



**FIRST** CORPORATE  
LAW SERVICES

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COMPANY LAW | COMPANY SECRETARIAL

**FCLS GROUP LIMITED**  
**TERMS AND CONDITIONS OF BUSINESS**

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

**1. INTERPRETATION**

1.1 Definitions. 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.

**Charges:** the charges payable by the Customer for the supply of the Services in accordance with clause 5.

**Client Information:** means all information of any type and in any format relating to the Customer's clients which is provided to the Supplier in order to employ the Supplier to perform the Services pursuant to the Contract.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 10.10.

**Contract:** the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions and our engagement letter which contains the hyperlink to these Conditions .

**Customer:** the person or firm who purchases Services from the Supplier.

**Deliverables:** the deliverables produced by the Supplier for the Customer.

**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 order for Services as sent to the Supplier.

**Services:** the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Specification.

**Specification:** the description or specification of the Services provided in writing by the Supplier to the Customer or as may be detailed on the Supplier's website from time to time.

**Supplier:** FCLS Group Limited registered in England and Wales with company number 03294502 and whose registered office is at 16 Churchill Way, Cardiff, CF10 2DX

1.2 Construction. 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) any phrase introduced by the terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) A reference to **writing** or **written** includes faxes and e-mails.

## **2. BASIS OF CONTRACT**

- 2.1 If we have sent you an engagement letter then the Contract shall come into existence on the date that you accept in writing the terms contained within our engagement letter which has been sent to you or on the day you send us your first instructions after receiving our engagement letter except in circumstances when no engagement letter has been sent to you in which case the acceptance of by the Supplier of an Order means the Contract shall come into existence on the date the Order is so accepted. .
- 2.2 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 2.3 Each Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order or provides the Services to the Customer.
- 2.4 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 the Supplier which is not set out in the Contract.
- 2.5 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures (or on the Supplier's website), are issued or published for the sole purpose of giving an approximate idea of the Services. They shall not form part of the Contract or have any contractual force.
- 2.6 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.
- 2.7 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

## **3. SUPPLY OF SERVICES**

- 3.1 The Supplier shall supply the Services to the Customer in accordance with the Specification in all material respects.
- 3.2 The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Contract or in correspondence with the Customer, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 3.4 The 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 the Supplier in all matters relating to the Services;
  - (c) Provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects.

- 4.2 If the 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) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services (where possible) 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 the Supplier's performance of any of its obligations;
  - (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the 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 the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

## 5. CHARGES AND PAYMENT

- 5.1 The Charges for the Services shall be:
- (a) calculated in accordance with the Supplier's standard fee rates as either provided to you and/or as published on the Supplier's website (from time to time) or otherwise confirmed in writing; and
  - (b) The Supplier shall be entitled to charge the Customer for any additional expenses which are reasonably incurred by the individuals whom the Supplier engages in connection with the Services.
- 5.2 The Supplier reserves the right to revise their charges annually.
- 5.3 The Supplier shall primarily invoice the Customer on commencement of the Services, but may agree to payment terms monthly in arrears for any Services which are provided over an extended period of time.
- 5.4 The Customer shall pay each invoice submitted by the Supplier:
- (a) Within 30 days of the date of the invoice; and
  - (b) In full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.
- 5.5 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 the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the 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.
- 5.6 Without limiting any other right or remedy of the Supplier, if the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment (**Due Date**), the Supplier shall have the right to charge interest on the overdue amount at the rate of 8% per annum above the then current Bank of England's base rate (under the Late Payment of Commercial Debt (Interest) Act 1998) 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.
- 5.7 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 the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the 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 the Supplier.

## 7. CONFIDENTIALITY

A party (**Receiving Party**) shall keep in strict confidence all Client Information, technical or commercial know-how, specifications, 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.

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

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

- (a) Death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; or
- (b) Fraud or fraudulent misrepresentation.

- 8.2 Subject to clause 8.1:

- (a) The 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, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with an Order, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the amount paid by the Customer to the Supplier for each Order.

- 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. CONSUMER/BUSINESS

- 9.1
- (a) If you are a consumer you may only purchase Services if you are 18 years old.
  - (b) Advice about your legal rights as a Consumer is available from your local Citizens' Advice Bureau or Trading Standards Office. Nothing in these Conditions will affect these legal rights.
  - (c) You may have a legal right to cancel a Contract with us under the Consumer Protection (Distance Selling) Regulations 2000, but cancellation rights do not usually apply in respect of any custom made products.
- 9.2 If you are a business customer:
- (a) You confirm that you have authority to bind any business on whose behalf you purchase Services.

