

Box Klever - General Terms & Conditions

1 Interpretation

1.1 In these General Terms & Conditions:

"The Client" means The Client as described in the specific Terms and Conditions;

"Deliverables" means all compact discs, programs, processed data, and other materials to be provided by Box Klever Limited to The Client as part of the Services, (including any Retrieval Software);

"Services" means the provision of services to be provided by Box Klever Limited as described in the Specific Terms and Conditions;

"Specific Terms and Conditions" means the proposal and quotation submitted by Box Klever Limited to The Client, as accepted by The Client as evidenced by the signed Statement of Works referencing these General Terms and Conditions; and

"Storage Information" means all files, documents, paper, film, fiche, reports, text, graphics, photographs, computer data files, media, and information provided by The Client for processing, reference, or other use;

1.2 Except where the context otherwise requires, any other expression which is defined in the Specific Terms and Conditions shall have the same meaning when used in these General Terms and Conditions.

2 Application

2.1 These General Terms and Conditions together with the Specific Terms and Conditions shall govern the provision of the Services to the exclusion of any other Terms and Conditions, except as may be specifically agreed in writing and signed both by Box Klever Limited and The Client.

2.2 Box Klever Limited's employees and agents are not authorised to make any representations concerning the Services unless confirmed by Box Klever Limited in writing. The Client acknowledges that does not rely on and waives any claim for breach of any such representations, which are not so confirmed.

3 Use Restricted to Client

The Client acknowledges that the Services are provided for the benefit of The Client and that any Deliverables are for use by The Client alone. Box Klever Limited is under no liability to the extent that the Services and/or/Deliverables are disclosed to and/or used or relied on by any third party.

4 Price

4.1 The price of the Services shall be as set out in the Specific Terms and Conditions.

4.2 Notwithstanding Condition 4.1, Box Klever Limited reserves the right, by giving notice to The Client at any time before delivery, to either suspend or cancel its performance or increase the price of the Services to reflect any increase in costs to Box Klever Limited that are caused by any factor beyond the control of Box Klever Limited but within the control of The Client (such as, without limitation, any variation between the description of the Storage Information and the actual condition of the Storage Information, as described in the Specific Terms and Conditions; any change in quantities or specifications for the Services to be performed as described in the Specific Terms and Conditions; or any delay or charges caused or incurred by Box Klever Limited due to any incorrect information or instructions or to any failure of The Client to provide Box Klever Limited with adequate information or instructions).

4.3 The price is exclusive of any applicable value added tax and any other tax or duties, which The Client shall be liable to pay to Box Klever Limited.

4.4 The Client shall meet the cost of any special packaging required by The Client over and above either Box Klever Limited's normal means of delivery or those identified in Special Terms and Conditions.

5 Terms of Payment

5.1 Unless otherwise agreed in writing, Box Klever Limited shall invoice Client when Box Klever Limited delivers any Deliverables. Invoicing may be performed incrementally when Deliverables are delivered incrementally. Payment of invoices shall unless otherwise agreed in writing be made in full within thirty days of the date of invoice. Time of payment shall be of the essence of all contracts between The Client and Box Klever Limited to which these conditions apply. Box Klever Limited reserves the right to suspend the provision of Deliverables to The Client where any amounts are overdue under any contract with The Client until all such amounts have been paid.

5.2 Any extension of credit allowed to The Client may be changed or withdrawn at any time where any amounts are overdue under the terms governing the extension of credit.

5.3 Interest shall be payable on overdue accounts at the rate of 2% over Barclays Bank Plc base rate from time to time to run from the due date for payment until receipt by Box Klever Limited of the full amount whether before or after judgement.

5.4 If, in the opinion of Capita Randall Lyons Ltd, the credit-worthiness of The Client shall have deteriorated prior to delivery of the Deliverables or if Box Klever Limited shall otherwise consider The Client's credit-worthiness unsatisfactory Box Klever Limited may require full or partial payment of the price prior to such delivery or the provision of security for payment by The Client in a form acceptable to Box Klever Limited.

5.5 If The Client fails to make any payment on the due date then, without prejudice to any other right or remedy available to Box Klever Limited, Box Klever Limited shall be entitled to:

(A) cancel the contract or suspend any further deliveries to The Client;

(B) appropriate any payment made by The Client to such of the Deliverables (or any Deliverable) supplied under any other contract between The Client and Box Klever Limited as Box Klever Limited may think fit (notwithstanding any purported appropriation by The Client); and

(C) charge The Client interest in accordance with Condition 5.3

5.6 All payments by The Client to Box Klever Limited under these General Terms and Conditions shall be made without any deductions or set-off.

5.7 Box Klever Limited will have a general lien for payment upon all Storage Information belonging to The Client in the possession or control of Box Klever Limited.

6 Ownership of intellectual property

6.1 The Client acknowledges that the Retrieval Software is the Copyright of Box Klever Limited or its Licensors. The Client shall only use it for the specific purpose of accessing the Storage Information and shall not make any copies of the Retrieval Software except such copies as may be necessary for back-up purposes.

