

P. W. Elcoat & Associates Ltd

Business Terms and Conditions

1. Definitions

1. This document shall define the general terms and conditions that shall apply to all consultancy agreements and retainer contracts involving P. W. Elcoat & Associates Ltd.
2. These clauses shall be the basis of business in the absence of a signed written contract from the client.
3. P. W. Elcoat & Associates Ltd shall be hereinafter known as PWE&A Ltd for the purposes of this document.
4. The Client is the party with whom the agreement to supply services exists.

2. Statement of Professional Standards

1. PWE&A Ltd shall conduct its business in accordance with the professional standards laid down by the Code of Professional Conduct of the Institute of Directors.
2. In particular, PWE&A Ltd shall apply high standards of service to the client with independence, objectivity and integrity.

3. Performance

1. All commitments with respect to the timing and scope of a project given to the client by PWE&A Ltd, whether verbal or written, are made in good faith but are made necessarily in advance of knowing the full scope of the difficulty that may pertain to performance on specific points (for example, un-foreseeable difficulty in obtaining certain information requested by the client). For this reason, whilst PWE&A Ltd agrees to use its best endeavours to fulfil such commitments to clients on the timing and the scope of consultancy and other projects we cannot guarantee performance in either respect.
2. Where the contract specifies that our service shall be provided by a named individual, PWE&A Ltd agrees to take all reasonable steps to ensure that these persons shall remain on these assignments for the full length of the contract.
3. PWE&A Ltd further agrees to obtain the client's agreement to any significant substitution of personnel that is necessitated by unforeseen circumstances, such as staff sickness.

4. Confidentiality

1. PWE&A Ltd agrees to hold all information provided by the client confidential where the client so specifies, save where such information is known to PWE&A Ltd already, or exists already in the public domain, until, either the information enters the public domain, or PWE&A Ltd is given the same information by a third party, or is released from its confidentiality requirement by the client, or the client is found in breach of contract with PWE&A Ltd by a court of law (including non-payment of account) or three years have elapsed, whichever is the sooner.
2. The client agrees to hold confidential all information about PWE&A Ltd's proposal(s), fee structures, fees and personnel.

5. Materials Supplied

1. PWE&A Ltd agrees to handle any materials, such as product samples or documents, supplied by the client in a responsible fashion and return them to the client upon request.
2. PWE&A Ltd shall not be responsible for any wear or tear occasioned nor for any loss or theft that might occur. All such material is supplied at the client's own risk and no liability for any financial restitution for any direct or indirect value shall be accepted, or for any consequential loss.

6. Conflict of Interest

1. PWE&A Ltd shall decline any third party contract that would create a conflict of interest with the client's previously agreed instructions. Where such a conflict only becomes apparent after our agreement to act for the third party we shall invoke Clauses 6.2 and 6.3 in respect of their contract.
2. PWE&A Ltd warrants to bring to the attention of the client any conflict of interest that may arise between the client's instructions and the terms under which PWE&A Ltd is acting, or has acted, for another client at the time that it becomes apparent to PWE&A Ltd (where such third party instructions were received prior to the client's instructions). The client shall then be free to vary his contract with PWE&A Ltd in the light of this revelation to the extent that it is affected by the potential conflict of interest. Such a declaration by PWE&A Ltd shall be general in nature, so as not to prejudice the confidentiality with the third party.
3. PWE&A Ltd shall have the right to resign its contract in such circumstances if, in its judgement, it is unable to proceed with the contract and maintain its fiduciary duty. PWE&A Ltd shall receive payment in full for hours worked and expenses incurred to the date of disclosure, including all due contract stage payments but not including any entitlement to pro-rata payment for any amounts payable on completion such as performance fees or terminal payments.

7. Rights of Ownership

1. PWE&A Ltd warrants that all personnel, whether full-time employees or not, shall be employed on terms that protect the clients intellectual property rights.
2. Notwithstanding any payments received from the client, all rights of ownership to all materials prepared by PWE&A Ltd, whether written or not, shall remain the property of PWE&A Ltd.
3. Copyright and distribution rights are reserved by PWE&A Ltd at its sole discretion, except where these rights are explicitly stated in writing to have been waived or where the contract between PWE&A Ltd and the client explicitly so provides or where the material is so endorsed by PWE&A Ltd.
4. PWE&A Ltd grants the right, without prejudice to its position under the previous paragraph, to the client to copy freely any material provided by PWE&A Ltd as part of work wholly commissioned by the client provided that distribution of these copies is exclusively within the client's particular organisation. This clause shall apply to all reports, including the final client report, and all presentation materials. It shall also apply to any audio or videotaping of any presentations made by PWE&A Ltd for the

client. In addition, it applies to all training materials used to support PWE&A Ltd training sessions.

