

Dated

2020

THE FINCH CONNECTION LTD.

(trading as Sell Beyond)

Terms and Conditions for the Supply of Services



31-41 Elm Street, Ipswich, Suffolk, IP1 2AY

1. INTERPRETATION

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Charges: the charges payable by the Customer for the supply of the Services in accordance with clause 5.

Commencement Date: has the meaning given in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 11.6.

Contract: the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions.

Customer: the person or firm who purchases Services from the Supplier.

Customer Default: has the meaning set out in clause 4.3.

Data Protection Legislation: the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data.

Deliverables: the deliverables produced by the Supplier for the Customer as set out in the Specification.

Intellectual Property Rights: patents, trade marks, service marks, registered designs, utility models, design rights, copyright, database rights, inventions, trade secrets, know-how, business or trade

names and all other intellectual rights whether registered or unregistered.

Order: the Customer's order for Services as set out in the Customer's purchase order form or the Customer's written acceptance of a quotation by the Supplier or the Customer's written acceptance of the Supplier's Order Form.

Order Form: the Supplier's order form submitted to the Customer containing a reference to these Conditions together with a draft of the Specification as the Supplier may consider appropriate.

Services: the services supplied by the Supplier to the Customer as set out in the Specification.

Specification: the description or specification of the Services provided by the Supplier to the Customer as set out in Schedule 1.

Supplier: THE FINCH CONNECTION LTD. (trading as Sell Beyond) registered in England and Wales with company number 09747466 and a registered office at Rosemary Rectory Hill, East Bergholt, Colchester, Suffolk CO7 6TH.

Supplier has the meaning set out in clause 4.2.33.

Materials:

Supplier's <https://www.sell-beyond.com/>

Website:

Training: means training supplied by the Supplier to the Customer on the Customer's premises (or any other premises as the parties may agree) comprising part or whole of the Services.

1.2 Interpretation:

1.2.1 A reference to a particular statute, statutory provision or subordinate legislation is a reference to it as it is in force at the date of this agreement,

taking account of any amendment or re-enactment and includes any statute, statutory provision or subordinate legislation that it amends or re-enacts and subordinate legislation for the time being in force made under it.

- 1.2.2 Except where the context otherwise requires, words denoting the singular include the plural and vice versa; words denoting any gender include all genders; words denoting persons include corporations and vice versa.
- 1.2.3 Unless otherwise stated, a reference to a Clause, sub-clause or Schedule is a reference to a Clause or a sub-clause of, or a Schedule to, this agreement.
- 1.2.4 Clause, Schedule and paragraph headings are for ease of reference only and do not affect the interpretation of this agreement.
- 1.2.5 A reference to **writing** or **written** includes fax but not email.
- 1.2.6 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 2.2 The Order shall be accepted when the Supplier issues written acceptance and at which date the Contract shall come into existence (**Commencement Date**).
- 2.3 Any details, information and specifications provided by the Supplier or contained on the Supplier's Website is issued for the sole purpose of giving an approximate idea of the Services and shall not form part of the Contract or have any contractual force.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms, or which are implied by law, trade custom, practice or course of dealing.

3. SUPPLY OF SERVICES

3.1 The Supplier shall supply the Services to the Customer in accordance with the Specification.

3.2 The Supplier shall use all reasonable endeavours to meet any performance dates specified in Schedule 1, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

3.3 The Supplier reserves the right to amend the Specification where:

3.3.1 the Customer's requirements have changed; or

3.3.2 it is necessary to comply with any applicable law or regulatory requirement and the Supplier shall notify the Customer in any such event.

4. CUSTOMER'S OBLIGATIONS

4.1 The Customer shall:

4.1.1 ensure that the terms of the Order and any information it provides which forms part of the Specification are complete and accurate;

4.1.2 co-operate with the Supplier in all matters relating to the Services;

4.1.3 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;

4.1.4 comply with all applicable laws, including health and safety laws; and

4.1.5 provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects.

4.2 Insofar as the Services comprise in whole or part Training, the Customer shall, in addition to its obligations under clause 4.1:

4.2.1 provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises (or as the case may be, assist the Supplier with any reasonable requests where the

Services are to be provided at other premises not forming part of the Customer's premises and procure access to such premises), office accommodation and other facilities as reasonably required by the Supplier;

4.2.2 prepare the Customer's premises for the supply of the Services where those Services include Training; and

4.2.3 keep all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation.

4.3 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission or failure to perform an obligation by the Customer (**Customer Default**):

4.3.1 without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default;

4.3.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly under this clause 4.3; and

4.3.3 the Customer shall reimburse the Supplier for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

5. CHARGES AND PAYMENT

5.1 The Charges for the Services shall be determined in accordance with the Specification.

5.2 The Supplier reserves the right to increase the Charges (in consultation with the Customer) where the Customer's requirements have changed and the Specification needs amending.

