Terms & Conditions

Title: ZirconTermsAndConditions-Rev1
Reference: ZMF-PLCY-43
Revision: 1
Date: 07/02/2025

1. DEFINITIONS
    a. In these Terms, "Quotation" shall mean a quotation for the supply of the Services by Zircon to the Customer to which these Terms are appended.
    b. In these Terms "Zircon" shall mean Zircon Software Limited (company registration no. 3844938) whose registered address is at Bellefield House, Hilperton Road, Trowbridge, BA14 7FP)
    c. the following definitions used in these terms shall be defined in the Quotation
        i. the Customer
        ii. the Prices
        iii. the Services
        iv. the Contract
        v. the Specification (where applicable)
        vi. the Deliverables (where applicable)
    d. Unless the context otherwise requires, words and expressions defined in the Quotation shall have the same meanings in these Terms.
    e. The headings in these Terms are inserted for ease of reference only and shall not affect the construction or interpretation of these Terms.
    f. "Background IP", shall mean IP that the Zircon already owns or has developed prior to or outside the scope of the Services. This includes but is not limited to:
        i. Proprietary Tools
        ii. Frameworks
        iii. Techniques
        iv. Software that Zircon has created and plans to reuse across multiple projects.
    g. "Foreground IP", shall mean IP that is created during the course of the project, typically tailored to meet the Customer's needs. This includes software, code, or solutions developed as part of the Services.
    h. "Open-Source Components', shall mean any Open-Source algorithms or libraries used as part of the services, which are subject to their respective licences.
2. QUOTATION
    a. The Quotation shall define the cost and scope of the Services and any chargeable expenses.
    b. The Contract shall be governed by the Quotation and these Terms to the exclusion of any other terms subject to which any order from the Customer is made or purported to be made.
    c. In the event of any conflict between the provisions of the Quotation and these Terms, the former shall prevail.
    d. No variation to the Quotation or these Terms shall be binding unless agreed in writing between the authorised representatives of Zircon and the Customer.
3. ORDERS
    a. Orders shall be placed only against written quotations from Zircon.
    b. Orders must be made in writing and be accompanied by a purchase order number.
4. PRICES
    a. All Prices provided are exclusive of VAT, which the Customer shall pay in addition.
5. TERMS OF PAYMENT
    a. Invoices are due for payment within 28 days from the invoice date.
    b. If any payment due to Zircon under the Contract is not made on or before the due date, then without limiting any other right or remedy it may have, Zircon shall be entitled to:
        i. Suspend any further performance of the Services; and/or
        ii. Charge [the Customer] interest (both before and after any judgement) on the amount unpaid at the rate specified from time to time under The Late Payment of Commercial Debts (Interest) Act 1998
6. LOCATION
    a. The Services will be undertaken based out of Zircon's offices in Trowbridge or the location specified in the Quotation.
    b. Where the Services are to be performed at locations other than those defined in the Quotation, expenses incurred for accommodation and subsistence, and travel by

public/privately owned road, rail, ferry or air transport systems, will be charged at cost plus an additional 20% administration and processing fee. Travel to other locations by private car is charged at the published mileage rate. Travel time will be charged at the base rate.

c. Where an overnight stay is required, then an additional 10% is charged to the day rate of the corresponding day.

