

# TERMS AND CONDITIONS OF BUSINESS

## DEFINITIONS

'Client Party' or 'you' or derivatives: The named party in the Service Specification.

'Client Group' means a subsidiary of the Client Party, any holding company of the Client Party, and any subsidiary of such holding company. The terms "subsidiary" and "holding company" shall have the meaning given in s1159 Companies Act 2006.

'Contract': The contract between Contior and the Client Party for the provision of Services on these Terms and the Service Specification.

'Deliverables': The letters, reports, information, advice or opinions given by us in connection with the Services.

"Fees" means the fees payable for the Services.

'Pound Gates Group Ltd': Pound Gates Group Ltd of Hyde Park House, Crown Street, Ipswich, IP1 3LG, United Kingdom (with company number 03737741), a sister company of Contior.

'Service Specification': The Service Specification document issued by Contior to the Client Party identifying (amongst other things) the services to be provided to the Client Party, together with all documents attached or referred to in it, as that may be amended in writing between Contior and the Client Party from time-to-time.

'Services': The services delivered to the Client Party (or any member of the Client Group) by Contior and which are detailed in and are subject to the terms of the Service Specification.

'Contior' or 'we' or derivatives: Pound Gates Vehicle Management Services Limited of Hyde Park House, Crown Street, Ipswich, IP1 3LG, United Kingdom (with company number 2277851) and persons, bodies corporate or partnerships controlled (directly or indirectly) by it, the body corporate which will provide the Services.

'Virtual Storage Facilities' means any internet or other electronic facility (whether cloud based or not) used to store information which relates to the Services.

'Terms' means these terms and conditions of business.

## 1. Engagement terms

- 1.1 These Terms, together with the Service Specification, are the terms upon which Contior shall provide the Services to the Client Party and any members of the Client Group, and apply to the exclusion of any other terms that the Client Party seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 1.2 By engaging Contior to provide the Services, the Client Party is deemed to have agreed to these Terms.
- 1.3 All Services provided by Contior for the Client Party will be in accordance with the Service Specification.
- 1.4 These Terms and the Service Specification replaces and supersedes any previous proposal, discussion, correspondence, representation or agreement between us in relation to the Services and forms the whole agreement between us in relation to the same. This clause shall have the effect of excluding the liability of any party to the Service Specification for any misrepresentation (other than a fraudulent misrepresentation) made prior to the date of the Service Specification.
- 1.5 Either Contior or the Client Party may terminate the Contract by giving notice in writing to the other party on not less than the notice period specified in the Service Specification (the "Notice Period").
- 1.6 Fees during the Notice Period will be calculated based on our actual activity, whether you require us to provide the Services or not, but in all circumstances will not be less than the average monthly fee level charged in the most recent 3 months of full service provision prior to the start of the Notice Period.
- 1.7 We may terminate this Contract immediately on giving you written notice if:
  - a) you do not pay any Fees to us within 7 days of becoming due;
  - b) you do not provide the assistance set-out in clause 10;
  - c) you commit a breach of any of the provisions of these Terms;
  - d) you become insolvent, have a receiver, administrative receiver, administrator or manager appointed over all or any part of your assets or business, make any composition or arrangement with your creditors, a petition is presented or resolution passed for your winding up or liquidation (other than for the purposes of solvent amalgamation or reconstruction), or we reasonably consider that any of the foregoing events is about to occur.

- 1.8 These Terms and the Service Specification will apply to any Services whether such Services were performed or provided before or after the issuing of these Terms or the Service Specification.
- 1.9 These Terms shall apply to all services provided by Contior to members of the Client Group, and the Client Party enters into these Terms for and on behalf of each member of the Client Group,

## **2. Changes in scope and Operational Parameters**

- 2.1 Should you require any services in addition to the Services from time to time, we will be pleased to discuss any request with you. Following such discussions, we will advise you whether or not we are willing to undertake any services in addition to the Services and, if so, the terms on which such services would be undertaken. We will not be required to provide any additional Services unless and until Contior and the Client Party have agreed any amendment to the Service Specification in writing, including any increase in the fees due to Contior for the Services
- 2.2 Our agreement to provide the Services and the terms under which we will provide them is based on information you provide to us and which we both agree is critical for us to make resourcing and pricing decisions (“the Operational Parameters”).
- 2.3 Should any material information relating to the Operational Parameters be withheld, whether intentionally or not, or the Operational Parameters become materially different to those set out in the Service Specification, we reserve the right to review the basis on which we provide the Services, including but not limited to the Fees payable. In such circumstances, we may suspend provision of the Services until we have agreed an amended Services Schedule with you.
- 2.4 We shall only be required to perform the Services in accordance with the Service Specification, and shall be entitled to decline to provide any services where, in our opinion, such services are outside the scope of the Services Specification.

