

FarrPoint Terms of Business

Canada



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1. Definitions

1.1 In these Terms the following words shall have the following meanings:

- 1.1.1 "Company" means FarrPoint Limited;
- 1.2.1 "Confidential Information" means any information relating to, but not limited to, the business affairs, prospective business, trade secrets, current and future products, services, technology, customers, market opportunities, IP or finances of a party, including without limitation price lists, lists of customers and suppliers which the party regards, or could reasonably be expected to regard, as confidential information;
- 1.3.1 "Contract" means the Proposal accepted by the Client together with these Terms;
- 1.4.1 "Client" means the company, organisation or person to whom the proposal is addressed;
- 1.5.1 "IP" means intellectual property;
- 1.6.1 "Proposal" means the proposal for the supply of services by the Company to the Client attached to these Terms or with which these terms were delivered;
- 1.7.1 "Services" means the services agreed in the Proposal to be supplied by the Company to the Client (including any part or parts of them).

2. Terms of Reference

2.1 In these Terms the following words shall have the following meanings:

- 2.2 Once incorporated, these terms shall apply to the exclusion of all other terms and conditions including any terms which a Client may purport to apply under any confirmation of instruction or similar document. These terms shall continue to apply to all services provided by the Company to the Client under any contract hereafter until expressly excluded in writing.
- 2.3 Each order for Services from the Client to the Company shall be deemed to be an offer by the Client to purchase Services subject to these Terms.
- 2.4 The Company agrees to carry out the Services in accordance with the Proposal.
- 2.5 The Client agrees to cooperate with the Company in the performance of the Company's Services and to give such support, facilities and information as may be reasonably required.
- 2.6 Any Proposal is valid for a period of 30 days only from its date unless otherwise stated in the Proposal, provided that the Company has not previously withdrawn it.

3. Company's Obligations

- 3.1 The Company will perform the Services with reasonable care, skill and diligence.
- 3.2 The Company warrants that the personnel used or employed to provide the Services will be properly experienced and qualified.

- 3.3 The Company shall employ the methods, procedures, techniques, personnel and sources of information set out in the Proposal but may vary these at its discretion to achieve the objectives of the Proposal.

4. Payments

- 4.1 The Client agrees to pay the charges and expenses in accordance with the provisions of the Proposal.
- 4.2 Unless otherwise stated in the Proposal, fees are exclusive of applicable taxes and payable within 30 days of the date of the invoice.
- 4.3 The Client will pay interest on all fees, costs and charges that remain unpaid after 30 days from the date of the invoice.
- 4.4 During any period in which payments from the Client are overdue, the obligations of the Company may be suspended.

5. Confidentiality

- 5.1 The Company undertakes to not, at any time, divulge or allow to be divulged to any person any Confidential Information relating to the business or affairs of the Client other than to sub-contractors who have signed an appropriate secrecy undertaking/non-disclosure agreement or others where the Client has expressly or impliedly consented to the disclosure.
- 5.2 The Client agrees not to copy, publish (in whole or in part) or disseminate the Proposal or any report or other documents produced or commissioned by the Company, on behalf of the Client, in the performance of the Services to any third party without the prior written consent of the Company, such consent not to be unreasonably withheld.

6. Intellectual Property

- 6.1 IP and rights to IP owned by either party at the date of the Contract ("Background IP") shall remain the property of that party.
- 6.2 The Client grants the Company a royalty free, nonexclusive, non-transferable licence to use the Client's Background IP as required to allow the Company to perform the Services.
- 6.3 IP created or developed by the Company in the course of providing the Services ("Foreground IP") will be owned by the Company.
- 6.4 Upon completion of the Services and on receipt of payment in full by the Client, the Company will grant the Client a non-exclusive, royalty free, non-transferable licence to use any Foreground IP and the Company's Background IP as required to allow the Client to use the deliverables produced by the Company for the purposes set out in the Proposal.

7. Liability and Insurance

- 7.1 Nothing in these Terms shall exclude or in any way limit the Company's liability for fraud or for death or personal injury caused by its negligence, or any other liability to the extent such liability may not be excluded or limited as a matter of law.

- 7.2 The Company shall have no liability to the Client for any indirect, special or consequential loss to the Client arising out of or in connection with the provision of any goods or services pursuant to this Contract (except in respect of death or personal injury resulting from negligence) and the total liability of the Company for any other loss of the Client arising pursuant to this Contract in respect of any one event or series of connected events shall not exceed the amount payable to the Company as set out in the Proposal.
- 7.3 These Terms state the full extent of the Company's obligations and liabilities in respect of the performance of the Services.

8. Termination for Breach

- 8.1 The following obligations are conditions of this Contract and any breach of them shall entitle the party not in breach to terminate this Contract by immediate written notice.
- 8.1.1 Failure on the part of the Client to make punctual payment of all sums due to the Company under the terms of this Contract.
- 8.1.2 Failure on the part of the Company to remedy any breach of its obligations hereunder within 30 days following written notice from the Client which: refers to this clause; specifies the breach with full particulars; indicates how the breach is to be remedied.
- 8.1.3 In the event that the other party becomes insolvent or commits an act of bankruptcy, or enters into any arrangement with his creditors or goes, or is put into liquidation (other than solely for purposes of reconstruction whilst solvent), or if a receiver is appointed over any part of its business.
- 8.1.4 The doing or permitting of any act by which the Company's rights in any IP may be prejudiced or put in jeopardy.
- 8.1.5 Any serious or persistent breach by the Client of its obligations hereunder.
- 8.2 Upon termination of the Contract for any reason all sums owing to the Company shall become immediately payable.
- 8.3 The termination of this Contract howsoever arising is without prejudice to the rights, duties and liabilities of either party accrued prior to termination.
- 8.4 Clauses 5, 6, 7, 8, 9, 10 and 11 shall survive termination of the Contract.

