

# TERMS AND CONDITIONS FOR TRAINING AND CONSULTANCY SERVICES OF VISUAL COMPONENTS (v.201610)

## 1. Scope of the General Terms and Definitions

1.1 These terms and conditions for training and consultancy services shall be applied to any and all training and consultancy services provided by Visual Components (“VISUAL”) or its Affiliates. Hereinafter, these terms and conditions shall be referred to as “General Terms”.

1.2 Hereinafter the provider of the services and its affiliates shall be referred to as “VISUAL” and the licensee and its affiliates shall be referred to as the “Client”. VISUAL and Client are also referred to individually as “Party” and collectively as “Parties”.

1.3 “Affiliate” shall mean a company or other entity, which is subject to the direct or indirect control of the Party. A company or entity is held to be subject to the control of the other Party, if the other Party owns fifty percent (50 %) or more of the voting rights in the company or entity.

1.4 “Agreement” shall mean these General Terms in connection with the Purchase Order and/or Project Plan and any other document, email or other correspondence to which these General Terms have been attached or referred to, which have been received by the Client. The Agreement will come into force when the Client and VISUAL have signed the Purchase Order or the Client has accepted VISUAL’s quote. Additional terms and conditions in the Client’s order documentation, assignment documentation or in any other corresponding documentation or terms and conditions, which otherwise conflict with the Agreement, shall under no circumstances be binding on VISUAL unless expressly agreed to in writing by VISUAL and signed by an authorized representative of VISUAL.

1.5 “Confidential Information” shall mean a Party’s technical, financial, commercial, strategic, administrative etc. information, which has been expressly declared or marked as being confidential or marked with the Party’s name, mark or trademark or which otherwise on the basis of its nature constitutes confidential information. Confidential information may be expressed in any form, included but not limited to oral, written or electronic form.

1.6 “Purchase Order” shall mean the order confirmation attached or referring to these General Terms, in which the Parties confirm the performance of the Services ordered by the Client from VISUAL in accordance with the Agreement. The Purchase Order inter alia includes the general description of the Services, the price for the Services, the terms of payment and the payment milestones.

1.7 “Project Plan” shall mean the Service description and the plan for the performance of Services attached to or referring to these terms and conditions, in which the Parties have defined and individualized the Services, which VISUAL shall perform to the Client pursuant to this Agreement. The Project Plan shall include (without being limited to) the project organization, the contact information and the delivery schedule for the Services including possible milestones and possible payment schedules relating thereto.

1.8 “Services” shall mean the training and/or consultancy work defined in the Purchase Order and/or defined in the Project Plan attached or referring to these terms and conditions.

1.9 “Service Documentation” shall mean material in any form, including but not limited to reports, documents, files, software or any other material, which has been specifically developed for the Client in connection with the performance of Services and/or which has resulted from an action of VISUAL or results from the Parties’ cooperation in connection with the performance of the Services.

1.10 “VISUAL Documentation” shall mean all material in any form whatsoever, which has been marked as being VISUAL’s information and material, including but not limited to reports, documents, files, software and other material, which has been created, acquired or developed by VISUAL prior to performance of the Services to the Client and which has been provided to the Client in connection with the performance of the Services.

## 2. Personnel

2.1 VISUAL shall assign personnel with appropriate competence and experience to fulfil its obligations in accordance with the Agreement.

2.2 Notwithstanding the supervision, guidance and management exercised by the Client over VISUAL’s personnel in connection with the Services, the personnel of VISUAL shall at all times remain in the employment of VISUAL. At no time shall an employment relationship develop between the Client and VISUAL or the personnel of VISUAL.

2.3 Each Party shall assign representatives with appropriate competencies to act as the Parties’ principal contact persons for all questions relating to the Services. The VISUAL representative shall supervise and guide the performance of the Services. The Parties may change their representatives only by notifying the other Party in writing thereof.

## 3. Subcontractors

3.1 VISUAL shall be entitled to use subcontractors or other third parties for the performance of its services. VISUAL shall be fully liable for the performances of its sub-contractors and other third parties as for its own performance.

## 4. Delivery

4.1 VISUAL shall use any commercially reasonable efforts to provide the Service and deliver the Service Documentation in a timely and professional manner with due skill and diligence and in accordance with the Purchase Order. Any changes shall be agreed between the Parties in writing prior to implementing such change.