## **3. Insurance advice**

- 3.1 We may, in the course of delivery of the Services, assist you with insurance activities that are incidental to the Services.
- 3.2 We are not authorised by the Financial Conduct Authority ('FCA'). If you require advice on insurance products or policies, you must appoint your own FCA authorised adviser. We may be able to refer you to an authorised adviser.
- 3.3 We have no liability to you in respect of any comments or opinions provided by us in respect of insurance products or policies, which you must not rely upon.

## **4. Fees and expenses**

- 4.1 The Fees shall be as set out in the Services Specification, or as otherwise agreed in writing between us.
- 4.2 Where agreed, expenses incurred, including travel and subsistence, and goods and services purchased in connection with the Services, will be re-charged to you.
- 4.3 The Fees shall be paid in the manner, and at the times, specified in the Services Specification, but in the absence of such agreement provision in the Service Specification, the following shall apply:
  - a) in relation to non-recurring Services we will bill 50% of the expected fee on commencement of the Service, 25% of the expected fee when the field work is completed and bill the balance of our fee (including disbursements and expenses) on completion of the Services; and
  - b) where continuous Services are provided (e.g. inspection services, engineering services and claims handling) fees will be rendered monthly or as otherwise agreed in advance.
- 4.4 All fees and expenses will be subject to VAT at the prevailing rate. We will charge VAT where we consider VAT is chargeable in accordance with VAT regulations and guidance at that time.
- 4.5 If HMRC or any other competent authority determines at any time that VAT is payable on our fees and expenses in circumstances where we did not originally charge VAT, you shall pay to us an amount equal to the VAT payable within 14 days of receipt of a VAT invoice in respect of such amount.
- 4.6 You indemnify us and Pound Gates Group Ltd against all costs, claims, losses, expenses and liabilities (including legal fees, penalties and interest) we incur in consequence of, or in connection with, complying with your instructions given on whether to charge or refrain from charging, or calculating, VAT on our fees and expenses.

- 4.7 The Service Specification will state the currency of our fees and you must pay our fees in the specified currency. You are responsible for any bank charges and Foreign Exchange losses we incur as a result of you not paying in the specified currency or in respect of money transfers to us.
- 4.8 Payment should be made within 14 days of the invoice date (unless stated otherwise in the Service Specification). Payment should be made by the following methods:
- |                   |  |
|-------------------|--|
| Cheque:           | Made payable to 'Contior'                  |
| Money transfer:   | Barclays Bank plc. Leicester, LE87 2BB, UK |
| Sort Code:        | 20-44-51                                   |
| Sterling account: | 83856585                                   |
| IBAN Code         | GB92BARC20445183856585                     |
- 4.9 We may charge interest on any outstanding balances at the rate prescribed from time to time in accordance with Section 6 of the Late Payment of Commercial Debts (Interest) Act 1998. We reserve the right to submit your contact details and payment record to a credit reference agency and you agree that we have this right.
- 4.10 Without affecting any other right or remedy available to it, Contior may:
- suspend the supply of the Services under this Contract (or any other contract between Contior and the Client Party); and/or
  - terminate the licence to use Contior's Intellectual Property Rights in the Deliverables given under clause 13.3
- if the Client Party fails to pay any amount due under the Contract on the due date for payment, or the Client Party becomes subject to any of the events listed in clause 1.7(d), or Contior reasonably believes that the Client Party is about to become subject to any such event.

## 5. Limitation of liability

- 5.1 The following clauses limit Contior's liability to the Client Party by Contior in respect of any negligence, breach of contract, default, breach of duty, or breach of trust, occurring in the course of the provision of Services pursuant to the Service Specification.
- 5.2 Contior shall not be liable to the Client Party, for:
- any loss, damage or delay arising from the Client Party's breach of these Terms (including but not limited to breach of clause 10 (*The Client Party's Obligations*)), or arising from any information provided to Contior in connection with the Services being inaccurate or misleading;
  - loss of profits;
  - loss of sales or business;
  - loss of agreements or contracts;
  - loss of use or corruption of software, data or information;
  - loss of or damage to goodwill;
  - any indirect or consequential loss.
- 5.3 In all other cases, Contior's aggregate liability in respect of all claims by you (and all members of the Client Group) in respect of the Services shall be limited to the total Fees paid by you for the Services in the relevant Service Specification or £1million, whichever is the lesser.
- 5.4 Any claim must be formally commenced within two years after the party bringing the claim becomes aware (or ought reasonably to have become aware) of the facts which give rise to the action and in any event no later than four years after the cause of action arises. This provision expressly overrides any statutory provision that would otherwise apply.
- 5.5 Except as expressly provided herein, no person may enforce the Service Specification by virtue of the Contracts (Rights of Third Parties) Act 1999.
- 5.6 These provisions do not apply in relation to:
- Death or personal injury caused by our negligence;
  - Loss and damage arising from fraud on our part; and
  - Any other situations in which the limitation of our liability is prohibited by law.