5. The right to distribute copies of PWE&A Ltd material internally within the Client's organisation does not extend to multi client and off the shelf market research reports which have been bought from PWE&A Ltd. Additional copies of such reports for internal distribution are available, at the time of purchase or later, at greatly reduced cost.
6. The client's interests in respect of this clause and any materials provided by the client to PWE&A Ltd are protected by PWE&A Ltd's blanket confidentiality commitment in respect of the dissemination of any and all materials related specifically to the client's affairs outlined in Clause 4 above.

8. Time Basis for Contracts

1. Where applicable, activity time may be calculated inclusive of travel time from the prior non-client activity (such as from the consultant's home, office, or third party premises).
2. The unit of activity is normally the day, except where otherwise agreed in advance.
3. Where the unit of activity is by the hour, all travel, office, administrative, preparatory, production and telephone time in addition to actual client meetings and external interviews, are chargeable at the agreed hourly rate for the individual concerned.
4. Activity logs shall be provided to clients upon request.

9. Expenses

1. In the case of 'net of expenses' contracts, PWE&A Ltd shall be authorised to incur, without prior notice to the client, reasonable travel expenses in performing the client's instructions. The client agrees to reimburse these in addition to the contract fee.
2. All expenses are payable for the total activity time: i.e. including travel to and from the client or travel to and from third parties on behalf of the client.
3. Invoices for expenses shall normally be presented monthly. PWE&A Ltd may, at its sole discretion, choose exceptionally to present invoices more or less frequently, to reflect the level of expense incurred.
4. Expenses incurred in foreign currency shall be billed at the actual exchange rate obtained (gross rates, including commission, handling charges etc, shall be used) except where this rate is not immediately available, such as for some credit card charges, when either the last rate obtained or an estimated rate shall be used at PWE&A Ltd's discretion.
5. 'Reasonable expenses' are those generally applied within international corporations for their senior executives. They vary to reflect the different standards applied to business travel in various parts of the world. For illustrative purposes, they may include, inter alia, Business Class international air travel and Economy (or 'coach') class internal flights, accommodation and incidental costs within an hotel suitable for international business affairs, all meals whilst acting on behalf of the client within an hotel's restaurant or an equivalent grade of individual premises, 1st class rail travel, taxis and car-hire costs for a mid-size or executive size vehicle as appropriate, entertainment costs for third-party contacts made on behalf of the client commensurate with obtaining the maximum value for money from the contact for the client. Where appropriate to the circumstances, we reserve the right to vary the class of travel to meet the business need. The client so authorises.

6. Allowable expenses are charged to the client at the gross invoice value. Expenses shall be charged inclusive of any sales taxes (or similar fiscal levies) where these are payable by us, whether or not we may be able to subsequently reclaim any part of these. VAT (and any other relevant tax) shall be added to the invoice amount in line with current government legislation at the rate ruling at the time of invoice.
7. Any additional charge for incidental expenses such as telephone, fax, copies of client commissioned reports, and presentation materials would normally be waived, except where such costs represent a significant proportion of the project value; such basis to be agreed by the client in advance.
8. The client should note that travel fares are sometimes charged on the basis of travel to and from PWE&A Ltd premises, which may not be the actual journey made, as our consultants may be travelling from a location required for another client's business.
9. PWE&A Ltd employees and associates are required to obtain receipts for expenses wherever practicable. These are retained by PWE&A Ltd and are available for inspection by the client upon his request.