## 10. GENERAL

### 10.1 Website:

- (a) The Supplier operates the website [www.fcls.co.uk](http://www.fcls.co.uk). Some of the Services offered by the Supplier are provided by way of actions of the Customer using the website's user-friendly interface; for the avoidance of doubt, these Conditions apply to any Services purchased via the website by the Customer.
- (b) The order process on the website allows Customers to check and amend any errors before submitting their Order to us. **Please take the time to read and check your Order at each page of the order process.**
- (c) In respect of Orders made online, the Contract between the parties will only be formed when the Supplier sends formal acceptance of the Order in writing.

### 10.2 Force majeure:

- (a) For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, terrorist attack, 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) The 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.

### 10.3 Assignment and subcontracting:

- (a) The 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 the Supplier, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

### 10.4 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, or sent by fax to the other party's main fax number.
- (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, or if sent by fax, on the next Business Day after transmission.
- (c) This clause 10.4 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

### 10.5 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.

10.6 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.

10.7 Privacy: Personal information is primarily used to enable the Supplier to provide the Services. The Supplier may send the Customer promotional material relating to its services from time to time, but the Customer may opt out of this if desirable by giving written notice of the same.

10.8 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.

10.9 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.

10.10 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 the Supplier and the Customer.

10.11 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.

# GDPR

You and where appropriate, your clients have rights of notification and control over any personal data which we store and process on our Company Secretarial System.

Under the General Data Protection Rules (GDPR) we hold data about you and/or your clients on certain vital computer systems, which enable us to provide an accurate and efficient service. In a complex, heavily scheduled and compliance laden world, modern accountancy practices would cease to function effectively without trusted software products.

We use a professional cloud based service called FirstOrder which enables us to interface electronically with Companies House to prepare and file documents like your annual Confirmation Statement. It also provides a repository for the statutory registers which your company is legally obliged to hold. By combining these and other filing requirements at Companies House and enabling the production of minutes etc. to underpin the legality of your officer appointments and share transactions etc., this system enables us to provide accurate and timely filing and saves time and effort as well as enabling us to provide accurate and best value service.

Nearly all of the data we hold about you, your company and or your clients and their companies on this system is already publicly available on the Companies House website.

However, some personal details are legally reportable but not publicly displayed by Companies House. If you or Companies House have provided them, the personal details we store on FirstOrder could include your and/or your clients' residential address, date of birth, work phone, home phone, mobile, fax, DX number, DX Exchange and special three character identification "snippets" you or your client may have volunteered if you have been involved with a company formation.

We use this data ONLY for the following

1. Ensuring you and/or your clients meet the statutory filing obligations at Companies House
2. Providing you and/or your clients with Minutes, Resolutions and Registers etc., which you and/or your clients have a legal obligation to create or maintain.

We have our own strict GDPR protocols so only trusted members of our staff are allowed to access or process your personal data.

Your personal data or statistics held on FirstOrder will NEVER be used for marketing or sales purposes.

No third party or any party other than those described above will ever receive any of your personal data or statistics, whether anonymously or identifiably.

Your personal data is only ever exchanged between FirstOrder and Companies House as the law requires.



Documentation produced by FirstOrder to enable us to meet your statutory requirements never leaves our office or archive facility, except to be transmitted to you.

We will only use your and/or your clients' personal data in pursuit of providing our professional services to you.

You may receive automated requests for information from FirstOrder but solely in pursuit of providing our service to you and never for marketing or any other reason.

Your personal data is strongly encrypted on FirstOrder. Each individual has their own individual encryption key and your personal data is meaningless without this key which is separately generated. This offers data security far in excess of the basic GDPR requirement.

Your personal data is held on a dedicated single application in a secure server centre in the UK. Backups are also held offline in the UK. None of your data is hosted outside the UK.

You have a right to a copy of the details held about you and/or your clients on this system. To avoid any risk of impersonation, please contact us separately and identify yourself and we will send you a copy of the personal details we hold about you and/or your clients on FirstOrder. You also have a right to take your personal details to another provider and we can generate these for you in a portable format (.CSV). Please note that there is always a small risk in transmitting such personal data, normally held in encrypted form, through email or other electronic media when in human readable form.

You and/or your clients also have a "right to be forgotten" under GDPR. We will keep the personal details whilst you are a client. Government agencies may query any company or your role or your clients' role in it for up to seven years after you and/or your clients cease to be involved with it. For this reason we may keep your data in archive for this period before it is automatically deleted. Archived data is never accessed except on your request or that of Government agencies.

