

## **Productivity and Technology Teardowns**

Thank you for booking your Teardown session. I look forward to our call.

Below you will find my standard Terms and Conditions which are designed to provide a clear structure for us both to work together.

**You are purchasing a Productivity or Technology Teardown which consists of the following service:**

- **A 45 minute Skype / mobile call to be booked in at mutually convenient time.**
- **During the call we can do a screen sharing session to look together at your screen.**
- **We use TeamViewer software for this process and I will send you a link in advance to get this setup.**

### **Cancellation policy**

- Either of us may cancel the Session by notice in writing, by email or telephone no less than 24 hours prior to the start of the Session.
- If you cancel the Session with less than 24 hours notice you will be liable for the full Session fee.
- If either of us cancel the Session, we will reschedule the Session at the earliest mutually convenient time.

### **Customer responsibilities**

- You will need to be able to give remote access to your computer and therefore expect you to have a good internet connection (at a minimum ADSL broadband connectivity).
- You are responsible for ensuring your computer is backed up.
- Please have TeamViewer running in advance so we can make the most of our time together

## **TERMS AND CONDITIONS OF BUSINESS**

**of**

**Be Nimble Ltd ("Supplier")**

**The Customer's attention is particularly drawn to the provisions of clause 8.**

These terms clarify the agreement between the 'supplier' Be Nimble Ltd trading as Digital Dragonfly, Company Registration 07157143, VAT registration 991 7143 93, of Registered Office c/o Crunch Accounting Ltd, Unit 11 Hove Business Centre, Fonthill Road, Hove, East Sussex, BN3 6HA and the 'customer' for the provision of consultancy services.

## 1. INTERPRETATION

1.1 In these Conditions, the following definitions apply:

**Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

**Contract:** the contract between Supplier and the Customer for the supply of Services in accordance with these Conditions.

**Deliverables:** the deliverables produced by Supplier for the Customer in accordance with the Proposal;

**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Order:** the Customer's written acceptance of a Proposal by Supplier.

**Proposal:** the description of the Services provided in writing by Supplier to the Customer.

**Services:** IT consultancy including any Deliverables, if applicable, supplied by Supplier to the Customer as set out in the Proposal.

**Supplier Materials:** has the meaning set out in clause 4.1(e).

1.2 In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its personal representatives, successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) a reference to **writing** or **written** includes e-mails provided they are backed up by post.

## 2. BASIS OF CONTRACT

2.1 The Order i.e. the written acceptance by the Customer of the Proposal constitutes an offer by the Customer to purchase Services in accordance with these Conditions.

- 2.2 The Order shall only be deemed to be accepted when Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Supplier which is not set out in the Contract.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5 Any quotation given by Supplier shall not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue.

### **3. SUPPLY OF SERVICES**

- 3.1 Supplier shall supply the Services to the Customer in accordance with the Proposal and any further requests for services from the Customer in all material respects and shall use all reasonable endeavours to meet any performance dates specified in the Proposal, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.2 Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and Supplier shall notify the Customer in any such event.
- 3.3 Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

### **4. CUSTOMER'S OBLIGATIONS**

- 4.1 The Customer shall:
- (a) ensure that the terms of the Order are complete and accurate;
  - (b) co-operate with Supplier in all matters relating to the Services;
  - (c) provide Supplier with such information and materials as Supplier may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
  - (d) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;
  - (e) if applicable, keep and maintain all materials, equipment, documents and other property of Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain Supplier Materials in good condition

until returned to Supplier, and not dispose of or use Supplier Materials other than in accordance with Supplier's written instructions or authorisation;

- (f) not employ any of Supplier's contractors or staff without Supplier's prior consent; and
- (g) comply with such extra obligations as are set out in the Proposal.

4.2 If Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays Supplier's performance of any of its obligations;
- (b) Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2; and
- (c) the Customer shall reimburse Supplier on written demand for any costs or losses sustained or incurred by Supplier arising directly or indirectly from the Customer Default.

## 5. CHARGES AND PAYMENT

5.1 The charges for the Services shall be the following basis:

- (a) the charges shall be calculated in accordance with Supplier's rates as set out in the Proposal; and
- (b) Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom Supplier engages in connection with the Services including, but not limited to, the cost of services provided by third parties and required by Supplier for the performance of the Services, and for the cost of any materials. These will be set out in the Proposal.

5.2 Supplier shall invoice the Customer as set out in the Proposal

5.3 The Customer shall pay each invoice submitted by Supplier:

- (a) within 7 days of the date of the invoice; and
- (b) in full and in cleared funds to a bank account nominated in writing by Supplier, and

time for payment shall be of the essence of the Contract.

- 5.4 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from Supplier, pay to Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.5 Without limiting any other right or remedy of Supplier, if the Customer fails to make any payment due to Supplier under the Contract by the due date for payment (**Due Date**), Supplier shall have the right to charge interest on the overdue amount at the rate of three per cent per annum above the then current Bank of England's base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 5.6 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against Supplier in order to justify withholding payment of any such amount in whole or in part. Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Supplier to the Customer.

## **6. INTELLECTUAL PROPERTY RIGHTS**

- 6.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by Supplier.
- 6.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on Supplier obtaining a written licence from the relevant licensor on such terms as will entitle Supplier to license such rights to the Customer.
- 6.3 All Supplier Materials are the exclusive property of Supplier.

## **7. CONFIDENTIALITY**

A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, Proposals, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those

which bind the Receiving Party. This clause 7 shall survive termination of the Contract.

Subject to the above, the Customer grants Supplier the right to use the Customer's name and business for promotional purposes or as a case study.

**8. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

8.1 Nothing in these Conditions shall limit or exclude Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

8.2 Subject to clause 8.1:

- (a) Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of data or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the amount payable for the Services.

8.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

8.4 This clause 8 shall survive termination of the Contract.

**9. TERMINATION**

9.1 Without limiting its other rights or remedies, Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.

9.2 Without limiting its other rights or remedies, unless stated otherwise in the Proposal, each party shall have the right to terminate the Contract by giving the other party one month's written notice. For the avoidance of doubt, in the case of early termination of the Tech Ninja Plan, the full annual fee stated on the Proposal remains payable .

## 10. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to Supplier all of Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, 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; and
- (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## 11. GENERAL

### 11.1 Force majeure:

- (a) For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- (b) Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- (c) If the Force Majeure Event prevents Supplier from providing any of the Services for more than six weeks, Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

### 11.2 Assignment and subcontracting:

- (a) Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may

subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

- (b) The Customer shall not, without the prior written consent of Supplier, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

11.3 Notices:

- (a) Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business.
- (b) Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed
- (c) This clause 11.3 shall not apply to the service of any proceedings or other documents in any legal action.

11.4 Waiver:

- (a) A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- (b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

11.5 Severance:

- (a) If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.



- 11.6 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 11.7 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 11.8 Variation: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by Supplier.
- 11.9 Governing law and jurisdiction: This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.