10. Fees

1. The remuneration structure agreed between the client and PWE&A Ltd may be based on a number of methods. These are a 'retainer', a 'fixed fee', a 'time based rate' (e.g. day rate, also known as a per diem fee, or an hourly rate), a 'success fee', and a 'brokerage' or 'finder's fee'.
2. The client agrees to pay PWE&A Ltd according to the fee structure outlined in the project proposal, as amended by subsequent written correspondence.
3. A retainer fee shall be defined as a payment made to secure PWE&A Ltd's services for a fixed period of time. The retainer shall be automatically renewed except where either party gives the appropriate notice or is in breach of the contract or where otherwise defined in the specific terms of the contract.
4. Fixed fee contracts cover the performance of an agreed service as outlined in our project proposal for an agreed remuneration. Extra time incurred by PWE&A Ltd in the performance of the fixed fee component of a contract shall be borne by PWE&A Ltd.
5. The fee shall be fixed in the currency in which the quotation is made, regardless of exchange rate movement.
6. Where PWE&A Ltd introduces the client to a third party, which PWE&A Ltd identifies to the client as a potential partner (as defined below) PWE&A Ltd shall receive a payment from the client by way of a success fee, brokerage fee or finder's fee. The fee shall be triggered under the circumstances defined in the particular contract with the client, or in the absence of such agreement, by the conclusion of a legally binding agreement with a third party where this agreement results in significant part from the actions of PWE&A Ltd under the consultancy agreement and where the partner was explicitly identified to the client by PWE&A Ltd. It shall normally be expressed as a percentage of the value associated with the triggering event.
7. The percentage rate shall be determined in advance by negotiation to reflect the degree of involvement of PWE&A Ltd in the identification process.
8. Finder's fees, brokerage fees and success fees shall be agreed at the onset of the project.
9. In the context of this clause, 'partner' shall include, but not be limited to, all of the following: companies and individuals with whom the client concludes a collaboration

agreement; businesses acquired, whether for cash or equity; licensees and cross-licensees of intellectual property rights; joint-venture partnerships; distribution agreements with wholesalers, distributors and sales or marketing agents.

10. Where PWE&A Ltd provides an introduction whilst acting on behalf of the client that may lead to a right to a finder's fee subsequent to the completion of the assignment with the client, PWE&A Ltd shall be entitled to the said finder's fee whenever the agreement between the parties is concluded.

11. Valuation

1. This clause shall only apply to projects where PWE&A Ltd is to receive a 'success fee' or a 'finder's fee'.
2. The valuation attributed to an agreement for the purposes of calculating PWE&A Ltd's success fee shall depend on the type of partnership that is concluded.
3. For acquisitions, the valuation shall be the total amount paid for the partner's share capital or its business plus repayments of intercompany indebtedness, dividends (including tax credits) plus special emoluments or other benefits paid at the time of the transaction plus any deferred consideration or amount paid into escrow plus any other form of debt structuring or financial arrangements used to affect the price, pro-rated where appropriate to 100% of the capital of the target; otherwise known as the headline value.
4. For joint-ventures, the value shall be the targeted year 5 working capital (sum of equity and loans) of the venture as contained in the set-up documentation, or where this is not possible to determine, shall be negotiated between the parties to reflect the agreed value of the introduction.
5. For distribution agreements, the value of the finder's fee shall be based on the targeted year 5 sales of the venture, or where this is not possible to determine, shall be negotiated between the parties to reflect the agreed value of the introduction.
6. For licences and cross-licences and all other types of partnership not more explicitly covered elsewhere in this clause, the value shall be the value agreed between the client and the partner for the purposes of their relationship or, where no such value has been established, shall be negotiated between PWE&A Ltd and the client so as to accurately reflect the value of PWE&A Ltd's introduction to the client.
7. Where it is not possible to agree a value, both parties agree to submit the matter to mutually binding arbitration.

12. Cancellation Rights

1. The contract shall be regarded as a whole unless there are break points within it agreed in advance or it is divided into stages or where it is subject to periodic renewal. Where no such division is agreed in advance and stipulated in the contract, the client shall be liable for the totality of the value of the contract, including all expenses incurred to the date of cancellation, whether or not the client wishes the work to be completed.
2. If a consultancy contract is expected to be for an extended period or to have phases contingent upon the results of earlier work, it shall normally be divided into stages or subject to periodic renewal. Where such divisions apply, either party may choose not to continue the contract into the next phase without penalty (unless otherwise provided in the specific contract). Where such cancellation is by PWE&A Ltd the

client shall be entitled to a refund of that proportion of any advance of fees that relate to the remaining part of the contract.

