

## General Terms

The following terms are General Terms applying to all FSS contracts.

These are supplemented by specific terms dependent on the nature of the business.

### 1) Definitions and Interpretation

Term	Description
Agreement	Terms and Conditions, any attached letter and any attached Schedules or Appendices concerning the Service or Product
Client	The party who is contracting FSS to perform the Agreement or the end recipient should this be a different entity
Licensee	The end user of the Product
Supplier	FormaServe Systems Ltd, its staff or any of its subsidiaries
Service	The agreed Service that FSS or its staff are engaged to perform
Product	The agreed product that FSS or its staff are engaged to supply
Commercial Exploitation	The use of the Products for monetary gain either by an institution or an individual
Confidential Information	All information obtained in connection with the discussions leading up to or the performance of the Agreement in whatever format or media obtained (and whether verbal or written) which is marked or notified to the recipient as being confidential, or which in the normal course of business would be considered to be of a confidential nature
Duration	The period from the date of the Agreement until its lawful termination in accordance with these terms
Equipment	The Client's Hardware or Software in relation to which these Services will be provided
Fixed Price	The price for the Service or Product set out in the Agreement
Hacker	Anyone who specifically and/or maliciously gains access to the website via the Internet or other external electronic link, solely by circumventing electronically the security systems in place to protect against such access
Initial Period	The initial period of 12 months during which the Company will provide Services to the Client
Site	The Premises housing the Equipment
Staff	Appropriately qualified individuals (Representatives) provided by FSS to perform the Service

## 2) Whole Agreement

2.1) This Agreement, additional Specific Terms, and any attached schedules constitutes the entire agreement between the parties relating to its subject matter and supersedes all previous communications, representations and other arrangements, whether oral or written.

2.2) The Client acknowledges that no reliance is placed on any representation made by the Supplier but not embodied in this Agreement

2.3) Initially the parties shall each designate a representative as the prime point of contact for matters relating to the Product and Service. Either party may change its representative under this clause at any time by informing the other party, as a general change or for a specific instance.

## 3) Fees and Payment

3.1) The Client will pay the Supplier the fees and other charges invoiced by the Supplier from time to time. Fees are quoted exclusive of VAT and where applicable, VAT will be payable by the Client at the appropriate rate

3.2) All invoices will be due for payment 30 days from the invoice date unless otherwise specified

3.3) If the Client fails to make any payment by the due date, the Supplier reserves the right (without prejudice to any other rights or remedies which it may have) to:

- charge interest on any overdue amount at the rate of 5% p.a. above the base rate of the Bank of England from time to time in force from the due date until payment is received in full; and/or
- remove, cease or otherwise render useless any work already carried out until payment is made

3.4) In case collection action proves necessary, the Client agrees to pay all fees and costs incurred by that process

## 4) Notice

Any notice to be given by either party to the other shall be in writing and sent by first class post, e-mail or delivered by hand. Notice sent by post shall be treated as delivered after two working days. Notice delivered by hand or by e-mail will be treated as delivered on the day of delivery unless this occurs outside normal working hours, in which case, delivery will be treated as occurring on the next working day

## 5) Termination

5.1) Either party may terminate this Agreement by notice to the other if the other party:

- commits a breach of this Agreement and (in the case of the breach capable of remedy) fails to remedy it within 14 days of receiving notice requiring it to remedy the breach; or
- the other party becomes insolvent or unable to pay its debts or if a liquidator, trustee, receiver or administrative receiver is appointed in respect of all or part of its business or assets or a solution is passed for its winding up

5.2) Termination will not prejudice any rights or remedies of either party that have accrued at the termination date

5.3) In the event of premature termination by the Client, Payments due under this Agreement will become immediately payable in full

5.4) The Supplier may refuse to accept work which is expected by them to extend beyond the termination date

## 6) Confidentiality

6.1) Neither party will disclose any information designated by the other as confidential to any third party (except to employees or sub-contractors on a need to know basis and then only after obtaining an appropriately worded confidentiality undertaking from those persons). No confidential information will be used for any purpose other than in relation to the Services or Products without the other party's prior written consent

6.2) This clause will not extend to information which:

- was already lawfully in the possession of the recipient; or
- is already or becomes public knowledge (other than to a breach of this Agreement)

6.3) The obligations in this clause will survive termination of this Agreement

## 7) Intellectual Property

7.1) The copyright and all other proprietary rights in all Products, Software and materials developed under this Agreement including modifications to any software will remain the property of the Supplier

7.2) The Client will have a non-exclusive and non-transferable licence to use and reproduce at its own expense, for its own internal purposes only, the materials and software developed by the Supplier. The Products may be used by any employee or other persons authorised by the Client for the purpose of the normal business of the Client's organisation, excluding consultancy or services leading to commercial exploitation of the Products.

