



Standard Terms and Conditions

These Terms and Conditions shall apply to all contracts for the supply of consultancy support services by Kirkmillan to the Client to the exclusion of all other terms and conditions including any terms and conditions which the Client may seek to impose or incorporate under any purchase order, confirmation of order or other document, or which are implied by trade, custom, practice or course of dealing. These Terms and Conditions may be updated from time to time by Kirkmillan and the most up to date version can be requested from Kirkmillan and will be made available on Kirkmillan website at www.kirkmillan.co.uk

1 The Services

- 1.1 Kirkmillan agrees to supply the Services to the Client in accordance with the Contract.
- 1.2 No Order for the supply of Services is binding on Kirkmillan unless and until it has been accepted by Kirkmillan in writing or (if earlier) when Kirkmillan performs the Services.
- 1.3 Kirkmillan shall be entitled to deem any quotation to have lapsed prior to acceptance unless it is unconditionally accepted by the Client within 30 days of its date.
- 1.4 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by Kirkmillan shall be subject to correction without any liability on the part of Kirkmillan.
- 1.5 Kirkmillan shall have the right to make any changes to the Services which are necessary to comply with applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and Kirkmillan shall notify the Client in any such event.
- 1.6 Kirkmillan will fulfil its obligations under the Contract using reasonable skill and care and shall keep the Client informed of the progress with the Services.
- 1.7 Kirkmillan will use all reasonable endeavours to meet any performance dates specified in the Order, but any such dates are estimates only and failure to perform the Services by such dates will not give the Client the right to terminate the Contract.

2 Client Obligations

- 2.1 Where Kirkmillan is required to perform the Services on Client premises, the Client agrees to provide a safe working environment for Kirkmillan staff and contractors including any relevant safety wear and equipment as may be necessary in performing the Services. The Client shall provide Kirkmillan, in a timely manner, with all such information (including all necessary health and safety information relating to the Client's premises) and full and uninterrupted access to Client premises and all materials and supplies as are necessary for Kirkmillan to perform the Services in accordance with the Contract and the Client warrants that all information provided by it or on its behalf to Kirkmillan is accurate. The Client further warrants that it will give Kirkmillan prior written notice of any exceptional hazards, known or suspected, by the Client that might potentially arise in the use of such materials or information or as a result of the Services being performed at the Client's premises.
- 2.2 The Client agrees to have in place suitable employer's liability and public liability insurance at all times that the Services are performed by Kirkmillan on the Client's premises.

3 Fees and Payment

- 3.1 Subject to any special terms agreed in writing between the Parties, Kirkmillan shall be entitled to invoice the Client for Services at the end of each 30 day period during the provision of the Services. In the event that the provision of the Services is less than 30 days, Kirkmillan shall invoice the Client on completion of such Services.



3.2 Payments of the Price shall be made by the Client within 30days of receipt of a valid invoice.

3.3 All fees quoted are for the provision of Services only, and exclude any travel or subsistence or other expenses unless otherwise stated in the proposal. The Client shall, however, reimburse Kirkmillan all reasonable expenses incurred in providing the Services, provided that those expenses have been agreed in advance as being necessary for the proper performance of the Services.

3.4 All sums due from the Client to Kirkmillan which are not paid on the due date shall be subject to a late payment interest charge of 5% above the then current Bank of England base rate and shall be calculated pro rata on a daily basis. Interest shall run from the date on which the sum in question becomes due for payment until the date on which actual payment is made.

4. Intellectual Property Rights

4.1 Neither Party shall have the right of use, other than for the purposes of the Contract, whether directly or indirectly of any Intellectual Property provided by the other Party and the rights thereto shall remain with the Party providing such Intellectual Property.

4.2 Where any potential patent or registrable right in any country in the world or any confidential know how results from:

4.2.1 developments by Kirkmillan which are based wholly on data, equipment, processes, substances and the like in the possession of Kirkmillan prior to the effective date of the Contract or otherwise produced by Kirkmillan outside of the Contract; or

4.2.2 enhancements of or in the existing Intellectual Property of Kirkmillan,

such rights shall vest in Kirkmillan.

5 Cancellation and Termination

5.1 Cancellation charges including those levied for transfers, deferrals or postponements of Services requested by Client are charged in accordance with the table of charges set out below. Charges are applied to the full list price or standard day rates in force at time of cancellation. All cancellations, deferrals or postponements must be received in writing by Kirkmillan.

Services	15 – 30 days prior to agreed Delivery Date	Less than 15 days prior to agreed Delivery Date
Cancellation charge %	50%	100%

5.2 Kirkmillan reserves the right to postpone or terminate the provision of Services at any time, at its discretion and without cause with no liability to the Client. In the case of postponement, Kirkmillan will offer the Client an alternative date(s).

5.3 Kirkmillan may at its discretion terminate or suspend the Contract immediately by written notice to the Client if the Client ceases to trade or otherwise terminates business operations; becomes insolvent, or seeks or any proceeding is instituted against the Client or the Client fails to make payment in accordance with the Contract.

