

**Stirling Dynamics Limited****Terms and Conditions for the Supply of Services**

**The Customer's attention is particularly drawn to the provisions of Clause 9.**

**1 INTERPRETATION****1.1 Definitions**

In these Conditions, the following definitions apply:

**Assumptions:** the assumptions (if any) contained in the Proposal being the basis upon which the Services and the Charges have been calculated.

**Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

**Charges:** the charges payable by the Customer for the supply of the Services in accordance with clause 6.

**Commencement Date:** has the meaning set out in clause 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 12.8.

**Contract:** the contract between Stirling and the Customer for the supply of Services in accordance with these Conditions.

**Customer:** the person or firm who purchases Services from Stirling.

**Customer Default:** has the meaning set out in clause 5.2.

**Deliverables:** the deliverables set out in the Proposal produced by Stirling for the Customer.

**Disclosing Party:** has the meaning set out in clause 8.1

**Due Date:** has the meaning set out in clause 6.8

**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trade marks, 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.

**Force Majeure:** has the meaning set out in clause 12.1.1

**Order:** the Customer's order for Services as set out in the Customer's purchase order form, or the Customer's written acceptance of a Proposal, as the case may be.

**Proposal:** a proposal provided by Stirling to the Customer for the provision of services by Stirling in the form of i) a commercial proposal and a technical proposal, both bearing the same reference; or ii) a commercial proposal containing details of Charges and payment profile; or iii) a technical proposal containing details of the Services to be provided; or iv) a letter containing details of both the Services, Charges and payment profile.

**Receiving Party:** has the meaning set out in clause 8.1

**Services:** the services, including the Deliverables, supplied by Stirling to the Customer as set out in the Proposal.

**Specification:** the description or specification of the Services provided in writing by Stirling to the Customer.

**Stirling:** Stirling Dynamics Limited registered in England and Wales with company number 02092114.

**Stirling Materials:** all materials, equipment, documents and other property of Stirling.

**Technical Proposal:** the document entitled 'Technical Proposal' provided by Stirling to the Customer and containing details of the Services to be provided.

**VAT:** has the meaning set out in clause 6.7

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

1.2.1 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

1.2.2 a reference to a party includes its successors or permitted assigns;

1.2.3 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

1.2.4 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

1.2.5 a reference to writing or written includes faxes and e-mails.

## **2 BASIS OF CONTRACT**

- 2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when Stirling issues written acceptance of the Order at which point and on which date the Contract shall come into existence (Commencement Date).
- 2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Stirling which is not set out in the Contract.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by Stirling, and any descriptions or illustrations contained in Stirling's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6 Any Proposal provided by Stirling to the Customer shall not constitute an offer, and (unless specified otherwise in writing by Stirling in the Proposal) is only valid for a period of 90 days from their date of issue. Stirling shall ensure that, if a Proposal incorporates a Technical Proposal and Commercial Proposal, both documents relating to the same Services or project contain the same reference.

## **3 SUPPLY OF SERVICES**

- 3.1 Stirling shall supply the Services to the Customer in accordance with the Proposal in all material respects.
- 3.2 Stirling shall use all reasonable endeavours to meet any performance dates specified in the Technical Schedule, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 Stirling shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and Stirling shall notify the Customer in any such event. The provisions of clause 4 shall not apply in such circumstances.
- 3.4 Stirling warrants to the Customer that the Services will be provided using reasonable care and skill.
- 3.5 Stirling provides a warranty for any defects in the Services for 12 months from delivery of those Services. The Customer's sole remedy for the supply of any defective and/or deficient Services shall be the re-supply of those Services. The Company shall be under no liability in respect of any defect in the goods arising from any drawing, design or specification, nor, where any

defective and/or deficient data is supplied by the Customer. Stirling shall be under no liability for warranty if the total price of the Services has not been paid by the due date for payment.

