



# OPTIWORKS SOLUTIONS TERMS AND CONDITIONS

Last Updated: 7<sup>th</sup> May 2024

## Application and Entire Agreement

1. These Terms and Conditions apply to the provision of the services detailed in our Statement of Work (**Services**) by Optiworks Solutions Limited, a company registered in England and Wales under number 15495468 whose registered office is at 4 London Road, Didcot, Oxfordshire, OX11 9NX (**we** or **us** or **Service Provider**) to the person buying the services (**you** or **Customer**).
2. You are deemed to have accepted these Terms and Conditions when you accept our Statement of Work or from the date of any performance of the Services (whichever happens earlier) and these Terms and Conditions and our Statement of Work (**the Contract**) are the entire agreement between us.
3. You acknowledge that you have not relied on any statement, promise or representation made or given by or on our behalf. These Conditions apply to the Contract to the exclusion of any other terms that you try to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
4. Any samples drawings, descriptive matter, or advertising issued by us, and any descriptions or illustrations contained in our literature, 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.
5. Unless previously withdrawn all prices and quotations (whether set out in a Statement of Work or not) given by the us are valid for a period of thirty (30) calendar days unless a different period has been expressly stated in writing by the us.

## Interpretation

6. A "business day" means any day other than a Saturday, Sunday or bank holiday in England and Wales.
7. The headings in these Terms and Conditions are for convenience only and do not affect their interpretation.
8. Words imparting the singular number shall include the plural and vice-versa.

## Services

9. We warrant that we will use reasonable care and skill in our performance of the Services which will comply with the Statement of Work, including any specification in all material respects. We can make any changes to the Services which are necessary to comply with any applicable law or safety requirement, and we will notify you if this is necessary.
10. We will use our reasonable endeavours to complete the performance of the Services within the time agreed or as set out in the Statement of Work; however, time shall not be of the essence in the performance of our obligations.
11. All of these Terms and Conditions apply to the supply of any goods as well as Services unless we specify otherwise.

## Your Obligations

12. You must obtain any permissions, consents, licences or otherwise that we need and must give us with access to any and all relevant information, materials, properties and any other matters which we need to provide the Services.
13. If you do not comply with clause 12, we can terminate the Services.
14. You must ensure that the terms of the Statement of Work are complete and accurate before accepting it.
15. We are not liable for any delay or failure to provide the Services if this is caused by your failure to comply with the provisions of this section (**Your obligations**).

## Fees

16. The fees (**Fees**) for the Services are set out in the Statement of Work and are on a time and materials basis.



17. In addition to the Fees, we can recover from you a) reasonable incidental expenses including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, b) the cost of services provided by third parties and required by us for the performance of the Services, and c) the cost of any materials required for the provision of the Services.
  18. You must pay us for any additional services provided by us that are not specified in the Statement of Work in accordance with our then current, applicable daily rate in effect at the time of performance or such other rate as may be agreed between us. The provisions of clause 14 also apply to these additional services.
  19. The Fees are exclusive of any applicable VAT and other taxes or levies which are imposed or charged by any competent authority.
- b. the daily fee rates for each individual are calculated based on an eight-hour day from 9.00 am to 5.00 pm worked on Business Days (or as otherwise agreed in the Statement of Work); and
  - c. we shall be entitled to charge the Customer for any expenses reasonably incurred by individuals whom we engage in connection with the Services including travelling expenses, hotel costs, subsistence, and any associated expenses, and for the cost of services provided by third parties and required by Optiworks Solutions for the performance of the Services, and for the cost of any materials.
25. Where Optiworks Solutions is providing Services to a Customer through a third party who has the invoice with the Customer, then we may raise an invoice to the Customer for any expenses reasonably incurred by individuals whom we engage in connection with the Services including travelling expenses, hotel costs, subsistence, and any associated expenses, and for the cost of services provided by third parties and required by Optiworks Solutions for the performance of the Services, and for the cost of any materials.

### **Cancellation and Amendment**

20. We can withdraw, cancel or amend a Statement of Work if it has not been accepted by you, or if the Services have not started, within a period of **30 calendar days** from the date of the Statement of Work, (unless the Statement of Work has been withdrawn).
21. Either we or you can cancel an order for any reason prior to your acceptance (or rejection) of the Statement of Work.
22. If you want to amend any details of the Services, you must tell us in writing as soon as possible. We will use reasonable endeavours to make any required changes and additional costs will be included in the Fees and invoiced to you.
23. If, due to circumstances beyond our control, including those set out in the clause below (**Circumstances beyond a party's control**), we have to make any change in the Services or how they are provided, we will notify you immediately. We will use reasonable endeavours to keep any such changes to a minimum.

