



## **Terms & Conditions – Carbon Footprint Consultancy Services & Related Products**

### **1. Definitions**

- 1.1. General: Carbon Footprint Ltd provides consultancy services & related products
- 1.2. Scope: These Terms & Conditions (hereinafter referred to as the "Terms") are incorporated into and form an integral part of all contracts (hereinafter referred to as the "Contract") in which Carbon Footprint Ltd provides consultancy services and related products
- 1.3. The Parties: Carbon Footprint Ltd of England (hereinafter known as 'Carbon Footprint') and the Client: 'the Client' are the parties to the Contract.
- 1.4. If any clause in these Terms shall be rendered unenforceable by Governmental action or legal judgement then all other clauses shall remain in force.

### **2. Performance**

- 2.1. All commitments with respect to the timing and scope of a Contract given to the client by Carbon Footprint - 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 Carbon Footprint agrees to use its reasonable endeavours to fulfill such commitments to clients on the timing and the scope of consultancy and other projects Carbon Footprint cannot guarantee performance in either respect.
- 2.2. Where the Contract specifies that Carbon Footprint services will be provided by a named individual, Carbon Footprint agrees to take reasonable steps to ensure that these persons will remain on such assignments for the full length of the Contract.
- 2.3. Carbon Footprint further agrees to obtain the Client's agreement to any significant substitution of personnel that is necessitated by unforeseen circumstances - such as staff sickness.

### **3. Confidentiality**

- 3.1. Carbon Footprint agrees to hold all information provided by the Client confidential where the Client so specifies, save where such information is known to Carbon Footprint already, or exists already in the public domain, until, either the information enters the public domain, or Carbon Footprint 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 Carbon Footprint by a court of law (including non-payment of account) or three years have elapsed - whichever is the sooner.
- 3.2. The Client agrees to hold confidential all information about Carbon Footprint's proposal(s), fee structures, fees and personnel.

### **4. Materials Supplied**

- 4.1. Carbon Footprint agrees to handle any materials, such as product samples or documents, supplied by the Client to Carbon Footprint in a responsible fashion and return them to the Client upon request. However, Carbon Footprint will 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 Carbon Footprint is not liable for any direct or indirect or consequential loss.

### **5. Conflict of Interest**

- 5.1. Carbon Footprint will 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 an agreement to act for the third party Clauses 5.2 and 5.3 shall apply in respect of the Contract.
- 5.2. Carbon Footprint 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 Carbon Footprint is acting, or has acted, for another client at the time that it becomes apparent to Carbon Footprint officers (where such third party instructions were received prior to the Client's instructions). The Client will then be free to vary the contract with Carbon Footprint in the light of this revelation to the extent that it is affected by the potential conflict of interest. Such a declaration by Carbon Footprint will be general in nature, so as not to prejudice the confidentiality with the third party.
- 5.3. Carbon Footprint will have the right to terminate the Contract for convenience in such circumstances if, in its judgment, it is unable to proceed with the Contract and maintain its fiduciary duty. Carbon Footprint 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.

### **6. Rights of Ownership**

- 6.1. Carbon Footprint warrants that all personnel, whether full-time employees or not, will be employed on terms that protect the Client's intellectual property rights.
- 6.2. Each party shall retain all intellectual property rights in its pre-existing and proprietary materials including, but not limited, to software, documentation, tool-sets, and data, of whatever nature and in whatever media owned, developed or controlled by it.
- 6.3. Where Carbon Footprint provides under the Contract, software databases, analysis, reports, supplier and technology evaluations, drawings, charts, and graphs held both electronically and on paper (hereinafter referred to a "Deliverables") such Deliverables shall be subject to the terms of this Clause 6
- 6.4. Carbon Footprint grants to The Client a non-exclusive, transferable and irrevocable license to use the Deliverables for its use only subject to the terms of the Contract. Carbon Footprint shall retain exclusive ownership of the intellectual property rights embodied in the Deliverables. Notwithstanding the foregoing, where any reference is made in any Deliverable to specific activities of The Client the same shall be considered confidential and shall not be used, processed or disclosed by Carbon Footprint other than in connection with the Services or with The Client's written consent.
- 6.5. Notwithstanding anything else in this Contract Carbon Footprint shall not be prevented or restricted from:



- 6.5.1. using any skills and experience similar to those provided hereunder elsewhere in the course of its business operations; or
- 6.5.2. using any know-how gained in performing the Services, provided that Carbon Footprint's use of such know-how does not breach Carbon Footprint's obligations of confidence to The Client hereunder or any intellectual property rights of The Client.
- 6.6. Intellectual Property Claims: Carbon Footprint will defend or settle, at its option, any legal proceeding brought against The Client, to the extent that it is based on a claim that any Deliverable infringes in the United Kingdom (or such other territory or territories as may be agreed in the Contract a third party's patent, trade secret, or copyright). Carbon Footprint will indemnify The Client against all damages and costs attributable exclusively to such claim awarded by the court finally determining the case, PROVIDED THAT The Client:
  - 6.6.1. gives written notice of the claim promptly to Carbon Footprint;
  - 6.6.2. gives Carbon Footprint sole control of the defence and settlement of the claim;
  - 6.6.3. does not compromise or settle such claim;
  - 6.6.4. provides to Carbon Footprint, at Carbon Footprint's expense, all available information and assistance;
  - 6.6.5. uses all reasonable endeavors to mitigate any losses or damage.
- 6.7. If any Deliverable is found to infringe, or in the reasonable opinion of Carbon Footprint is likely to be the subject of a claim, Carbon Footprint may, at its option:
  - 6.7.1. obtain for The Client the right to use the Deliverable;
  - 6.7.2. replace or modify the Deliverable so that it becomes non-infringing; or
  - 6.7.3. remove the Deliverable and refund the Fees paid.
- 6.8. Carbon Footprint shall have no liability or obligation to the extent that any claim results from:
  - 6.8.1. use of any Deliverable in combination with any software, hardware, products or other equipment or materials not supplied by or approved in writing by Carbon Footprint;
  - 6.8.2. Carbon Footprint's compliance with designs or specifications of The Client;
  - 6.8.3. use of an allegedly infringing version of the Deliverable, if the infringement could have been avoided by the use of a different version made available to The Client by Carbon Footprint; or
  - 6.8.4. modification, repair, adjustment or enhancement of the Deliverable other than at Carbon Footprint's written direction.
- 6.9. In no circumstances shall Carbon Footprint be liable for any losses, costs or expenses incurred by the Client without Carbon Footprint's written authorisation or for any indirect, consequential or special loss or damage. So far as permitted by law, Carbon Footprint's aggregate liability in respect of any claim for infringement of patent or for any other claim under this Clause shall be £1,000,000 (one million pounds)
- 6.10. Clauses 6.6 to 6.9 state the entire liability and obligation of Carbon Footprint and exclusive remedy of The Client for claims that any Deliverable infringes a third party's intellectual property rights.
- 6.11. 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 Carbon Footprint for the Client. In addition, it applies to all training materials used to support Carbon Footprint training sessions.

- 6.12. The right to distribute copies of Carbon Footprint material internally within the Client's organisation does not extend to multi-client and off-the-shelf market research reports that have been bought from Carbon Footprint. Additional copies of such reports for internal distribution are available, at the time of purchase or later, at a commercially agreed cost.
- 6.13. The Client's interests in respect of this clause and any materials provided by the Client to Carbon Footprint are protected by Carbon Footprint's confidentiality commitment in respect of the dissemination of any and all materials related specifically to the Client's affairs outlined in Clause 3 above.

## 7. Licence Terms

- 7.1. Where Carbon Footprint licenses the use of Deliverables that are subject to an annual license fee under the terms of any Contract and the Client continues to use the Deliverables beyond the term of any licence fee the Client will have deemed to have extended the term of the license for the Deliverable and Carbon Footprint shall be entitled to invoice and receive payment for the continued use of the Deliverables at the current published fee or other fee as notified by Carbon Footprint to the Client.

## 8. Expenses

- 8.1. Carbon Footprint Contracts stipulate either 'fixed price' (ie all expenses will be included within the pre-negotiated fee and not charged supplementary to the Client) or 'fee plus expenses' in which case travel expenses are levied in addition to the agreed fee.
- 8.2. Carbon Footprint does not levy a fixed daily dislocation charge.
- 8.3. In the case of 'fee plus expenses' contracts, Carbon Footprint is hereby authorised to incur, without prior notice to the client, travel expenses in accordance with the current Carbon Footprint policy.
- 8.4. All expenses are payable for the total activity time ie including travel to and from the Client or travel to and from third parties on behalf of the Client.
- 8.5. Invoices for expenses will normally be presented monthly. Carbon Footprint may, at its sole discretion, choose exceptionally to present invoices more or less frequently, to reflect the level of expense incurred.
- 8.6. Expenses incurred in foreign currency will be billed at the actual exchange rate obtained (gross rates, including commission, handling charges etc, will 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 will be used at Carbon Footprint's discretion.
- 8.7. Expenses are re-imbursable immediately and the Client accepts that they are not subject to any credit terms or delayed payment clauses that may relate to some or all the consultancy services.
- 8.8. Where appropriate to the circumstances, Carbon Footprint reserves the right to vary the class of travel to meet the business need.
- 8.9. Travel expenses are charged to the Client at the gross invoice value. Expenses will be charged inclusive of any



sales taxes (or similar fiscal levies) where these are payable by Carbon Footprint, whether or not Carbon Footprint may be able to subsequently reclaim any part of these. VAT (and any other relevant tax) will be added to the invoice amount in line with current government legislation at the rate ruling at the time of invoice.