7.3) The Client hereby grants the Supplier the right to name the Client and to display graphics and other design elements as examples of their work in their portfolios but not any secured or password protected areas or information that is commercially sensitive or would be in contravention of the Data Protection Act

7.4) The Client shall be responsible for ensuring that no action of the Client constitutes an infringement of any third-party intellectual property rights and shall indemnify the Supplier against any third-party claims arising from any breach

7.5) The Client is responsible for obtaining all licences, permits and approvals required in connection with the Services or Products, including, but not limited to, the consent of any licensor of software, telecommunications owner, utility company or otherwise with respect to the Equipment

## 8) Staff

8.1) Unless otherwise provided, the Supplier shall not, and shall procure that its personnel shall not, act on behalf of or commit the Client with regard to third parties or hold itself out or permit itself to be held out as having any authority to do or say anything on behalf of or in the name of the Client. The Supplier shall abstain from any statement or behaviour which might be misunderstood in this respect

8.2) This agreement is not intended to and does not create or reflect a contact of services between any two parties referred to and there is no implied restraint upon the Staff or the Supplier in providing services, not in conflict with the Client's interests, to any other party, nor does this agreement confer any obligation upon any party to provide or accept further work

8.3) The Supplier may make holiday arrangements with their Staff in accordance with their entitlement or require them to attend meetings or courses from time to time. When making any such arrangements, The Supplier shall take all reasonable steps to minimise disruption

8.4) The Supplier is entitled to sub-contract all or part of its obligations with respect to the provision of the Services but sub-contracting will not relieve it from its obligations to the Client

## 9) Warranty and Liability

9.1) The Supplier will exercise reasonable skill and care in the provision of the Products or Services

9.2) The Client must notify the Supplier immediately and in any event within 10 working days of performance by the Supplier of any Products or Services which in the Client's opinion are unsatisfactory. The Supplier will rectify any faulty work as soon as reasonably practicable at its own expense

9.3) If a fault is reported which on investigation is not the responsibility of the Supplier, the Supplier may charge the Client at its standard hourly rates for the time plus expenses incurred in undertaking the investigation and rectification

9.4) All terms, conditions and warranties implied by law, trade use or otherwise (including but not limited to any warranties as to quality or fitness for purpose) are excluded to the extent permitted by law. The Client, by entering into the Agreement, acknowledges that the only warranties are those given expressly by the Supplier in this Agreement and the Supplier has no liability or obligation to the Client except as expressly set out in this Agreement

9.5) The Client is responsible for the consequences of any use of the Products or Services. The Supplier will have no liability for any indirect or consequential loss, damage, cost or expense of any kind whether arising under contract, tort or otherwise including (but not limited to) loss of production, loss of or corruption to data, loss of profits, loss of operating time or loss of goodwill, cost of reconstituting data, damage, loss of anticipated savings,

9.6) The Supplier's liability to the Client for death or injury resulting from negligence of the Supplier or its employees shall not be limited

9.7) The Supplier's liability in respect of any negligence or breach of contract including any damage to or loss of property of the Client is limited to the aggregate of the service fees paid under this Agreement in the immediately preceding period of 12 months

9.8) The Supplier will use all reasonable endeavours to secure delivery and completion by any quoted dates, but all such dates are to be treated as estimates only

9.9) the Client agrees to indemnify and keep indemnified and hold the Supplier, on demand, harmless from and against any claim brought against the Supplier by a third party resulting from the provision of the Services to the Client, and in respect of all losses, costs, actions, proceedings, claims, damages, expenses (including reasonable legal costs and

expenses), or liabilities, whatsoever suffered and howsoever incurred by the Supplier in consequence of a breach by the Client or non-observance of these terms and conditions

## 10) Force Majeure

10.1) The Supplier will not have any liability to the Client if it is prevented from performing the Agreement on account of any circumstances beyond its reasonable control (a “force majeure event”). The Supplier will immediately notify the Client of a force majeure event and take such steps as is reasonably practicable to overcome the same. During a period of force majeure, the obligations of the Supplier shall be suspended to the extent that they cannot be performed

## 11) Disputes

11.1) The parties will endeavour to resolve any disputes through good faith amicable negotiations

11.2) Any dispute which cannot be resolved directly between the parties shall, on the application of either of them, be referred to mediation before a mediator appointed in accordance with the CEDR (Centre for Effective Dispute Resolution) mediation rules then in force

11.3) Any dispute which is not settled by negotiation or mediation shall be finally determined by the Courts of England and Wales and the parties agreed to submit to the jurisdiction of those Courts

## 12) Waiver

12.1) No delay or failure by either party to exercise any of its rights under this Agreement will operate as a waiver of them. To be effective, a waiver must be in writing

## 13) Severability

13.1) If any provision of this Agreement is illegal, invalid or unenforceable in any jurisdiction, its enforceability in any other jurisdiction shall not be affected and nor shall the validity or enforceability of any other provision of this Agreement

## 14) Governing Law

14.1) This Agreement shall be construed in accordance with and governed by the law of England. Each party irrevocably agrees to submit to the exclusive jurisdiction of the Courts of England in respect of any dispute, suit, action or proceedings which may arise out of or in connection with this Agreement