### **Charges and Payment**

24. The charges for the Services shall be calculated on tan as quoted basis:
  - a. the charges shall be calculated in accordance to our daily fee rates, as set out in the quote;
26. We will invoice you for payment of the Fees either:
  - a. when we have completed the Services; or
  - b. on the invoice dates set out in the Statement of Work.
27. In the event that the scope of the Services changes, we shall confirm this to the Customer and shall confirm the impact of any such changes on the Charges.
28. You must pay the Fees due within **14 days** of the date of our invoice or otherwise in accordance with any credit terms agreed between us.
29. Time for payment shall be of the essence of the Contract.
30. Without limiting any other right or remedy we have for statutory interest, if you do not pay within the period set out above, we will charge you interest at the rate of 4% per annum above the base lending rate of the Bank of England from time to time on the amount outstanding until payment is received in full.



31. All payments due under these Terms and Conditions must be made in full without any deduction or withholding except as required by law and neither of us can assert any credit, set-off or counterclaim against the other in order to justify withholding payment of any such amount in whole or in part.
32. If you do not pay within the period set out above, we can suspend any further provision of the Services and cancel any future services which have been ordered by, or otherwise arranged with, you.
33. Receipts for payment will be issued by us only at your request.
34. All payments must be made in British Pounds unless otherwise agreed in writing between us.

### **Cancellation of Booked Days**

35. If the Customer gives notice to cancel or postpone a workshop, we may charge the Customer s follows depending on the length of notice given:

<b>Circumstance</b>	<b>Penalty</b>
If you cancel 14 or more days prior to the day on which the event is to be held.	No charge
If you cancel 5 or more but less than 14 days prior to the day on which the event is to be held.	50% of day rate fee
If you cancel less than 5 days prior to the day on which the event is to be held.	100% of day rate
If you cancel hourly services 7 or more working days prior to the day on which the event is to be held.	No charge
If you cancel hourly services 6 or less working days prior to the day on which the event is to be held.	100% of hourly rate

### **Termination**

36. We can terminate the provision of the Services immediately if you:
  - a. commit a material breach of your obligations under these Terms and Conditions; or
  - b. fail to make pay any amount due under the Contract on the due date for payment; or

- c. are or become or, in our reasonable opinion, are about to become, the subject of a bankruptcy order or take advantage of any other statutory provision for the relief of insolvent debtor; or
- d. enter into a voluntary arrangement under Part 1 of the Insolvency Act 1986, or any other scheme or arrangement is made with its creditors; or
- e. convene any meeting of your creditors, enter into voluntary or compulsory liquidation, have a receiver, manager, administrator or administrative receiver appointed in respect of your assets or undertakings or any part of them, any documents are filed with the court for the appointment of an administrator in respect of you, notice of intention to appoint an administrator is given by you or any of your directors or by a qualifying floating charge holder (as defined in para. 14 of Schedule B1 of the Insolvency Act 1986), a resolution is passed, or petition presented to any court for your winding up or for the granting of an administration order in respect of you, or any proceedings are commenced relating to your insolvency or possible insolvency.

### **Sub-contracting and Assignment**

37. We can at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of our rights under these Terms and Conditions and can subcontract or delegate in any manner any or all of our obligations to any third party.
38. You must not, without our prior written consent, assign, transfer, charge, subcontract or deal in any other manner with all or any of your rights or obligations under these Terms and Conditions.

### **Non-solicitation of Employees or Contractors**

39. In order to protect our legitimate business interests, you shall not directly or indirectly (except with our prior written consent):
  - a. attempt to solicit or entice away; or
  - b. solicit or entice away, from the employment or service of Optiworks



Solutions the services of any Restricted Person other than by means of a national advertising campaign open to all-comers and not specifically targeted at such staff of Optiworks Solutions.

40. You shall be bound by the covenant set out in clause 35, during the terms of this agreement, and or a period of 6 months or termination or expiry of this agreement.
41. For the purposes of this clause 35 and 36, a Restricted person shall mean any firm, company or person employed or engaged by Optiworks Solutions during the term of this agreement, who has been engaged in the provision of Services or the management of this agreement either as a principal, agent, employee, independent contractor or in any other form of employment or engagement.

### Intellectual Property

42. We reserve all copyright and any other intellectual property rights which may subsist in any goods supplied in connection with the provision of the Services. We reserve the right to take any appropriate action to restrain or prevent the infringement of such intellectual property rights.