6.2 The Client acknowledges that the Retrieval Software represents Box Klever Limited's or its Licensors' valuable copyrights and trade marks and that The Client will acquire no rights in it and will have no licence to use it except as may be expressly set out in these General Terms and Conditions, the Specific Terms and Conditions or any other written agreements signed by the parties.

7 Delivery

7.1 Delivery of the Deliverables shall be made by The Client collecting the Deliverables at Box Klever Limited's premises at any time after Box Klever Limited has notified The Client that the Deliverables are ready for collection or, if some other place for delivery is agreed by Box Klever Limited's, by Box Klever Limited delivering the Deliverables to that place.

7.2 Unless the Specific Terms and Conditions state that time is of the essence, any dates set out in the Specific terms and Conditions or which are quoted for delivery of the Deliverables are approximate only and Box Klever Limited shall not be liable for any delay of the Deliverables however caused. Time for delivery shall not be of the essence unless previously agreed by Box Klever Limited in writing. The Deliverables may be delivered by Box Klever Limited in advance of the quoted delivery date on giving reasonable notice to The Client.

7.3 Where the Deliverables are to be delivered in instalments, each delivery shall constitute a separate contract and failure by Box Klever Limited to deliver any one or more of the instalments in accordance with these conditions, or any claim by The Client in respect of any one or more instalments, shall not entitle The Client to reject the other instalments or to treat the contract as a whole as repudiated.

7.4 Box Klever Limited shall not be liable for non-delivery unless a written claim has been received by Box Klever Limited within fourteen days of the due date for delivery. If such claim has been made Box Klever Limited shall only be liable if and to the extent provided for under these conditions.

7.5 For the avoidance of doubt Box Klever Limited shall not be liable for damage to or loss of the Deliverables or any part of them in transit, except where otherwise agreed in writing.

7.6 If The Client fails to take delivery of the Deliverables or fails to give Box Klever Limited adequate delivery instructions at the time stated for delivery then, without prejudice to any other right or remedy available to Box Klever Limited, Box Klever Limited may store the Deliverables until actual delivery and charge to The Client for the cost (including insurance) of storage.

7.7 Section 82(2) of the Sale of Goods Act 1979 shall not apply. Box Klever Limited shall not be required to give The Client the notice specified in Section 82(3) of the Act.

8 Confidential Information

8.1 The Client will keep strictly confidential and not disclose to any third party any information relating to Box Klever Limited's business, services and products, including its tools and methodologies, that The Client obtained as a result of Box Klever Limited carrying out the service, except information already in the public domain.

8.2 Box Klever Limited will treat as confidential all Storage Information in its possession and will not without express written authority disclose any of the Storage Information to any third party.

9 Warranty

9.1 Box Klever Limited warrants that it has the right to supply the Retrieval Software and that to its knowledge none of the Retrieval Software infringes the copyright of any third party. The Client warrants that it is entitled itself to commission Box Klever Limited to duplicate, record, and otherwise perform the Services on all Storage Information upon CD-ROM or other Storage media pursuant to these General Terms and Conditions and the Specific Terms and Conditions.

10 Liability

10.1 Box Klever Limited's only obligation to The Client is to carry out the Services with reasonable skill and care. Box Klever Limited excludes all other express or implied terms, conditions and warranties. Box Klever Limited shall not be liable to The Client for any indirect, special or consequential loss (including loss of profit or business) however caused including by Box Klever Limited's negligence. Box Klever Limited's aggregate liability to The Client shall not in any event exceed the part of the charges for the services, which has been paid by The Client.

10.2 Box Klever Limited shall be notified in writing within thirty days of delivery of any Services or Deliverables of any claim by The Client that the Services or Deliverables have not been provided with reasonable skill and care or are in any way defective or inaccurate. The notice shall specifically define the nature of the alleged lack of reasonable skill or care, or the alleged defect or inaccuracy. If no such notification is provided within thirty days of delivery, Box Klever Limited shall have no liability in respect of such claim.

10.3 Box Klever Limited will not be liable for delays or inaccuracies in Services or Deliverables where the Storage Information or instructions from The Client are inaccurate, of poor quality, ambiguous, or incorporate technical changes not previously agreed to by Box Klever Limited's.

10.4 Box Klever Limited will be entitled to reject any order received by from The Client if in its sole opinion it is unable to process the Storage Information due to the reasons stated in clause 10.3, and any such rejections will not affect the rights of the parties in respect of the other terms of the Agreement.

10.5 Box Klever Limited shall not be liable to The Client or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of Box Klever Limited's obligations in relation to the Services if the delay or failure was due to any cause beyond Box Klever Limited's reasonable control, including (without limitation) acts of God, explosion, flood, tempest, fire or accident, war, government acts or regulations, strikes, lock-out or other industrial actions, difficulties or delays in obtaining materials (whether or not the Storage Information), breakdown in telecommunications, computer malfunction, software error, power failure, or breakdown in machinery.