5.4 Kirkmillan may at its discretion terminate or suspend the Contract immediately if the Client commits a material breach or a series of breaches the combination of which constitutes a material breach and the Client fails to remedy such breach (es) within 10 days after receipt of notice giving details of the breach (es) and requiring them to be rectified.



6 Confidentiality

6.1 Each Party acknowledges and agrees that any and all information concerning the others business or the terms of the Contract including these Terms and Conditions is confidential and each Party agrees that it shall not permit the duplication, use or disclosure of any such confidential information to any person (other than its own employees, agents or sub-contractors where the same requires such information for the performance of the Contract) unless such duplication, use or disclosure is specifically authorised in writing by the other Party, or is required by the operation of the law. Confidential information does not include information which at the time of disclosure is or comes into the public domain (other than the unauthorised act of the receiving party). The Parties shall take all reasonable steps to ensure that their employees, agents and sub-contractors keep confidential information confidential. This clause 6.1 shall survive the termination of the Contract.

7 Liability

7.1 Save as provided for in condition 7.2 below, Kirkmillan's total liability arising under or in connection with the Contract whether in contract, delict (including negligence), breach of statutory duty, or otherwise shall not exceed a sum equal to 100% of the aggregate consideration received by Kirkmillan from the Client under the relevant Order.

7.2 Nothing in these Terms and Conditions excludes or limits the liability of Kirkmillan:

- (a) For death or personal injury caused by Kirkmillan's negligence; or
- (b) For any matter which it would be illegal for Kirkmillan to exclude or attempt to exclude its liability; or
- (c) For fraud or fraudulent misrepresentation.

All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

7.3 Notwithstanding any other provision of the Contract, Kirkmillan shall not be liable for Client's Consequential Loss. "Consequential Loss" shall mean:-

- (a) consequential or indirect loss under applicable law; and
- (b) loss of revenue, loss of contracts, loss of business opportunity, business interruption arising from or related to the performance of the Contract, and whether or not such losses were foreseeable at the time of entering into the Contract.

7.4 If Kirkmillan's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Client, its agents, contractors or employees or by any authority, Kirkmillan shall not be liable for any costs, charges or losses sustained or incurred by the Client arising directly or indirectly from such prevention or delay.

8. General

8.1 The Client shall not have the right to direct or control the actions of Kirkmillan staff, agents or sub-contractors. Nothing in the Contract shall be construed so as to create a partnership or joint venture between the Parties or have the effect of making any employee of the Client an employee or a servant of Kirkmillan or of making any employee of Kirkmillan an employee or servant of the Client.

8.2 Kirkmillan will use any personal information Client provides to it to:

- (a) provide the Services; and
- (b) process payment for the Services;

Further details of how Kirkmillan will process personal information are set out in its privacy notice found on www.kirkmillan.co.uk



8.3 The Client must not attempt to procure services that are competitive with the Services from any of Kirkmillan's directors, employees or consultants, whether as an employee or on a freelance basis, during the period that Kirkmillan are providing the Services to the Client and for a period of six months following termination of the Contract.

8.4 The Contract constitutes the entire agreement between the Parties and supersedes all previous discussions, correspondence and negotiations between them relating to its subject matter.

8.5 The Contract shall be governed by the laws of Scotland and the Parties agree to submit to the exclusive jurisdiction of the courts of Scotland.

9. Definitions and Interpretation

9.1 In these Terms and Conditions the following words shall have the following meanings:

"Client" means the person or persons whom orders Services from Kirkmillan as detailed in the Order;

"Contract" means the contract between Kirkmillan and the Client for the supply of Services comprising the Order, these Terms and Conditions and any amendment or variation to the Order or these Terms and Conditions as agreed in writing between Kirkmillan and the Client;

"Kirkmillan" means Beverley Francis trading as Kirkmillan Consulting, 62 Menteith View Dunblane, FK15 0PD;

"Intellectual Property" means all patents, copyright, trademarks, service marks, trade, business and domain names, database 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 including Technical Information;

"Order" means either of (i) the purchase order issued by the Client and accepted in writing (including by email) by Kirkmillan or (ii) the project quotation or scope of work or proposal provided by Kirkmillan and accepted in writing (including by e-mail) by the Client, in each case containing details relating to the supply of Services under the Contract;

"Parties" means Kirkmillan and the Client;

"Price" means the price, charges, taxes and disbursements specified by Kirkmillan for the supply of the Services;

"Services" means the services to be supplied by Kirkmillan as detailed in the Order;

"Technical Information" means drawings, techniques, processes, formulae, reports, specifications, practices, procedures, instructions and other technical information and data of any kind in whatever form;

"Terms and Conditions" means these Standard Terms and Conditions for the supply of consultancy support services.

9.2 Unless the context otherwise requires, references in these Terms and Conditions:

9.2.1 to "person" or "third party" include any individual, company, corporation, firm, partnership, joint venture, association, organisation, institution, trust or agency, whether or not having a separate legal personality;

9.2.2 to one gender include all genders, and reference to the singular includes the plural and vice versa; and

9.2.3 to "include" or "including" shall be construed without limitation.

9.3 In the event of any inconsistency between these Terms and Conditions and the provisions of the Order, the provisions of the Order shall prevail.