



Terms and Conditions of Sale / Service

Definitions

the "Sales Document"	- ERP Momentum Ltd Service Level Agreement or Sales Order form.
the "Customer"	- the party referred to in the Sales Document.
ERP Momentum	- ERP Momentum Ltd 4 Kensington Close Stone Staffordshire. ST15 8XQ
the "Agreement"	- this document, and the Sales Document, combined.
The "Consultants"	- staff employed or contracted by ERP Momentum in pursuance of its day to day activities

Clause 1 - The Service

Customer engages ERP Momentum to provide consultancy services and/or equipment or software products to Customer ("the Services") upon the terms and conditions of this Agreement. Each product or service assignment shall be defined within a Service Level Agreement or other Sales Document as an accompaniment to this Agreement created for the purpose and signed by both parties as confirmation that the assignment is accurately defined therein. The document accompanying this Agreement shall be referred to generically as the "Sales Document", with each assignment or product identified uniquely therein.

The Services shall be conducted by employees of ERP Momentum ("the Consultants") deemed qualified by ERP Momentum to undertake the Services.

Clause 2 - Duration

This Agreement shall continue in perpetuity unless terminated in accordance with Clause 9.

Clause 3 - ERP Momentum Obligations

ERP Momentum warrants and undertakes to Customer that it shall ensure that the Consultants at all times during the performance of the Services

- a) devote such of their time attention and skill as may be necessary for the proper performance of its obligations hereunder. Customer and ERP Momentum shall from time to time agree what is necessary in this respect.
- b) supply and render the services with all reasonable skill and care and in a professional manner.
- c) conform to the standards generally observed in the industry for similar services, and provide the Services with reasonable skill and care.
- d) adhere to all security and other office procedures implemented at the Site. (For the purposes of this Agreement, the "Site" shall mean any of the Customer's offices or premises where the Customer may wish the Services to be carried out, and
- e) promptly provide to Customer such information as Customer reasonably requests in relation to the performance of the Services.

Clause 4 - Customer Obligations

Customer warrants and undertakes to ERP Momentum that it shall

- a) pay the fees in accordance with Clause 6.
- b) make available to ERP Momentum free of charge such workstations and other computing and office facilities at the Site as may be reasonably necessary for its work under this Agreement, and
- c) promptly furnish ERP Momentum with such information and documents as it may reasonably request for the proper performance of its obligations hereunder.

- d) Provide a safe and healthy working environment for ERP Momentum staff whilst on their site in accordance with all appropriate Statutes, Regulations and expected safe working practices.

Clause 5 - Supervision of the Service

With effect from the date of this Agreement, ERP Momentum and Customer shall each nominate a representative who shall be authorised to make decisions relating to the Services who shall be responsible for

- a) organising regular meetings at which they shall review the progress of the Services, and
- b) providing all information and documentation reasonably required by ERP Momentum or Customer (as the case may be) for the performance of its duties hereunder.

ERP Momentum shall keep detailed records of all acts and things done in relation to the provision of the Services and at Customer's request shall make them available for inspection and/or provide copies to Customer.

Clause 6 - Fees and Charge method

Customer shall pay ERP Momentum the fees set out in the Sales Document for the provision of the Services.

Disbursements may be payable in addition to agreed fees in respect of travel and subsistence. In these cases these disbursements will be agreed in advance and will be noted on sales documentation.

ERP Momentum shall render invoices to Customer in respect of its fees at intervals specified in the Sales Document, or if not specified when the Services have been completed. Invoices will be rendered to the address detailed in the Sales Document.

The fees shall be payable by Customer within 14 days after receipt of ERP Momentum invoice, unless other terms are agreed and detailed in the Sales Document.

Unless agreed otherwise, ERP Momentum will raise an invoice each week end to cover charges for Consultants time expended in providing the Service to the Customer at the agreed rate or rates during that week.

Clause 7 - Confidential Information

ERP Momentum agrees that both it and its employees shall at all times both during the term of and after the termination of the Agreement for any reason

- a) treat as secret and confidential and not disclose or permit to be disclosed to any person other than such of its employees who reasonably need to know the same for the performance of the Services
- b) not use for any purpose other than the performance of the Services or permit so to be used, and
- c) upon termination of this Agreement for whatever reason deliver up to Customer

All documents provided to ERP Momentum and all working papers or other material prepared by or on behalf of ERP Momentum (and all copies thereof) which contain any commercial, financial, technical, operational or other information relating to the business or affairs of Customer whether received during or prior to the period of the Agreement.