#### **4 CHANGE CONTROL**

- 4.1 Without prejudice to clause 3.3, if either party wishes to change the scope or execution of the Services, it shall submit details of the requested change to the other in writing provided that Stirling shall not be under any obligation to consider a change or comply with this clause in relation to a request by the Customer if the implementation of the change is required by the Customer less than 60 days after the request (unless specified otherwise in writing by Stirling in the Proposal).
- 4.2 If either party requests a change to the scope or execution of the Services, Stirling shall, within a reasonable time, provide a written estimate to the Customer of:
  - 4.2.1 the likely time required to implement the change;
  - 4.2.2 any necessary variations to Stirling's charges arising from the change;
  - 4.2.3 the likely effect of the change on the Proposal; and
  - 4.2.4 any other impact of the change on this agreement.
- 4.3 If at any time before or during the course of providing the Services it emerges that any of the Assumptions are incorrect, Stirling may:
  - 4.3.1 request a change in accordance with this clause 4; and
  - 4.3.2 suspend the provision of the Services until such time as the change is agreed in accordance with this clause 4.
- 4.4 If the Customer wishes Stirling to proceed with the change, Stirling has no obligation to do so unless and until the parties have agreed the necessary variations to its charges, the Services, the Proposal and any other relevant terms of this agreement to take account of the change and this agreement has been varied in accordance with clause 12.8.
- 4.5 Stirling may charge for the time it spends assessing a request for change from the Customer on a time and materials basis in accordance with clause 6.

#### **5 CUSTOMER'S OBLIGATIONS**

- 5.1 The Customer shall:
  - 5.1.1 ensure that the terms of the Order and any information it provides to Stirling are complete and accurate;
  - 5.1.2 co-operate with Stirling in all matters relating to the Services;

- 5.1.3 provide Stirling, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by Stirling;
- 5.1.4 provide Stirling with such information and materials as Stirling may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
- 5.1.5 obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start; and
- 5.1.6 keep and maintain Stirling Materials at the Customer's premises in safe custody at its own risk, maintain Stirling Materials in good condition until returned to Stirling, and not dispose of or use Stirling Materials other than in accordance with Stirling's written instructions or authorisation.
- 5.2 If Stirling's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):
  - 5.2.1 Stirling shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays Stirling's performance of any of its obligations;
  - 5.2.2 Stirling shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Stirling's failure or delay to perform any of its obligations as set out in this agreement; and
  - 5.2.3 the Customer shall reimburse Stirling on written demand for any costs or losses sustained or incurred by Stirling arising directly or indirectly from the Customer Default.
- 5.3 Compliance with Foreign Regulatory Regimes
  - 5.3.1 The Customer shall ensure that all customer furnished items to be delivered to Stirling that are of US-origin and ITAR-controlled, or incorporate US-origin ITAR-controlled technology, are accompanied by a 'United States Export Authorisation', issued by the U.S. Department of State, Office of Defense Trade Controls. This 'Export Authorisation' shall include written authority to receive the customer furnished items or information including re-export to the Customer, through Stirling in the United Kingdom or through another country as directed by the Customer.

## **6 CHARGES AND PAYMENT**

- 6.1 The Charges for the Services shall be as set out in the Proposal.
- 6.2 Where Services are provided on a time and materials basis:
  - 6.2.1 the Charges shall be calculated in accordance with Stirling's standard daily fee rates, as set out in the Proposal;

- 6.2.2 Stirling's standard daily fee rates for each individual are calculated on the basis of a seven and a half hour day worked on Business Days;
- 6.2.3 Stirling shall be entitled to charge an overtime rate of 150 per cent of the standard daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 6.2.2; and
- 6.2.4 Stirling shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom Stirling engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by Stirling for the performance of the Services, and for the cost of any materials.
- 6.3 Where Services are provided for a fixed price, the total price for the Services shall be the amount set out in the Proposal as amended from time to time in accordance with clause 4. Stirling shall invoice the Customer for the Charges that are then payable, together with expenses, the costs of materials and VAT, where appropriate, calculated as provided in clause 6.2.4.
- 6.4 Stirling reserves the right to increase its standard daily fee rates, provided that such charges cannot be increased more than once in any 12 month period. Stirling will give the Customer written notice of any such increase 2 months before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify Stirling in writing within 2 weeks of the date of Stirling's notice and Stirling shall have the right without limiting its other rights or remedies to terminate the Contract by giving 2 weeks' written notice to the Customer.
- 6.5 Stirling shall invoice the Customer in accordance with the Proposal.
- 6.6 The Customer shall pay each invoice submitted by Stirling:
- 6.6.1 unless specified otherwise in writing by Stirling in the Proposal, within 30 days of the end of the month in which the invoice is dated; and
- 6.6.2 in full and in cleared funds to a bank account nominated in writing by Stirling, and time for payment shall be of the essence of the Contract.
- 6.7 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made under the Contract by Stirling to the Customer, the Customer shall, on receipt of a valid VAT invoice from Stirling, pay to Stirling such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 6.8 Without limiting any other right or remedy of Stirling, if the Customer fails to make any payment due to Stirling under the Contract by the due date for payment (Due Date), Stirling shall have the right to charge interest on the overdue amount at the rate of 5 per cent per annum above the then current Bank of England's base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 6.9 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any

credit, set-off or counterclaim against Stirling in order to justify withholding payment of any such amount in whole or in part. Stirling may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Stirling to the Customer.