### Liability and Indemnity

43. Our liability under these Terms and Conditions, and in breach of statutory duty, and in tort or misrepresentation or otherwise, shall be limited as set out in this section.
44. The total amount of our liability is limited to the total amount of Fees payable by you under the Contract.
35. We are not liable (whether caused by our employees, agents or otherwise) in connection with our provision of the Services or the performance of any of our other obligations under these Terms and Conditions or the Statement of Work for:
- a. any indirect, special or consequential loss, damage, costs, or expenses or;
  - b. any loss of profits; loss of anticipated profits; loss of business; loss of data; loss of reputation or goodwill; business interruption; or, other third-party claims; or
  - c. any failure to perform any of our obligations if such delay or failure is

due to any cause beyond our reasonable control; or

- d. any losses caused directly or indirectly by any failure or your breach in relation to your obligations; or
  - e. any losses arising directly or indirectly from the choice of Services and how they will meet your requirements or your use of the Services or any goods supplied in connection with the Services.
36. You must indemnify us against all damages, costs, claims and expenses suffered by us arising from any loss or damage to any equipment (including that belonging to third parties) caused by you or your agents or employees.
37. Nothing in these Terms and Conditions shall limit or exclude our liability for death or personal injury caused by our negligence, or for any fraudulent misrepresentation, or for any other matters for which it would be unlawful to exclude or limit liability.

### Data Protection

38. When supplying the Services to the Customer, the Service Provider may gain access to and/or acquire the ability to transfer, store or process personal data of employees of the Customer.
39. The parties agree that where such processing of personal data takes place, the Customer shall be the 'data controller' and the Service Provider shall be the 'data processor' as defined in the General Data Protection Regulation (**GDPR**) as may be amended, extended and/or re-enacted from time to time.
40. For the avoidance of doubt, 'Personal Data', 'Processing', 'Data Controller', 'Data Processor' and 'Data Subject' shall have the same meaning as in the GDPR.
41. The Service Provider shall only Process Personal Data to the extent reasonably required to enable it to supply the Services as mentioned in these Terms and Conditions or as requested by and agreed with the Customer, shall not retain any Personal Data longer than necessary for the Processing and refrain from Processing any Personal Data for its own or for any third party's purposes.
42. The Service Provider shall not disclose Personal Data to any third parties other than employees, directors, agents, sub-contractors



or advisors on a strict 'need-to-know' basis and only under the same (or more extensive) conditions as set out in these Terms and Conditions or to the extent required by applicable legislation and/or regulations.

43. The Service Provider shall implement and maintain technical and organisational security measures as are required to protect Personal Data Processed by the Service Provider on behalf of the Customer.
44. Further information about the Service Provider's approach to data protection are specified in its Data Protection Policy, which can be found [The Privacy Policy](#) can be found on our website. For any enquiries or complaints regarding data privacy, you can email: [info@optiworks.co.uk](mailto:info@optiworks.co.uk).

### **Circumstances Beyond a Party's Control**

45. Neither of us is liable for any failure or delay in performing our obligations where such failure or delay results from any cause that is beyond the reasonable control of that party. Such causes include, but are not limited to: industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the party in question. If the delay continues for a period of 90 days, either of us may terminate or cancel the Services to be carried out under these Terms and Conditions.

### **Communications**

46. All notices under these Terms and Conditions must be in writing and signed by, or on behalf of, the party giving notice (or a duly authorised officer of that party).
47. Notices shall be deemed to have been duly given:
  - a. when delivered, if delivered by courier or other messenger (including registered mail) during the normal business hours of the recipient;
  - b. when sent, if transmitted by fax or email and a successful transmission report or return receipt is generated;
  - c. on the fifth business day following mailing, if mailed by national ordinary mail; or
  - d. on the tenth business day following mailing, if mailed by airmail.

48. All notices under these Terms and Conditions must be addressed to the most recent address, email address or fax number notified to the other party.

### **No waiver**

49. No delay, act or omission by a party in exercising any right or remedy will be deemed a waiver of that, or any other, right or remedy nor stop further exercise of any other right, or remedy.

### **Severance**

50. If one or more of these Terms and Conditions is found to be unlawful, invalid or otherwise unenforceable, that / those provisions will be deemed severed from the remainder of these Terms and Conditions (which will remain valid and enforceable).

### **Law and Jurisdiction**

51. These Terms and Conditions shall be governed by and interpreted according to the law of England and Wales and all disputes arising under the Terms and Conditions (including non-contractual disputes or claims) shall be subject to the exclusive jurisdiction of the English and Welsh courts.