- 8.10. 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 and are agreed by the Client in advance.
- 8.11. The Client should note that travel fares are sometimes charged on the basis of travel to and from Carbon Footprint premises, which may not be the actual journey made, as our consultants may be travelling from a location required for another client's business.
- 8.12. Carbon Footprint employees are required to obtain receipts for expenses wherever practical. These are retained by Carbon Footprint and are available for inspection by the Client upon his request.

## 9. Fees

- 9.1. The remuneration structure agreed between the Client and Carbon Footprint may be based on a number of methods. These are a 'retainer', a 'fixed fee', a 'time based rate' (e.g. daily rate, also known as a per diem fee or an hourly rate).
- 9.2. The Client agrees to pay Carbon Footprint according to the fee structure defined in the Contract.
- 9.3. 'Retainer fee' shall be defined as a payment made to secure Carbon Footprint'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.
- 9.4. Fixed fee contracts cover the performance of an agreed service for an agreed remuneration. Extra time incurred by Carbon Footprint in the performance of the 'fixed fee' component of a contract shall be borne by Carbon Footprint. The fee shall be fixed in the currency in which the quotation is made, regardless of exchange rate movement.
- 9.5. The 'daily rate' and 'hourly rate' shall be charged in accordance with the criteria defined in this Clause 9.

## 10. Cancellation Rights

- 10.1. 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.
- 10.2. If the Contract is expected to be for an extended period or to have phases contingent upon the results of earlier work, it will 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 Carbon Footprint 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.

- 10.3. 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.
- 10.4. Where the Client cancels the Contract, the Client shall pay for all stages of the Contract that have been commenced. Should the Client choose not to have work completed on the stage underway prior to cancellation the Client remains liable for payment in full of this stage. In addition the Client shall be invoiced for 10% of the remaining balance of the contract value, for stages that have been cancelled.
- 10.5. Where performance of the Contract is contingent upon the availability of a specific Carbon Footprint 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 Contract 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 Carbon Footprint 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.
- 10.6. Specific terms apply to cancellation in the event of a conflict of interest (see Clause 5), Client insolvency (see Clause 17), Illegal activities (Clause 18) or Force Majeure (Clause 20).
- 10.7. In the event of cancellation by the Client, expenses incurred referred to in this clause 10 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 Carbon Footprint 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.
- 10.8. Carbon Footprint reserves the right to terminate the contract of a Client for whom a period of 6 months has elapsed between contract and commencement of project work by Carbon Footprint, should this be caused by the Client (for example but not limited to - failure to produce adequate datasets or to agree meeting dates for consultancy work to begin). In this instance, no refund shall be payable to the Client on monies already paid. In addition the client will be invoiced for 10% of the remaining balance of the contract value.

## 11. Payment Terms

- 11.1. The Client agrees to be bound by the payment terms stipulated in the Contract.
- 11.2. If the Client fails to make any final payment without giving notification of due cause, then Carbon Footprint will withhold delivery of any final reports and will not be responsible for any inconvenience, loss or damage so caused.
- 11.3. In respect of any delays in interim payments attention is drawn to Clause 12.2 below.
- 11.4. The currency of payment will be stipulated in the Contract. Both parties agree to accept this in respect of all invoices and payments.
- 11.5. Unless otherwise explicitly provided in the Contract, no account will 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.

- 11.6. The Client's responsibility is for payment to Carbon Footprint 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 Carbon Footprint receives the full amount. The Client accepts that Carbon Footprint shall be entitled to recover all deducted amounts.
- 11.7. The Client agrees to make payment by the method stipulated in the Contract to the location stipulated in the Contract. Carbon Footprint shall be entitled to recover any costs caused by any Client variations in this respect not agreed in advance.
- 11.8. The Client agrees to pay all government taxes and duties, regardless of origin, that may apply to all payments to Carbon Footprint. 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, the Client will be responsible for them in totality. Each party will be responsible for recovering his own entitlements in respect of pre-payments (for example in respect of VAT or sales tax).
- 11.9. Carbon Footprint shall be entitled to charge interest at the rate of 3% per month on all amounts that remain unpaid 30 days after the agreed payment date
- 11.10. In the absence of any other agreed payment terms, all invoices shall be payable in full within 30 days of the date of the invoice.