Such provisions shall not apply to any such information which is, or comes into, the public domain otherwise than through breach of this Clause.

This Clause 7 shall survive expiry or termination of this Agreement for whatever reason.

Clause 8 - Intellectual Property Rights

The copyright, trade marks and all other intellectual property rights in all and any bespoke software developed by or on behalf of ERP Momentum and supplied to the Customer pursuant to this Agreement ("the Software") are hereby assigned to the Customer in their entirety and within the context for which ERP Momentum have been retained only.

ERP Momentum shall indemnify, defend and hold harmless Customer against any damages (including costs) that may be awarded or agreed to be paid to any third party in respect of any claim or action to the extent that the normal operation, possession, or use of the Software by Customer infringes the patent, copyright, registered design, trade mark rights, or any other intellectual property rights of said third party (an "Intellectual Property Infringement") provided that Customer:-

- a) gives notice to ERP Momentum of any intellectual property infringement forthwith upon becoming aware of the same

- b) gives ERP Momentum the sole conduct of the defence to any claim or action in respect of any intellectual property infringement and does not at any time admit liability or otherwise settle or compromise or attempt to settle or compromise the said claim or action except upon the express instructions of ERP Momentum, and
- c) acts in accordance with the reasonable instructions of ERP Momentum and gives to ERP Momentum such assistance as it shall reasonably require in respect of the conduct of the said defence including without prejudice to the generality of the foregoing the filing of all pleadings and other court process and the provision of all relevant documents.
- d) Has used their best endeavours to ensure that the act of commissioning ERP Momentum on it's behalf to develop a specific software application is not likely to infringe the intellectual property rights of a third party.

ERP Momentum shall reimburse Customer its reasonable costs incurred in complying with the provisions of clause c) above.

In the event of an intellectual property infringement, ERP Momentum shall be entitled at its own expense or option either to

- a) procure the right for Customer to continue to use the Software, or
- b) make such alterations, modifications or adjustments to the Software so that it becomes non-infringing without incurring a material diminution in performance or function.

ERP Momentum shall promptly deliver to Customer the "Source Code" of the Software at any time on Customer's request. For the purpose of this clause, "Source Code" means, in respect of any software, such software in an eye-readable form capable of interpretation by a software programmer of reasonable skill and in such form that it can be compiled or interpreted into equivalent object code, together with all such supporting technical information and documentation as is reasonably necessary to reproduce, support, maintain, modify and enhance such software.

The obligations of the parties under this Clause 8 shall survive the expiry or the termination of this Agreement for whatever reason.

Clause 9 - Termination

Each party shall be entitled to terminate this Agreement forthwith by notice in writing in the event that

- a) Either party commits a breach of any of the terms of this Agreement which breach, in the case of a breach capable of remedy, is not remedied within 14 days of receipt of a written notice giving full particulars of the breach and requiring it to be remedied
- b) a receiver is appointed over any of the property or assets of either party
- c) Either party makes any voluntary arrangement with its creditors or becomes subject to an administration order, or
- d) Either party ceases or threatens to cease to carry on business.
- e) The Consultant(s) assigned to the work are replaced by ERP Momentum Ltd without the agreement of the Customer.

Either party may terminate this Agreement at any time on completion of agreed work in progress or within by 90 days prior written notice to the other party (whichever is the least).

Upon termination of this Agreement under this Clause 9, some or all of the fees may remain payable and the parties agree to negotiate a settlement of the amount payable in good faith, having regard to the proportion of any assignment as shall have been completed at such time, and of any material costs incurred and not yet recovered prior to the issuing of the termination notice.

Clause 10 - Warranty and Liability

ERP Momentum warrants that the Software or the Service being provided to the Customer shall be suitable for the purpose for which it is supplied and comply in all significant respects with any agreed specification.

In no event shall ERP Momentum's liability to Customer or any other person or entity arising out of or in connection with this Agreement or the Services exceed, in the aggregate, £250,000.

Notwithstanding this provision, ERP Momentum accepts liability for death or personal injury caused by the negligence of ERP Momentum or any of its staff subject to a maximum aggregated claim of £250,000.

ERP Momentum agrees to take out adequate insurance to cover the provisions of this Clause 10 and at Customer's request agrees to produce a copy of the insurance policy and relevant renewal lists.