## **7 INTELLECTUAL PROPERTY RIGHTS**

- 7.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by Stirling.
- 7.2 The Customer acknowledges that, in respect of any third- party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on Stirling obtaining a written licence from the relevant licensor on such terms as will entitle Stirling to license such rights to the Customer.
- 7.3 All Stirling Materials are the exclusive property of Stirling.

## **8 CONFIDENTIALITY**

- 8.1 A party (Receiving Party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (Disclosing Party), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain.
- 8.2 The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party.
- 8.3 This clause 8 shall survive any termination of the Contract.

## **9 LIMITATION OF LIABILITY**

### **THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

- 9.1 Nothing in these Conditions shall limit or exclude Stirling's liability for:
  - 9.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
  - 9.1.2 fraud or fraudulent misrepresentation; or
  - 9.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

- 9.2 Subject to clause 9.1:
- 9.2.1 Stirling shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of business, depletion of goodwill and / or similar losses, loss of anticipated savings, loss of goods, loss of contract, loss of use, loss of corruption of data or information, loss resulting from incorrect information being provided by the Customer to Stirling, loss arising from any of the Assumptions being incorrect, any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses or any indirect or consequential loss arising under or in connection with the Contract; and
- 9.2.2 Stirling's total liability to the Customer 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, shall in no circumstances exceed the Charges for the period of 12 months prior to the date of any claim by the Customer.
- 9.3 Except as set out in 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.
- 9.4 This clause 9 shall survive termination of the Contract.

## **10 TERMINATION**

- 10.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 10.1.1 the other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach;
- 10.1.2 the other party 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;
- 10.1.3 the other party 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;
- 10.1.4 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 that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 10.1.5 a creditor or encumbrancer of the other party 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 14 days;



- 10.1.6 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 other party (being a company);
- 10.1.7 a floating charge holder over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 10.1.8 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- 10.1.9 any event occurs or proceeding is taken with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 10.1.2 to clause 10.1.8 (inclusive);
- 10.1.10 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.
- 10.2 Without limiting its other rights or remedies, Stirling may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the Due Date.
- 10.3 Without limiting its other rights or remedies, each party shall have the right to terminate the Contract by giving the other party 1 months' prior written notice.
- 10.4 Without limiting its other rights or remedies, Stirling shall have the right to suspend provision of the Services under the Contract or any other contract between the Customer and Stirling if the Customer becomes subject to any of the events listed in clauses 10.1.2 to 10.1.10, or Stirling reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the Due Date.

## **11 CONSEQUENCES OF TERMINATION**

- 11.1 On termination of the Contract for any reason:
  - 11.1.1 the Customer shall immediately pay to Stirling all of Stirling's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Stirling shall submit an invoice, which shall be payable by the Customer immediately on receipt;
  - 11.1.2 the Customer shall return all of Stirling Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then Stirling may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
  - 11.1.3 the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination 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
  - 11.1.4 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## **12 GENERAL**

### **12.1 Force majeure:**

12.1.1 For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of Stirling including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of Stirling 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.

12.1.2 Stirling shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

12.1.3 If the Force Majeure Event prevents Stirling from providing any of the Services for more than 4 weeks, Stirling shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

### **12.2 Assignment and subcontracting:**

12.2.1 Stirling 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.

12.2.2 The Customer shall not, without the prior written consent of Stirling, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

### **12.3 Notices:**

12.3.1 Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.

12.3.2 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.

12.3.3 This clause 12.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

### **12.4 Waiver:**

12.4.1 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.

- 12.4.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 12.5 Severance:
- 12.5.1 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.
- 12.5.2 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.
- 12.6 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 12.7 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 12.8 Variation: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by Stirling.
- 12.9 Governing law and jurisdiction: This 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 non-exclusive jurisdiction of the courts of England and Wales.