4.2 As soon as VISUAL perceives that the performance of the Services and/or the delivery of the Service Documentation will be delayed with respect to the time of delivery defined in the Project Plan, VISUAL shall without delay notify the Client of the delay, the reasons for it and its impact on the delivery schedule.

4.3 In the event that VISUAL fails to meet the delivery time of the Service or the Service Documentation set forth in the Project Plan, the Client is entitled to a price reduction of two percent (2%) of the original price for the delayed Service or a part thereof for each commencing week of delay.

The price reduction shall be limited to ten percent (10%) of the price agreed in the Purchase Order of the delayed Service or part thereof.

4.4 Notwithstanding the aforementioned, the Client shall not be entitled to the aforementioned price reduction, if and to the extent that the delay of VISUAL has occurred due to reasons caused the Client.

## 5. Acceptance

5.1 The Service and Service Documentation shall be assumed accepted, if the Client has not within seven (7) days from the Performance of the Service and the delivery of the Service Documentation made a written reclamation regarding the performance of the Service or delivery of the Service Documentation. The reclamation shall also include the grounds for the reclamation.

## 6. Prices and Terms of Payment

6.1 In the invoice the price for the Service shall be specified in accordance with the agreement.

6.2 In addition to the price for the Service agreed in the Purchase Order, the Client shall also be invoiced for reasonable material, travel and accommodation expenses relating to the performance of the Service, as well as for the price of one working day, if the time spent travelling exceeds ten (10) hours.

6.3 The agreed prices shall not include VAT or any other taxes or duties.

## 7. Intellectual Property Rights

7.1 All copyrights and other intellectual property rights relating to the Service Documentation shall be the property of the VISUAL unless otherwise agreed in applicable Purchase Order. All copyrights and other intellectual property rights relating to the VISUAL Documentation, including but not limited to any development applications and models, shall be the property of VISUAL.

7.2 All copyrights and other intellectual property rights relating to any Customer specific geometrics, layouts, models, components etc. provided to VISUAL by Client shall remain the property of Client.

7.3 VISUAL shall grant the Client a worldwide, perpetual, irrevocable, non-exclusive and non-transferable license to use, copy and amend the VISUAL Documentation and Service Documentation provided as part of performance of the Services for the Client's internal use only.

## 8. Limitation of Liability

8.1 THE SERVICES SHALL BE PERFORMED AND THE SERVICE DOCUMENTATION SHALL BE DELIVERED ON AN "AS IS"-BASIS WITHOUT A WARRANTY OF ANY KIND. EXCEPT AS PROVIDED IN THESE GENERAL TERMS OR REQUIRED BY THE MANDATORY PROVISIONS OF APPLICABLE LAW, VISUAL, ITS AFFILIATES OR SUBCONTRACTORS SHALL NOT GIVE ANY KIND OF WARRANTY FOR THE SERVICES OR THE SERVICE DOCUMENTATION, SUCH AS A WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR A WARRANTY THAT THE SERVICES OR THE SERVICE DOCUMENTATION DO NOT INFRINGE ANY PATENTS, COPYRIGHTS, TRADEMARKS OR OTHER RIGHTS OF THIRD PARTIES.

NEITHER VISUAL NOR ANY OTHER PARTY WARRANTS THAT THE SERVICES OR THE SERVICE DOCUMENTATION MEET ALL OF THE CLIENT'S REQUIREMENTS OR THAT THEY ARE FREE FROM ANY DEFECTS. THE CLIENT ASSUMES THE RESPONSIBILITY AND THE RISK OF THE SELECTED SERVICES ACHIEVING THE RESULT DESIRED BY THE CLIENT.

8.2 IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY LOST PROFITS OR SAVINGS, LOST BUSINESS, LOSS OF DATA, LOSS OF REVENUE, LOSS OF USE OR MONEY, LOSS OF BUSINESS, LOSS OF OPPORTUNITY, INJURY TO PERSON OR PROPERTY OR ANY INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL

DAMAGES (WHETHER OR NOT ALSO CONSTITUTING ONE OF THE FOREGOING SPECIFIC TYPES OF LOSS), WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE OR OTHER FAULT OF EITHER PARTY), PRODUCT LIABILITY, OR OTHERWISE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE FOREGOING SHALL APPLY REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON AN ACTION OR CLAIM IN CONTRACT, NEGLIGENCE, TORT, OR ANY OTHER THEORY OF LEGAL LIABILITY. THE LIMITATION OF LIABILITY SHALL NOT BE APPLICABLE TO BREACH OF CONFIDENTIALITY AS SET FORTH IN SECTION 10 NOR WHERE THE DAMAGE HAS BEEN CAUSED BY INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE.