3. Annually renewed service contracts and retainers shall be renewed automatically for a further 12 months unless either party gives the other the minimum notice of termination set out in the individual contract or in the absence of such a provision 90 days notice.
4. Where the client cancels, the client shall pay for all stages of the contract that have been commenced. Should he choose not to have work completed on the stage underway prior to cancellation he remains liable for payment in full of this stage? The client also agrees to pay all expenses incurred, whether or not these relate to the stages cancelled or to any prior stages.
5. Where performance under the contract of PWE&A Ltd's service is contingent upon the availability of a specific PWE&A Ltd employee or associate, the client shall have the right to cancel the contract if the person or persons essential to the timely completion of the project is unable to carry out the agreed function within a period of sixty days of the agreed deadlines due to ill health or other reason. In such circumstances the client shall not be liable for any further payment of fees but PWE&A Ltd shall be entitled to retain payments already made in lieu of work carried out to date and to recover all reasonable expenses incurred up to the date of cancellation.
6. Specific terms apply to cancellation in the event of a conflict of interest (see Clause 6), client insolvency (see Clause 18), illegal activities (Clause 19) or force majeure (Clause 21).
7. In the event of cancellation, expenses incurred referred to in this clause shall be interpreted as including all monies spent on behalf of the client plus all spending irrevocably committed to on the client's behalf by PWE&A Ltd up to the date of cancellation plus any cancellation charges that may be levied by third party suppliers as a result of the contract cancellation.
8. The client agrees that cancellation of arranged dates or projects shall incur cost penalties as follows:
 - Cancellation with more than 20 working days notice – no cost penalty
 - Cancellation with less than 20 working days notice – 50% of the arranged fee shall be charged
 - Cancellation with less than 10 working days notice – 75% of the arranged fee shall be charged
 - Cancellation without notice or incidents of non-attendance – 100% of the arranged fee shall be charged

13. Payment Terms

1. The client agrees to be bound by the payment terms specified at the time of the initial order.
2. If the client fails to make any final payment without giving notification of due cause, then PWE&A Ltd shall withhold delivery of any final reports and shall not be responsible for any inconvenience, loss or damage so caused.
3. In respect of any delays in interim payments attention is drawn to clause 14.2 below.
4. The currency of payment shall be stipulated in the client contract. Both parties agree to accept this in respect of all invoices and payments.

5. Unless otherwise explicitly provided by an individual contract, no account shall be taken of any exchange rate fluctuations during the life of the contract. Each party accepts as their own responsibility the variation, whether favourable or unfavourable, that they may see in local currency terms in respect of the contract.
6. The client's responsibility is for payment to PWE&A Ltd of the full amount agreed. The client agrees to adjust all payments to take into account any charges levied (such as may be made by the transferring bank), such that the full amount is received by PWE&A Ltd. The client accepts that PWE&A Ltd shall be entitled to recover all deducted amounts.
7. The client agrees to make payment by the method stipulated in the contract to the location stipulated in the contract. PWE&A Ltd shall be entitled to recover any costs caused by any client variations in this respect not agreed in advance.
8. The client agrees to pay all government taxes and duties, regardless of origin, that may apply to all payments to PWE&A Ltd. The client further agrees that, should there be a change in type or value during the life of the contract, whether favourable or unfavourable to the client, he shall be responsible for them in totality. Each party shall be responsible for recovering his own entitlements in respect of pre-payments (for example in respect of VAT or sales tax).
9. PWE&A Ltd shall be entitled to charge interest in line with the late payment of commercial debts (interest) act 1998 at 8% over base rate on all amounts that remain unpaid after the agreed payment date.
10. In the absence of any other agreed payment terms, all invoices shall be due for payment within 30 days of the date of the invoice.
11. Any invoice outstanding beyond this period shall be referred to Daniels Silverman Limited and will be subject to a surcharge of 15% plus vat to cover the collection costs incurred. This surcharge together with all other charges and legal fees incurred shall be the responsibility of the client and shall be legally enforceable.

14. Stage Payments

1. Most contracts that extend across several months provide for stage payments. These are negotiated in advance as part of the normal discussions prior to agreement of the contract.
2. PWE&A Ltd shall have the right to suspend all work on behalf of the client should these payments not be made on time to the agreed schedule. Any adverse impact that this suspension has upon the completion schedule or the quality of the product for the client shall be at the client's sole responsibility. This right applies not just to the contract in arrears but also any other contracts with the client, whether or not payments against these contracts are in arrears.
3. In particular, clients should note that where it has been agreed that payment of all or part of a contract is to be made 'in advance' work shall not commence on the client's behalf until payment is actually received.

15. Liability for Advice Given

1. PWE&A Ltd provides information, advice and services in good faith based upon information available at the time. We do not warrant the accuracy of information provided. It is for the client to decide whether or not to accept our advice in making his own management decision. We advise that any data critical to a decision should be independently verified prior to being acted upon. Therefore PWE&A Ltd accepts no liability for the consequences of its information opinions and advice whether direct or indirect.