## 12. Stage Payments

- 12.1. Contracts that extend across several months may be subject to stage payments. Where applicable, these are defined in the Contract.
- 12.2. Carbon Footprint shall have the right to suspend all work on behalf of the Client where the Client has not completed the Stage Payments on time to the agreed schedule. Any adverse impact that this suspension has upon the completion of the Contract 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.
- 12.3. When it has been agreed that payment of all or part of the Contract is to be made 'in advance', Carbon Footprint will not commence work on the Contract until the agreed payment is received from the Client in its entirety.

## 13. Appropriate use

- 13.1. Where a Client purchases carbon offsets/carbon credits, the Client agrees that these are not bought as either personal investments (e.g. with intent to re-sell at a later date) or to be re-sold to other buyers, known to be purchasing the carbon offsets/ carbon credits as a personal investment.

## 14. Liability for Advice Given

- 14.1. Carbon Footprint provides information, advice and services in good faith based upon information available at the time and does not warrant the accuracy of information provided. It is for the Client to decide whether or not to accept Carbon Footprint's advice. Carbon Footprint advises that any data

critical to a decision should be independently verified prior to being acted upon. Therefore Carbon Footprint accepts no liability for the consequences of its information opinions and advice whether direct or indirect.

## 15. Publicity

- 15.1. Carbon Footprint 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. Carbon Footprint may also describe in general terms the type of work conducted for the Client, but shall not be permitted to link the two without the prior permission of the Client.
- 15.2. Wherever the results of any commissioned work are cited by the Client, the Client agrees to make due reference to Carbon Footprint so as to make it clear who carried out the work, except where Carbon Footprint explicitly waives this right. This provision is notwithstanding the over-riding position over ownership of said product (outlined in Clause 6, Rights of Ownership, above).

## 16. Recruitment of Personnel

- 16.1. 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.
- 16.2. The Client agrees to pay Carbon Footprint a 'finder's fee' should the Client recruit a Carbon Footprint 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.
- 16.3. In respect of this clause, the definition of 'Consultant' shall include all Carbon Footprint employees and Associates that are involved in the provision of services to the Client under this or any other Contract.
- 16.4. The 'finder's fee' shall be 30% of the first year's gross remuneration payable by the Client or its Associates to the Consultant.

## 17. Insolvency

- 17.1. Carbon Footprint shall have the right to discontinue immediately all work for the Client should Carbon Footprint or another person petition for the Client's bankruptcy, or the Client be declared insolvent, or the Client be placed into administrative receivership or be generally unable to pay invoices as they become due.
- 17.2. In these circumstances Carbon Footprint will also be entitled to have a general lien on all goods and property of the Client that is within Carbon Footprint's possession and, following 14 days notice to dispose of such goods and property in such manner and at such prices as Carbon Footprint thinks fit and to apply the proceeds towards such debts.

## 18. Illegal activities

- 18.1. Carbon Footprint will not carry out any illegal activities on behalf of the Client. Any requirement in this respect will nullify this Contract in respect of performance and Carbon Footprint will be entitled to recover in full its fee and expenses.
- 18.2. The Client agrees not to make any illegal use of any information provided by Carbon Footprint.



other means including any terms or conditions that the Client may from time to time apply to suppliers.

**19. Limitation of liability**

19.1. Without prejudice to other more restrictive limitations elsewhere in this Contract, liability on the part of Carbon Footprint is limited to the value of the Contract with the Client or the value of the loss whichever is the smaller. Carbon Footprint accepts no liability for the consequences of its information, opinions and advice, whether direct or indirect.

19.2. Neither party shall be liable to the other for any indirect, special or consequential damages.

**20. Force Majeure**

20.1. Whilst Carbon Footprint agrees to use its reasonable endeavours to perform the Contract for the Client as specified, Carbon Footprint will not be responsible for any delays or failure to complete the Contract which are beyond Carbon Footprint's control and which could not have been reasonably predicted.

20.2. 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 will not make any further payments of fees but there will be no refund of payments already made (including any payments for that part of the Contract that remains unfulfilled) and Carbon Footprint will be entitled to recover any costs already incurred.

**21. Assignment**

21.1. The Client shall not, without Carbon Footprint's prior written consent, assign or transfer or purport to assign or transfer the Contract to which these conditions relate or the benefit thereof to any other person whomsoever.

**22. Jurisdiction**

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

**23. Arbitration**

23.1. All unresolved disputes between the Parties shall be referred to arbitration in London before a single arbitrator to be appointed.

23.2. Both parties also agree that all disputes arising with respect to this contract will be arbitrated upon within the English legal system.

**24. Waiver**

24.1. 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**

25.1. The Client, on appointing Carbon Footprint for consultancy services, accepts that all of these terms have been read, understood and agreed.

25.2. The Client agrees that all of the above terms form part of the Contract between Carbon Footprint and the Client, except where explicitly excluded or modified by the Contract and shall take precedence over and shall not be varied by any