8.3 THE MAXIMUM AGGREGATE LIABILITY OF VISUAL ARISING OUT OF OR RELATED TO THE SERVICES SHALL IN NO EVENT EXCEED 50 % OF THE AMOUNT ACTUALLY PAID BY THE CLIENT FOR APPLICABLE SERVICES OR PART THEREOF (EXCLUDING VALUE ADDED TAX).

## 9. Force Majeure

9.1 Either Party shall be entitled to suspend performance of his obligations under the Agreement during duration of Force Majeure.

9.2 Neither Party shall be liable for any delay, non-performance or damages or expenses suffered by the other Party as a result of force majeure. In an event of force majeure, the other Party shall be notified without delay of its occurrence and estimated duration.

9.3 An event of force majeure is an unforeseeable event beyond the control of the Party which occurs after the time of signing of this Agreement and which essentially affects the ability of a Party to fulfil its contractual obligations in such a way that the Party could not reasonably overcome or prevent its effects from occurring. Events of force majeure shall include (without being limited to) war, strikes, fires, explosions, natural disasters etc.

9.4 If the performance of the Agreement is delayed by more than three (3) months as a result of a force majeure event, a Party may terminate the Agreement by notifying the other Party in writing thereof.

## 10. Confidentiality

10.1 Each Party undertakes not to disclose to a third party any Confidential Information without the other Party's prior written consent. The Parties undertake to use the Confidential Information for purposes relating to the Agreement only.

10.2 The abovementioned limitations shall not apply to information, which i) has lawfully entered the public domain prior to the entry into force of the Agreement; ii) was in the possession of the receiving Party prior to being disclosed to the receiving Party; iii) a third party has disclosed without breaching any duty of confidentiality owed to the disclosing Party; or iv) the personnel of the receiving Party has independently developed without having had access to or using the Confidential Information.

10.3 Each Party shall allow access to the Confidential Information only to such personnel and subcontractors, for whom it is necessary to access it in order to fulfil their contractual obligations. Each Party shall enter into written confidentiality agreements with its personnel and subcontractors, which shall include at least the same limitations as set forth in these General Terms.

10.4 Each Party undertakes to ensure the confidentiality of the other Party's Confidential Information to at least the same extent and with the same care as the Party exercises to ensure the confidentiality of its own Confidential Information and trade secrets.

10.5 The provisions set forth in this clause 10 shall be valid for five (5) years from disclosure of the Confidential Information regardless of the performance of the contractual obligations or the termination of the Agreement or the earlier termination of the Agreement.

## **11. Termination**

11.1 A Party may terminate the Agreement with immediate effect by written notice to the other Party, in the event that (i) the other Party is in material breach of this Agreement and has not remedied the breach within thirty (30) days after having been notified of the breach in writing; (ii) the other Party becomes insolvent, is made bankrupt or put into liquidation; or (iii) it becomes otherwise clear that the other Party as a result of its financial or other difficulties is unable to fulfil its contractual obligations.

11.2 Notwithstanding the expiry of the Agreement as a result of termination or otherwise, sections 7, 8 and 10 of the General Terms shall remain in force.

## **12. Miscellaneous**

13.1 Neither Party shall assign this agreement or any rights or obligations arising hereunder to a third party without the other Party's prior written consent. Notwithstanding the aforementioned, VISUAL is entitled to use subcontractors pursuant to section 3.

12.2 This Agreement and all matters arising out of or in connection with this Agreement shall be interpreted, construed and governed exclusively in accordance with the laws of the State of New York and the federal laws of the United States (without giving effect to the conflicts of law's provisions thereof). The United Nations Convention for the International Sale of Goods shall not apply. Any dispute, controversy or claim arising out of or relating to this Agreement or interpretation, breach, termination or validity thereof shall be finally settled by arbitration in accordance with the Arbitration Rules of International Chamber of Commerce. The arbitration shall be conducted in New York City, NY, United States, by sole arbitrator, in the English language. The award shall be final and binding on the Parties. The Parties have nevertheless right to claim for any receivables due and payable at the district court of New York City, NY, USA.

12.3 In the event of conflict between the signed Purchase Order including the Project Plan attached to it and provisions in these General Terms, the Purchase Order shall prevail.