## 6. Working for other parties

- 6.1 For the avoidance of doubt, the provision of the Services to you shall not prevent or restrict the manner in which Contior carries on its profession or business in relation to its other clients. In particular, you acknowledge that Contior reserves the right to act at any time for other clients who may be competitors or suppliers of yours or in respect of whom issues of commercial conflict may arise.

## **7. Conflicts of interest**

- 7.1 We will use reasonable efforts to identify situations where conflicts of interest may arise in connection with the provision of the Services. If you are, or become, aware of any potential conflict affecting our provision of the Services, you will notify us immediately.
- 7.2 Where a specific conflict of interest is identified, and we believe that implementing appropriate procedures can properly safeguard your interests, we will discuss and agree the safeguards to be implemented.

## **8. Publicity**

- 8.1 Once the subject matter of the Service Specification is in the public domain (or you and we otherwise agree in writing) we may (at our own expense) place advertisements or make reference on our website or distribute other marketing materials (using your name and logo) describing our role.

## **9. Confidentiality**

- 9.1 You and we shall each (and will each use our respective reasonable endeavours to procure that our respective partners, directors, officers, agents, contractors and employees shall) at all times keep confidential and shall not use, except in connection with the performance of the Services or as expressly stated in the Service Specification or subsequently agreed to in writing or as otherwise required or permitted or permissible in law or by regulation, any Deliverables and/or the other party's confidential information regarding their business affairs, customers, clients or supplier, obtained or given in connection with the Services.
- 9.2 Both you and we each accept no liability to any other party who is shown or gains access to any confidential information or Deliverables.
- 9.3 You will keep confidential any methodologies and technology used by us to carry out the Services. The provisions of clause 9 shall continue in full force and effect notwithstanding the termination of the engagement the subject of the Service Specification or the completion of the Services.

## **10. The Client Party's Obligations**

- 10.1 You shall cooperate with us in all matters relating to the Services.
- 10.2 You shall be responsible for making available to us and/or granting full access to, as and when required, all relevant information and materials that we required in order to supply the Services. You will ensure that all such information is complete and accurate. To the extent that such information is not in your control or possession, you will use your best endeavours to procure that the required information is made available to us.

## **11. Communication and meetings**

- 11.1 We shall keep you informed on the progress of the Services and give warning of all matters that we consider to be of significance to you as they arise during the course of the provision of the Services.

## **12. Electronic communication**

- 12.1 We each agree to communicate electronically over the internet, including email communications.
- 12.2 We shall each be responsible for protecting our own systems and interests and neither of us shall be responsible to the other on any basis (contract, tort or otherwise) for any loss, damage or omission in anyway arising from the use of electronic data (including e-mail) as a form of communication. Nothing in this clause shall exclude any liability arising from the negligent addressing and transmission of an email to an incorrect party.
- 12.3 The parties accept you and/or we may provide (or procure provision of) Virtual Storage Facilities for us or you to use relating to Services.
- 12.4 For such Virtual Storage Facilities you and/or we undertake to (a) use (or procure the use of) information and data protection procedures to prevent unauthorised disclosure or use of confidential information, and (b) comply with all applicable laws on confidentiality and data protection.
- 12.5 You and/or we may download or copy information relating to Services from such Virtual Storage Facilities and then hold such information in accordance with these Terms.
- 12.6 The Client Party agrees to comply with all terms of use in respect of any Virtual Storage Facilities in connection with the Services.
- 12.7 Neither party shall have any liability to the other for any loss, corruption or unauthorised disclosure of, any information or materials stored within the Virtual Storage Facilities (unless directly attributable to the negligence or default of that party).