7. HOURS OF WORK
   a. Where the Customer requires work outside of Zircon's core working hours 9am to 5:30pm the following shall apply, and be applied prior to any overtime rates:
      i. Any time worked between 7am to 9am or 5:30pm to 9pm shall be charged at 1.5x the base rate
      ii. Any time worked between 9pm to 7am shall be charged at 2x the base rate
   b. Where the Customer requires work in addition to Zircon's 7.5 hour day, i.e. overtime, this is charged at a higher rate of 1.5x the base rate.
   c. Where the Customer requires work on weekends or UK bank holidays, this is charged at a higher rate of 2x the base rate.
   d. Where an hourly rate applies, any time worked in a day which is less or more than Zircon's 7.5 hour day is charged in per hour increments.
   e. Where a daily rate applies, the number of days is calculated on a monthly basis from the number of hours for the month divided by 7.5, and charged in per day increments.
8. TERMINATION
   a. The Customer shall provide Zircon with at least one (1) month's prior written notice of any cancellation. Such cancellation will not affect Zircon's right to recover any costs incurred or committed before the effective date of cancellation. During the notice period, the Customer shall pay labour costs at Zircon's published hourly rate plus a 20% cancellation fee, calculated on either the current utilisation rate or the planned utilisation rate, whichever is higher.
   b. The Contract may be terminated forthwith by Zircon if:
      i. The Customer fails to pay any sum due to Zircon under the Contract within the number of days stated in the quotation of the due date therefor;
      ii. The Customer commits any material breach of any term of the Contract (other than one falling within sub-clause i above) and which (in the case of a breach capable of being remedied) shall not have been remedied within one calendar month of a written request to remedy the same;
      iii. The Customer shall convene a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part 1 of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors or the Customer shall be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or a trustee, receiver, administrative receiver or similar officer is appointed in respect of all or any part of business or assets of the Customer or a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the Customer or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction).
   c. Any termination of the Contract pursuant to this clause shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.
9. TITLE
   a. In consideration of the payment of the Prices, but subject to payment in full thereof and to clauses b and d below, Zircon hereby assigns to the Customer the copyright and all other Foreground IP rights in any programs and/or documentation supplied to the Customer by Zircon pursuant to the Contract. The Customer retains a perpetual, non-exclusive right to reuse generic components or methodologies developed during the project.
   b. Zircon reserves the rights to any Background IP.
   c. Zircon reserves the right to use in any way any programming tools, programming skills, programming knowledge and programming techniques acquired or used by Zircon in performing their duties under the Contract.

d. Any programs or documentation created for development, test or support purposes and which are not referred to in the Quotation or not part of the Deliverables, shall remain vested in Zircon.
e. Open-Source components used in carrying out the services shall be subject to their own licences and unclaimable as exclusive intellectual property.

10. CONFIDENTIALITY AND PUBLICITY
    a. Zircon shall ensure that its employees, agents, and sub-contractors ("Personnel") keep confidential any information ("Information") in whatever form relating to the business or affairs of the Customer which may from time to time be made available by the Customer.
    b. The Company shall not assign, transfer, distribute or make available the Information to any third party without the express written consent of the Customer, save to Personnel employed or engaged in the provision of the Services.
    c. Publicity and Marketing Communications
        i. Notwithstanding the confidentiality obligations set out in this Agreement, the Company reserves the right to publicise its involvement in any Deal, Collaboration, Partnership, or Project ("Engagement") established under this Agreement, unless the Client expressly opts out in writing. Such publicity may include, but is not limited to
            1. Press releases,
            2. Website content,
            3. Case studies,
            4. Social media posts,
            5. Brochures and other promotional materials.
    d. Use of Client Name and Branding
        i. The Company may reference the Client's name, logo, and trademarks in its promotional activities, provided that:
            1. Such use does not disclose any Confidential Information or commercially sensitive details; and
            2. The use complies with any branding or usage guidelines provided by the Client, where applicable.
    e. Notification and Opt-Out
        i. The Company will notify the Client of any planned promotional activities where practical.
        ii. The Client may opt out of any or all promotional activities at any time by providing written notice to the Company. The Company will honour such requests for future materials but will not be required to recall or amend materials already published.
    f. No Waiver of Confidentiality
        i. For the avoidance of doubt, the Company's promotional activities will not compromise or waive its obligations to maintain the confidentiality of information under this Agreement.
    g. Implied Consent
        i. In the absence of written notice to the contrary, the Client's consent to the Company's promotional activities will be deemed granted under this Agreement.
    h. The provisions of clauses a and b above shall not apply to the whole or any part of the information to the extent that it is:
        i. trivial or obvious;
        ii. already in Zircon's possession other than as a result of a breach of this clause 10; or
        iii. in the public domain.

11. CUSTOMERS RIGHT OF ACCESS
    a. Zircon shall afford the Customer the right to send a representative to visit the offices during normal working hours for any purpose in connection with the Contract, on reasonable notice or by prior arrangement.

12. WARRANTY
    a. No warranty is provided for the Services, unless defined in the Quotation, in that case it is, subject to the clauses below and sub-clauses of 15, Zircon warrants that:
        i. it will perform the Services with reasonable care and skill; and
        ii. the programs and documentation supplied to the Customer pursuant to the Contract will for a period of 3 months from Acceptance by the Customer conform to the Specification.

