airmail requiring signature on delivery.

9.2 The addresses for service of a notice are as set out in the relevant Agreement or as notified by one party to the other in writing.

9.3 If a notice has been properly sent or delivered in accordance with this clause 9, it will be deemed to have been received as follows:

9.3.1 if delivered personally, at delivery; or

9.3.2 if delivered by commercial courier, at the time of signature of the courier's receipt; or

9.3.3 if sent by fax, at the time of transmission; or

9.3.4 if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second day after posting; or

9.3.5 if sent by airmail, five (5) days from the date of posting.

9.4 For the purposes of this clause 9, all times are to be read as local time in the place of deemed receipt; and if deemed receipt under this clause is not within business hours (meaning 9.00am to 5.30pm Monday to Friday on a day that is not a public holiday), the notice is deemed to have been received when business next starts in the place of receipt.

9.5 To prove delivery, it is sufficient to prove that:

9.5.1 if sent by fax, the notice was transmitted by fax to the fax number of the party; or

9.5.2 if sent by pre-paid first-class post, the envelope containing the notice was properly addressed and posted.

9.6 The provisions of this notice clause 9 shall not apply to the service of any process in any legal action or proceedings.

10. No Agency or Partnership

10.1 Nothing in the Agreement is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name of/on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).



11. Third Party Rights

- 11.1 A person who is not a party to the Agreement shall not have any rights in connection with it.

12. Variation

- 12.1 Subject to the terms of the Agreement no variation of the Agreement shall be valid unless it is in writing and signed by, or on behalf of, each of the parties.

13. No waiver

- 13.1 Failure to exercise, or any delay in exercising, any right or remedy provided under the Agreement or by law shall not constitute a waiver of that right or remedy, nor shall it restrict further exercise of that (or any other) right or remedy.
- 13.2 A waiver (which may be given subject to conditions) of any right or remedy provided under the Agreement or by law shall only be effective if it is in writing. It shall apply only to the party to whom it is addressed and for the specific circumstances for which it is given. It shall not prevent the party who has given the waiver from subsequently relying on the right or remedy in other circumstances.

14. Severance

- 14.1 If any court or competent authority finds that any provision of the Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Agreement shall not be affected. If any invalid, unenforceable or illegal provision of the Agreement would be valid, enforceable and legal if some part of it were deleted, the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.

15. Dispute Resolution

- 15.1 If any dispute arises in connection with the Agreement the parties (by senior managers or executives) shall within five (5) days of a written request from one party to the other, meet and act in a good faith effort to resolve the dispute. If the dispute is not resolved at that meeting, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must give notice in writing (**ADR notice**) to the other party requesting a mediation. A copy of the request shall be sent to CEDR. The mediation shall start not later than 5 days after the date of the ADR notice. Commencement of mediation shall not prevent the parties commencing or continuing court proceedings **OR** an arbitration.

16. Compliance



- 16.1 By entering into the Agreement each party represents and warrants that they are not and will not be in breach of any express or implied obligation to any third party binding on it. Each party that has rights under the Agreement is acting on its own behalf and not for the benefit of another person.
- 16.2 The party to the Agreement shall provide all reasonable information, data, cooperation and assistance to Us as We may reasonably request in the performance of Our obligations under the Agreement. The parties shall comply with all reasonable health and safety and security requests made by each to the other in performing their respective obligations under the Agreement.
- 16.3 We may, without limiting any other rights or remedies We may have, set off any amounts owed to Us, against any amounts payable by Us under the Agreement.
- 16.4 The parties to the Agreement shall obtain, and at all times maintain, all necessary licences, permissions and consents and comply with all relevant legislation and regulations in relation to the performance of their obligations under the Agreement. Each party to the Agreement agrees to comply (or procure compliance) with the Data Protection Act 1998. Each party to the Agreement agrees that it shall not transfer personal data outside the European Economic Area (EEA) without the prior written consent of the other.
- 16.5 We acknowledge that a party to the Agreement may be legally obliged under the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 to disclose certain information to the public. If that party intends to publish any such information and/or receives a request for information relating to the Agreement (or any of Our affairs), it shall promptly notify Us in writing, providing a copy of any request for information, and give Us reasonable opportunity to make representations in relation to such information in advance of any disclosure of information, give Us at least five (5) business days to object to such disclosure, and shall give all due consideration to any representations and/or objections made by Us.
- 17. Miscellaneous**
- 17.1 The express terms of the Agreement are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute common law custom trade usage course of dealing or otherwise, all of which are hereby excluded to the fullest extent permitted by law. Each party acknowledges that, in entering into the Agreement, it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in the Agreement. Each party agrees that its only remedies in respect of those representations and warranties in the Agreement shall be for breach of contract.
- 17.2 Unless specifically provided otherwise, rights arising under the Agreement are cumulative and do not exclude rights provided by law. Unless expressly stated and agreed (in writing) We make no warranties or representations as to the compatibility of any services, equipment or materials installed or provided by Us, and We exclude all liability for any non-interoperability with other systems or equipment.



18. Counterparts

18.1 The Agreement may be executed in any number of counterparts, each when executed constituting a duplicate original, but all together constituting the one Agreement. No counterpart is effective until each party has executed at least one counterpart.

19. Governing Law and Jurisdiction

The Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes) shall be governed by, and construed in accordance with, the law of England and Wales. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims). The provisions of this clause 19 shall survive termination of the Agreement, howsoever arising