Please note that we would not keep any personal details on any computer system without very good reason and there are consequences in removing any details from FirstOrder. The statutory registers would have to be kept by hand, minutes prepared by traditional word processing and your filing obligation met by using Companies House own website. We use carefully selected computer systems to improve efficiency and the inevitable consequence of being unable to do so would unfortunately impact us heavily and increase our costs. Other officers and shareholders in your company would be affected in the same way, as we cannot process companies unless we can process all the officers, members and shareholders involved. If you and/or your clients are involved with more than one company, this would apply to all the relevant companies. As any alternative methods also carry their own data risks, we would ask you to consider the consequences very carefully before exercising this option and avoid doing so if at all possible.

We are primarily giving you this notification to meet compliance under the GDPR regulations. In practice, we have never had a data breach using this system and hope that the encryption information and reassurance given herein would be sufficient to enable us to continue using your details in a careful and professional manner on this very necessary software system. At First Corporate Law Services we are committed to data protection and GDPR compliance. We aim to answer the key questions regarding our measures to be GDPR compliant, so to provide complete assurance that your data is protected.

**1. WHAT ARE YOU DOING/HAVE YOU DONE TO BE GDPR-COMPLIANT?**

- a. Personal data will be encrypted on a field by field basis. Our clients will be provided with a compliance statement for onward distribution to their clients, outlining what data is encrypted under GDPR
- b. There will be a facility to export personal data as CSV upon client request
- c. There will be a facility to remove personal data upon request
- d. We will only process personal data where there is a lawful basis in doing so
- e. We will always seek, record and manage consent in line with GDPR compliance
- f. Our FCLS Group Ltd data protection policy is available on request

**2. WHERE ARE YOUR SERVERS – INSIDE OR OUTSIDE OF THE EU?**

Our servers are dedicated to our application alone and hosted in the UK in a fully managed secure server centre, by the UK's largest web hosting company.

**3. WHAT SORT OF PHYSICAL AND TECHNICAL SECURITY PROTECTS YOUR SERVERS?**

Our backup is held on and offsite. The offsite backup is fully encrypted and managed by 'Xsystems Limited' on private UK based servers.

Our servers are fully equipped with firewall and suhosin server management software and all access attempts and targets are logged. The server and product have both been "black hat" tested by professional data security specialists.

**4. WHO HAS ACCESS TO THE SERVERS AND/OR DATA?**

Our support staff (administrator users) will log in with two factor authentication (password and emailed key) and will be required to change their password weekly. Two developers have access to the server codes and rights to access data outside of the in-product authenticated user logins.

**5. HOW OFTEN DO YOUR STAFF RECEIVE DATA PROTECTION TRAINING?**

All staff at FCLS Group Limited have received GDPR training and the measures that must be taken to comply with GDPR. Each individuals working practices have been reviewed and amended for compliance. An annual review will take place and further training provided as necessary. Each new staff member will receive training on GDPR.

**6. DO YOU SUB-CONTRACT YOUR DATA PROCESSING TO THIRD PARTIES? IF SO, HOW WATERTIGHT ARE THE THIRD PARTY'S PROCEDURES AND PROCESSES?**

Our servers are dedicated to our application alone and hosted in the UK in a fully managed secure

server centre, by the UK's largest web hosting company.

**7. IS ACCESS TO YOUR DATA USER-BASED PERMISSION ONLY?**

See point 3. Above.

**8. HOW COMPREHENSIVE ARE YOUR BACK-UP SYSTEMS? (E.G. WHEN WAS THE LAST TIME/HOW OFTEN DO THEY BACK UP YOUR DATA, AND HOW FAR BACK CAN THEY GO TO RETRIEVE IT?)**

Our backup is held on and offsite. The offsite backup is fully encrypted and managed by 'Xsystems Limited' on private UK based servers.

Backups operate daily both onsite and offsite and a rolling 30 day backup of both is kept.

**9. HAVE YOU EVER EXPERIENCED A DATA BREACH, OR ARE THERE ANY PERCEIVED TECHNICAL OR OPERATIONAL WEAK LINKS?**

There have been no breaches in the nine year life of the service. In the event of a breach one of two things will happen according to the nature of the attack. If the server logs indicate no modification of the data (i.e. an attempt to corrupt the data) then the vulnerability will be traced in the source code or server set up as soon as possible and fixed. If the server logs show an attempt to corrupt the data, users will be notified and the data restored from the most recent un-affected backup. Simultaneously, the vulnerability in the server or source code will be addressed to prevent re-occurrence.