13. NON-COMPETITION
    a. It is agreed that neither Zircon nor the Customer shall, either directly or indirectly or for itself or for the benefit of any third party, approach employees of the other with offers of employment for the duration of the Contract and for a period of six months from termination of the Contract.
    b. In the event that one of Zircon's or the Customer's employees shall accept employment with the other party as a result of a breach of clause a, the minimum recompense payable shall be a recruitment fee at the prevailing market rate.
    c. The provisions of clauses a and b above shall not apply to Zircon if the Contract is terminated by Zircon pursuant to any one of the events of insolvency set out in sub-clause 8.b.iii above.
14. FORCE MAJEURE
    a. Zircon shall not be liable for any failure to perform, or delay in performing, its obligations under the Contract if such failure or delay results from circumstances which could not have been foreseen at the date of acceptance of the Quotation by the Customer and which are beyond Zircon's reasonable control.
15. LIMITATION OF LIABILITY
    a. The following provisions set out Zircon's entire liability (including any liability for the acts and omissions of its employees, agents and sub-contractors) to the Customer in respect of:
        i. Any breach of its contractual obligations arising under the Contract; and
        ii. Any representation, statement or tortious act or omission, including negligence (but excluding any of the same made fraudulently) arising under or in connection with the Contract;
        iii. being in each case an "Event of Default".

    AND THE CUSTOMER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF THIS CLAUSE 15.

    b. Zircon's liability to the Customer for:
        i. Death or injury resulting from its own or that of its employees', agents', or subcontractors' negligence; and
        ii. Damage suffered by the Customer as a result of any breach of the obligations implied by, as applicable, section 12 of the Sale of Goods Act 1979, section 2 of the Supply of Goods and Services Act 1982 or section 8 of the Supply of Goods (Implied Terms) Act 1973; shall not be limited.
    c. Subject to clause b, Zircon's entire liability in respect of any Event of Default shall be limited to damages of an amount equal to:
        i. A sum determined by an independent assessor in the case of damage to the tangible property of the Customer resulting from the negligence of Zircon or its employees, agents or sub-contractors; and
        ii. In the case of any other Event of Default, the aggregate of the Prices paid by the Customer.
    d. Subject to clause b, Zircon shall not be liable to the Customer in respect of:
        i. Any Event of Default for loss of profits, goodwill or any type of special, indirect or consequential loss (including loss or damage suffered by the Customer as a result of any action brought by a third party) even if such loss was reasonably foreseeable or Zircon had been advised of the possibility of the Customer incurring the same; or
        ii. Any direct loss or any loss of the type mentioned in sub-clause i above arising from the use by the Customer of items purchased from or supplied by any third party and incorporated into any software or system supplied by Zircon pursuant to the Contract or of which any such software or system forms part.
    e. The Customer hereby agrees to afford Zircon not less than one calendar month following notification thereof by the Customer in which to remedy any Event of Default hereunder.
    f. Except in the case of an Event of Default arising under the clauses and sub-clauses of 12, Zircon shall have no liability to the Customer in respect of any Event of Default unless the Customer shall have served notice of the same upon Zircon within one year of the date it became aware of the circumstances giving rise to the Event of Default or the date when it ought recently to have become so aware.

g. Nothing in this clause 15 shall confer any right or remedy upon the Customer to which it would not otherwise be legally entitled.

16. INVALIDITY
    a. If any provision of these terms shall be held to be illegal, void or unenforceable in whole or in part, that provision or part shall to that extent be deemed not to form part of these terms and the enforceability of the remainder of these terms shall not be affected.
17. ENTIRE AGREEMENT
    a. These Terms and the Quotation constitute the entire agreement between the parties in relation to its subject matter and supersede all previous agreements and arrangements in relation thereto.
18. NOTICES
    a. Any notice required to be served under the Contract shall be in writing, and may be given personally, or by posting it by First Class Recorded Delivery, to the other party at the address given in the Quotation or other last known address, and any notice given by post shall be deemed to have been served 48 hours after it was posted or, if given personally, on delivery, and in proving service by post it shall be sufficient to prove that any envelope was properly addressed, appropriately stamped and posted.
19. EXCLUSION OF THIRD-PARTY RIGHTS
    a. The Contracts (Rights of Third Parties) Act 1999 shall not apply to the Contract, and no rights or benefits expressly or impliedly conferred by it shall be enforced under that Act against Zircon or the Customer by any other person.
20. LAW & JURISDICTION
    a. The interpretation, construction, effect and enforceability of the Contract shall be governed by English law, and Zircon and the Customer irrevocably submit to the exclusive jurisdiction of the English Courts, in relation to any claim or matter arising under the Contract.