ERP Momentum shall not be liable for any loss of profit, indirect or consequential loss or damage including, without limitation, lost revenues, savings or business or loss of records or data, whether arising from tort (including, without limitation, negligence), breach of contract, warranty, strict liability, or otherwise.

The obligations of the parties under this Clause 10 shall survive the expiry or termination of this Agreement for whatever reason.

Clause 11 - Entire Agreement

This Agreement (when read in conjunction with sales documentation) constitutes the entire agreement between the parties relating to the subject matter thereof, and supercedes all prior agreements, representations and understandings relating thereto, provided always that nothing herein shall exclude or limit any liability or remedy which either party may have in respect of any representation fraudulently made. No addition or variation may be made to this Agreement unless agreed to in writing by the parties.

Clause 12 - Staff

Customer undertakes that it will not induce any ERP Momentum employee to leave ERP Momentum's employment, whether that is to become a direct employee of Customer, to become an independent party acting as contractor to Customer or to become an employee of a third party supplying services to Customer, during the term of this Agreement or for a period of 12 months from the termination of this Agreement.

ERP Momentum undertakes that it will not induce any Customer employee to leave Customer's employment, whether that is to become a direct employee of ERP Momentum, to become an independent party acting as contractor to ERP Momentum or to become an employee of a third party supplying services to ERP Momentum, during the term of this Agreement or for a period of 12 months from the termination of this Agreement.

Either party being found in breach of this Clause 12 agrees to pay a finder's fee of £5,000 to the other party 30 days from termination of the employee's contract of employment.

Clause 13 - Change Control

Customer may at any time request any change to the scope of the Services by notice in writing to ERP Momentum. ERP Momentum shall respond to any such notice promptly, in any event within 14 days of the date of change request, giving details of any consequential changes to the Services necessary to accommodate such change, and providing full costings for the implementation of the same. The communication of change management will be made in a manner commensurate with the scale and nature of the change and can be from verbal agreement to e-mail, or re-issue of formal sales documentation. ERP Momentum shall prepare all such costings in good faith, and shall ensure that the same are not disproportionate either to the cost of such implementation to ERP Momentum, or to the rates of charging reflected in the fees set out in the Sales Document. Following receipt of ERP Momentum's response, Customer shall notify ERP Momentum whether or not Customer wishes to proceed with such change, and in the event that Customer notifies ERP Momentum that Customer does so wish to proceed, such change shall be implemented in accordance with the costings agreed.

ERP Momentum shall not be held to any previously agreed service delivery date where any change request has been made since the Agreement came into force.

Clause 14 - Assignment and Sub-Contracting

ERP Momentum shall not sub-contract, assign or transfer the whole or any part of its rights or obligations under this Agreement without the prior written consent of Customer.

Clause 15 - Notices

Any notice required to be given pursuant to this Agreement shall be given in writing and sent by e-mail, postal service or through any other agreed medium such as the ERP Momentum web site to the other party at the address and using the contact details in the Sales Document.

Any notice given shall be deemed received no later than 2 working days following the date raised.

Invoices shall be sent to Customer at the address indicated on the Sales Document.

All communication made in writing with **ERP Momentum** will be to its offices as noted on page one.

Clause 16 - Severability

If any provision or part of any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court or competent jurisdiction, such provision or part thereof shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Agreement had been executed with the invalid, illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the

accomplishment of the purpose of this Agreement, Customer and ERP Momentum shall negotiate in good faith with a view to remedying such invalidity.

Clause 17 - Waiver

The failure of either party to insist upon strict performance of any provision of this Agreement, or the failure of either party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by this Agreement.

A waiver of any breach or other default shall not constitute a waiver of any subsequent breach or other default.

Clause 18 - Law and Jurisdiction

This Agreement shall be construed and the rights and obligations herein shall be determined in all respects by English Law, and the parties hereby submit to the exclusive jurisdiction of the English courts in relation to any dispute arising out of or in connection with this Agreement.

Clause 19 - Arbitration

Any dispute or difference in this matter will be referred initially to the Managing Director of ERP Momentum who will use his best endeavours to resolve the matter. Failing this, the dispute or difference arising out of or in connection with this contract shall be determined by the appointment of a single arbitrator to be agreed between the parties, or failing agreement within fourteen days, after either party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the President or a Vice President of the Chartered Institute of Arbitrators.

Clause 20 - Force Majeur

Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

Signed:

for and on behalf of client (print name below)

Date ____/____/____

Signed:

for and on behalf of ERP Momentum (print name below)

Date ____/____/____