9. Recruitment of Company's Staff

- 9.1 The Client undertakes that it (including for this purpose any subsidiary or associated company) or any person connected with it will not, without prior written consent from the Company, directly or indirectly recruit as an employee or engage as an independent contractor any person employed or so engaged by the Company in connection with the Services provided hereunder for a period of six months after such person last provided services to the Client.
- 9.2 In the event that the Client is in breach of the undertaking in sub-clause 9.1, the Client will pay liquidated damages of a sum equal to 50% of the equivalent annual remuneration or payment and any other benefits payable to the relevant individual by the Company at the rate payable during the week immediately prior to such individual ceasing to provide services to the Company.

10. Force Majeure

- 10.1 The Company shall not be liable for any failure or delay in performing its obligations under the Contract which is beyond its reasonable control, provided it has given written notice of such delay to the Client.
- 10.2 Where possible in the conditions prevailing at the time, within a period of one month from the date of such notice the Company and Client shall meet to agree steps to alleviate any failure or delay in performance.
- 10.3 After one month from the date of such notice the Company may terminate the Contract and the Client shall pay all fees and expenses then owing to the Company (including all the expenses of, caused by or arising out of such termination).

11. Protection of Personal Information

- 11.1 Where either the Company or the Client receives any personal information (as defined by the Personal Information Protection and Electronic Documents Act, SC 2000, c. 5 ("PIPEDA"), the Personal Information Protection Act, SCB 2003, c. 63 ("BC PIPA"), the Personal Information Protection Act, SA 2003, c P-6.5 ("AB PIPA"), the Act respecting the protection of personal information in the private sector, CQLR c P-39.1 ("QC Act"), or other similar data protection and privacy laws in Canada (the "Privacy Laws"),
- from the other party (the party receiving any such personal information being "the Receiving Party"), then the Receiving Party shall ensure that it fully complies in all material respects with the provisions of the Privacy Laws, to the extent applicable, and only collects, uses or discloses the personal information to fulfil its obligations under the Contract.
- 11.2 The Receiving Party shall indemnify the other party for any breach of the Privacy Laws which renders the other party liable for any costs, fines, claims or expenses however so arising.
- 11.3 In fulfilment with its obligations under the Privacy Laws, the Receiving Party shall have such systems in place to ensure:
- 11.3.1 Full compliance with the Privacy Laws, to the extent applicable;

- 11.3.2 Compliance with the Privacy Laws pertaining to the security of personal information that is collected, used or disclosed by the Receiving Party on behalf of the other party, to the extent applicable;
- 11.3.3 The reliability of all its employees who may be involved in collecting, using or disclosing personal information.
- 11.4 The Receiving Party shall take all reasonable steps to ensure that all its partners, contractors and agents comply with this clause where they are collecting, using or disclosing any personal information of the other party on behalf of the Receiving Party.
- 11.5 The Receiving Party shall allow the other party reasonable access to such information as necessary to ensure that the Receiving Party is complying with the above provisions, and with the Privacy Laws, as applicable.

12. General

- 12.1 The parties do not intend that this Contract should confer any right or benefit on any third party.
- 12.2 Failure by either party to enforce at any time or for any period any one or more of the terms or conditions of this Contract shall not be a waiver of them or the right at any time subsequently to enforce all terms and conditions of this Contract.
- 12.3 The Contract contains the entire agreement between the parties with respect to the Services and may not be modified except by an instrument in writing signed by the duly authorised representatives of the parties.
- 12.4 The Company shall be entitled to sub-contract any of its rights or duties under this Contract.
- 12.5 In the event of any dispute arising between the parties in connection with this Contract, the parties will in good faith seek to resolve that dispute through mediation. The mediator shall be agreed upon within seven days of one party requesting mediation, failing which the mediator shall be appointed from the Institute of Engineering and Technology, or an equivalent body in Canada, as agreed in writing by the parties. Unless otherwise agreed, the parties shall share equally the costs of the mediation. If the dispute is not resolved within 30 days or one of the parties refuses to participate in mediation, the dispute shall be resolved by way of litigation. Nothing in this clause shall prevent either party seeking a preliminary injunction or other judicial relief at any time if in its judgment such action is necessary, nor shall the Company be precluded from issuing proceedings or taking any other step in relation to the non-payment of monies due.
- 12.6 This Contract will be governed by and interpreted in accordance with the laws of the Province of Nova Scotia, and the federal laws of Canada applicable therein.
- 12.7 The parties to this Contract submit to the exclusive jurisdiction of the courts of Nova Scotia in relation to any claim, dispute or matter arising out of or relating to this Contract.

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