### **13. Ownership of papers and Intellectual property**

- 13.1 All Intellectual Property Rights in, or arising out of or in connection with the Deliverables or the Services shall be owned by Contior. In this clause “Intellectual Property Rights” means any patents, copyright and related rights, trademarks, and other intellectual property rights, whether registered or unregistered.
- 13.2 We retain all Intellectual Property Rights in the Deliverables set out in the Service Specification, and also in our work papers, proprietary intellectual property, processes, methodologies, techniques, ideas, concepts, trade secrets, know-how and software existing prior to the signing of the Service Specification or which is created outside of the provision of the Services.
- 13.3 We grant you a non-exclusive, non-assignable, royalty-free licence to use any of our Intellectual Property Rights in the Deliverables for the purpose for which the Deliverables are prepared. To the extent the Deliverables contain the proprietary intellectual property of a third party, you agree to comply with such third party’s terms of licence as the same are communicated or made available by us to you.
- 13.4 You agree to grant us a royalty free licence to use your Intellectual Property Rights to the extent necessary for the provision of the Services. Such licence shall expire automatically upon termination of this Contract, provided that such termination shall not require us to return any information provided to us in connection with the provision of the Services.

### **14. Document retention policy**

- 14.1 Files and other papers, electronic or otherwise, relating to your matters, including certain documents that may legally belong to you, will be stored for such time as we judge reasonable or for such time as we are required by law so to do, but in any event for a period of not less than six years, after which time we may destroy them without further reference to you.

### **15. Client money**

- 15.1 Where we have client money bank accounts on your or your insurers behalf these will be maintained by Pound Gates Group Ltd, on behalf of Contior, in compliance with a document issued to you that describes how we have agreed to manage the client money bank accounts.

### **16. Force Majeure**

- 16.1 Neither of us will be liable to the other for any delay or failure to fulfil obligations caused by circumstances outside our reasonable control.

### **17. Assignment**

- 17.1 You shall not transfer or assign any rights or obligations under this contract without our prior written consent.
- 17.2 We may at any time assign any rights or obligations, sub-contract, charge, or otherwise deal with our rights under this Contract.
- 17.3 Without limiting clause 17.2, we may sub-contract certain services (including undertaking client bank account transactions) to Pound Gates Group Ltd, which is company under common control with Contior.

### **18. Quality assurance**

- 18.1 As a matter of routine, we carry out quality assurance procedures on the work performed by our staff. If at any time you wish to discuss with us how our services to you could be improved, or if you are dissatisfied with the Services you are receiving, please let us know. Contact details of the person responsible for handling complaints can be viewed at <https://www.contior.com/complaints-procedure/>.
- 18.2 We undertake to look carefully and promptly into any complaint and to do all we can to explain the position to you. If we have given you a less than satisfactory service we would like the opportunity to do what we can to put it right.

### **19. Data Protection Act 2018 and General Data Protection Regulation (“Data Protection Regulations”)**

- 19.1 This clause applies to personal data provided by, or on behalf of, the Client Party in connection with the Service Specification. Each party shall comply with Data Protection Regulations when processing such personal data. In particular, the Client Party shall ensure that any disclosure of personal data to us complies with the Data Protection Regulations.
- 19.2 We shall use appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data. We shall

not sub-contract any processing of personal data unless that personal data continues to be subject to an appropriate level of protection. To the extent Contior acts as data processor for the Client Party, it shall only process personal data in accordance with the Client Party's instructions.

- 19.3 Contior shall notify the Client Party in 40 working days in the event of an individual asking for copies of their personal data, a complaint about processing of personal data or a notice from a relevant Data Protection Authority. The Client Party and Contior shall consult and co-operate with each other when responding to any such request, complaint or notice.
- 19.4 Contior shall answer the Client Party's reasonable enquiries to enable the Client Party to monitor compliance with this clause 19.

## **20. Health and Safety**

- 20.1 Where our staff or agents operate from a location where you are in management control then you will provide our staff with a safe working environment and maintain all necessary licenses and consents and comply with all relevant statutes and limitations.
- 20.2 You will permit us access to any location referred to in clause 20.1 to conduct health and safety assessments at the location(s). You will co-operate with us, and comply with all of our reasonable instructions, in respect of all health and safety matters.

## **21. Consequences of Termination**

- 21.1 On termination of the Contract:
- a) the Client Party shall immediately pay to Contior all of the Contior's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted or no payment has become due, Contior shall submit an invoice for the Services supplied, which shall be payable by the Customer immediately on receipt; and
  - b) the Client Party shall (at Contior's direction) return or permanently destroy or delete all Deliverables in its possession or control which have not been fully paid for; and
  - c) be prohibited from accessing the Virtual Storage Facilities, and Contior may terminate the Client Party's access with immediate effect.
- 21.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, 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.
- 21.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

## **22. Waiver**

- 22.1 Any waiver of any rights is only effective if it is in writing from us and it applies only to the circumstances for which it is given. No failure or delay by us in exercising any right or remedy or by law shall constitute a waiver of that or any other right or remedy nor preclude or restrict its further exercise.

## **23. Governing law**

- 23.1 The Contract shall be governed by and construed in accordance with the Law of England and Wales.
- 23.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.