10.6 In view of the uncertain liabilities that may arise from loss or damage of the Storage Information, Box Klever Limited will have no liability whatsoever in respect of loss or damage to Storage Information due to any cause other than Box Klever Limited's recklessness or wilful misconduct unless Box Klever Limited specifically agrees otherwise in the Specific Terms and Conditions. Notwithstanding the limitations of this limitation of liability, Box Klever Limited is specifically authorised to destroy the Storage Information without further notice thirty days after delivery of Services or Deliverables if the Specific Terms and Conditions do not call for Box Klever Limited to otherwise dispose of the Storage Information or forward the Storage Information to The Client or other third party.

10.7 Nothing in this clause 10 shall limit Box Klever Limited's liability for death or personal injury arising from its negligence.

11 Client's Obligations

11.1 The Client shall be responsible for ensuring the accuracy of the description of the Storage Information and the Services to be performed as set out in the Specific Terms and Conditions.

11.2 The Client shall provide Box Klever Limited with all Storage Information necessary for Box Klever Limited to provide the Services and produce the Deliverables required by the Specific Terms and Conditions.

11.3 No order for Services which has been accepted by Box Klever Limited may be cancelled by The Client except with the agreement in writing of Box Klever Limited and on terms that The Client shall indemnify Box Klever Limited in full against all loss (including loss of profit), costs (including labour costs), damages, charges and expenses incurred by Box Klever Limited as a result of cancellation.

11.4 The Client will be responsible for retaining in safe custody duplicates of all Storage Information and will on receipt of any Deliverables ensure it corresponds with the duplicate retained.

11.5 If any other licence or consent of any government or other authority shall be required for the provision of the Services to The Client, The Client shall obtain the same at its own expense and if requested produce evidence of the same to Box Klever Limited on demand. Failure to obtain any licence or consent shall not entitle The Client to withhold or delay payment of the price. Any additional expenses or charges incurred by Box Klever Limited resulting from such failure shall be for The Client's account.

12 Indemnity

12.1 The Client shall indemnify Box Klever Limited and keep Box Klever Limited indemnified against any and all losses, liabilities and costs resulting from any claim by a third party that by copying the Storage Information or otherwise carrying out the Services Box Klever

Limited has infringed any intellectual property or other rights of such third party or given rise to a claim for defamation. This indemnity will not apply to the extent that infringement occurs because Box Klever Limited's own tools or methodologies themselves infringe third party rights.

12.2 The Client shall indemnify Box Klever Limited against all loss, actions, claims, demands, proceedings (whether criminal or civil), costs, legal expenses (on a full indemnity basis), insurance premiums and calls, liabilities, judgements, damages or other sanctions arising directly from the Storage Information supplied to and used by Box Klever Limited's, including (without limitation) The Client's failure or alleged failure to be validly and correctly registered under the Data Protection Act 1984.

13 Suspension

If Box Klever Limited is delayed in carrying out the services for longer than fifteen days because of The Client's failure to provide Box Klever Limited with full and prompt access to information, systems, equipment, personnel, premises, documents, or other materials Box Klever Limited requires to carry out the Services, or because of any other failure of The Client to co-operate with Box Klever Limited or for any reason beyond Box Klever Limited or The Client's reasonable control, Box Klever Limited may immediately suspend the Services by serving written notice on The Client and may raise an invoice for the Services carried out up until such suspension (which shall be paid in accordance with the terms relating to payment of invoices set out in these conditions) and may resume the Services immediately on serving further written notice on The Client that the period of delay has ended. Box Klever Limited shall have no liability to The Client during the period in which the Services are suspended.

14 Termination

Box Klever Limited may terminate the Services with immediate effect by service of written notice on The Client without liability to The Client and without prejudice Box Klever Limited's other rights, if:

(A) The Client is in material breach of these General Terms and Conditions or the Specific Terms and Conditions; or **(B)** The Client becomes unable to pay its debts as they fall due within the meaning of the Insolvency Act 1986 or passes a resolution for its winding up or if a court of competent jurisdiction makes an order for its winding up or dissolution or if an administration order is made in relation to it or a receiver or liquidator or administrator is appointed over any of its assets or if it makes an arrangement or composition with its creditors generally, or suffers any other act of insolvency or bankruptcy. On termination of the Services under this clause 14, all amounts due to Box Klever Limited under these General Terms and Conditions and the Specific Terms and Conditions shall immediately become payable.

15 Waiver

No waiver by Box Klever Limited or any breach of any provision of the General Terms and Conditions or the Specific Conditions by The Client shall be considered a waiver of any subsequent breach or the same or any other provision.

16 Solicitation

The Client shall not during the period of the Services or for a period of twelve months afterwards solicit any of Box Klever Limited's employees (or sub-contractors) who carry out the Services.

17 These General Terms and Conditions and the Specific Terms and Conditions are governed by English law and the parties submit to the jurisdiction of the English Court.