16. Publicity

1. PWE&A Ltd shall have the right, without further reference to the client, to publicise the fact that the client is, or was, a client and to utilise the client's name in publicity materials in this respect. PWE&A Ltd may also describe in general terms the type of work conducted for the client, but shall not link the two without the prior permission of the client.
2. Wherever the results of any commissioned work are cited by the client, the client agrees to make due reference to PWE&A Ltd so as to make it clear who carried out the work, except where PWE&A Ltd explicitly waives this right. This provision is notwithstanding the over-riding position over ownership of said product (outlined in Clause 7, Rights of Ownership, above).
3. The Client may not publicise his relationship with PWE&A Ltd or use any part of the PWE&A Ltd brand (or imagery deliberately intended to be similar in appearance) without the express permission of PWE&A Ltd.

17. Recruitment of Personnel

1. Each party undertakes not to attempt to solicit or procure the services of staff employed by the other party who are involved in the performance of this contract during the course of this contract and for a period of six months thereafter without the written permission of the other party.
2. The client agrees to pay PWE&A Ltd a 'finders fee' should the client recruit a PWE&A Ltd consultant to a paid employment position within two years of the conclusion of any work on behalf of the client by that Consultant or of that Consultant being introduced to the client whichever is the later.
3. In respect of this clause, the definition of 'Consultant' shall include all PWE&A Ltd's employees and associates that are involved in the provision of services to the client under this or any other contract.
4. The 'finder's fee' shall be 30% of the first year's gross remuneration payable by the client or its associates to the consultant.

18. Insolvency

1. PWE&A Ltd shall have the right to discontinue immediately all work for the client should he or another person petition for his bankruptcy, or he be declared insolvent, or he be placed into administrative receivership or be generally unable to pay his bills as they become due.
2. In these circumstances PWE&A Ltd shall also be entitled to have a general lien on all goods and property of the client that is within PWE&A Ltd's possession and,

following 14 days notice to dispose of such goods and property in such manner and at such prices as PWE&A Ltd thinks fit and to apply the proceeds towards such debts.

19. Illegal activities

1. PWE&A Ltd shall not carry out any illegal activities on behalf of the client. Any requirement in this respect shall nullify this contract in respect of performance and PWE&A Ltd shall be entitled to recover in full its fee and expenses.
2. The client agrees not to make any illegal use of any information provided by PWE&A Ltd.
3. Neither party shall be liable to the other for any indirect, special or consequential damages.

20. Limitation of liability

1. Without prejudice to other more restrictive limitations elsewhere in this contract, liability on the part of PWE&A Ltd is limited to the value of the contract with the client or the value of the loss whichever is the smaller. PWE&A Ltd accepts no liability for the consequences of its information, opinions and advice, whether direct or indirect.

21. Force Majeure

1. Whilst PWE&A Ltd agrees to use its best endeavours to perform the contract for the client as specified and shall not be responsible for any delays or failure to complete the contract which are beyond its control and which could not have been reasonably predicted.
2. Where the delay caused by third party events outside either party's control or influence causes such delay that the purpose of the contract is wholly or significantly destroyed, either party shall be entitled in these circumstances to cancel the remaining portion of the contract. In such circumstances the client shall not make any further payments of fees but there shall be no refund of payments already made (including any payments for that part of the contract that remains unfulfilled) and PWE&A Ltd shall be entitled to recover any costs already incurred.

22. Jurisdiction

1. Any disputes or claims shall be governed by and construed in accordance with English law and the jurisdiction of the English courts.

23. Arbitration

1. All unresolved disputes between the parties shall be referred to arbitration before a single arbitrator to be appointed, in default of agreement otherwise.
2. Both parties also agree that all disputes arising with respect to this contract shall be arbitrated upon within the English legal system.

24. Waiver

1. The failure by either party to enforce at any time or for any period any one or more of the terms and conditions of this agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this agreement.

25. Integral part of contract

1. The client agrees that all of the above terms form part of the contract between PWE&A Ltd and the client, except where explicitly excluded or modified by a contract and shall take precedence over and shall not be varied by any other means including any terms or conditions that the client may from time to time apply to suppliers.
2. The client agrees to inform PWE&A Ltd in writing within ten days of the delivery of service of any points or issues that may influence the payment of invoices when presented.
3. The client appointing PWE&A Ltd by verbal contract, accepts that all of these terms have been read, understood and agreed.