5.3 The Supplier shall be entitled to charge the Customer for any expenses it reasonably incurs in connection with performing the Services.

- 5.4 The Supplier reserves the right to invoice the Customer for the total amount of the Charges in advance of the Services being supplied. Thereafter, any invoices in relation to the Services shall be raised by the Supplier to the Customer at the Supplier's discretion.
- 5.5 Unless the Supplier otherwise determines, the Customer shall pay each invoice submitted by the Supplier:
- 5.5.1 within 10 days of the date of the invoice; and
- 5.5.2 in full and in cleared funds to a bank account nominated in writing by the Supplier.
- 5.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). The Customer shall pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.7 The Customer shall pay the Supplier such additional amounts in respect of any bank charges or other fees the Supplier incurs as a result of a particular payment method the Customer opts to use in order to pay any amounts payable under the Contract.
- 5.8 If the Customer fails to make a payment due to the Supplier under the Contract by the due date (without limiting the Supplier's remedies under clause 9) the Supplier may require the Customer to pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 5.8 will accrue each day at 4% a year above the Bank of England's base rate from time to time.
- 5.9 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding.

6. INTELLECTUAL PROPERTY RIGHTS

- 6.1 All Intellectual Property Rights in or arising out of or in connection with the Services and Deliverables shall be owned by the Supplier.

- 6.2 All Intellectual Property Rights in any materials supplied by the Customer to the Supplier, for the purposes of the Supplier performing the Services and Deliverables, shall remain vested in the Customer.
- 6.3 The Supplier grants to the Customer a non-exclusive licence during the term of the Contract to copy any material provided by the Supplier in connection with the Services and the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business.
- 6.4 The Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 6.2 and agrees to indemnify the Supplier against all losses suffered or incurred by the Supplier arising out of or in connection with a breach of clause 6.3.
- 6.5 The Customer grants the Supplier a non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the purpose of providing the Services to the Customer.

7. DATA PROTECTION

- 7.1 The Supplier and the Customer shall comply with the Data Protection Legislation as may apply to their respective rights and obligations under the terms of the Contract subject to the privacy statement contained on the Supplier's Website.
- 7.2 The Customer acknowledges the terms of the privacy statement contained on the Supplier's Website regarding the use and storage of data as shall apply to the provision of the Services and Deliverables subject to these Conditions.

8. LIMITATION OF LIABILITY

- 8.1 Nothing in these Conditions limits or excludes the Supplier's liability for:
- 8.1.1 death or personal injury caused by the Supplier's negligence;
 - 8.1.2 fraud or fraudulent misrepresentation; or
 - 8.1.3 any other liability that cannot be limited or excluded by law.
- 8.2 Subject to clause 8.1, the Supplier will under no circumstances be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

- 8.2.1 any loss of profits, sales, business or revenue;
 - 8.2.2 loss of business opportunity;
 - 8.2.3 loss of goodwill; or
 - 8.2.4 any indirect or consequential loss.
- 8.3 Subject to clause 8.1 the Supplier's total liability to the Customer in respect of each event or series of connected events shall not exceed the amount paid for the Services by the Customer to the Supplier.
- 8.4 The terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 8.5 The Supplier shall not be liable for a claim unless notice in writing of the claim, summarising its nature and the amount claimed, has been provided by the Customer to the Supplier on or before the first anniversary of the Commencement Date.
- 8.6 This clause 8 shall survive termination of the Contract.

9. TERMINATION

- 9.1 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services under the Contract, or terminate the Contract with immediate effect by giving written notice to the Customer if the Customer:
- 9.1.1 commits a material breach of any of the Conditions and (if such a breach is remediable) fails to remedy that breach within 14 days of being notified by the Supplier in writing to do so;
 - 9.1.2 fails to pay any amount due under the Contract on the due date for payment;
 - 9.1.3 takes any step or action in connection with its own business by entering into administration, provisional liquidations or any composition or arrangement with creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceases to carry on business;

9.1.4 suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or

9.1.5 allows its financial position to deteriorate to such an extent that in the opinion of the Supplier the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

10. CONSEQUENCES OF TERMINATION

10.1 On termination of the Contract:

10.1.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt; and

10.1.2 the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for.

10.2 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

11. GENERAL

11.1 **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

11.2 **Assignment and other dealings.**

11.2.1 The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

11.2.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.

11.3 **Confidentiality.**

11.3.1 Each party undertakes that it shall not disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.3.2.

11.3.2 Each party may disclose the other party's confidential information:

(a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11.3; and

(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

11.3.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

11.4 **Restriction on Recording of Video Meetings.** The Customer shall not record any of the Services provided to the Customer by the Supplier through video conferencing including without limitation Teams, Zoom or WhatsApp without the prior written consent of the Supplier.

11.5 **Entire agreement.** The Contract sets out the entire agreement between the Supplier and the Customer in relation to its subject matter. The Customer acknowledges that it has not relied on any statement, promise or representation or assurance or warranty that is not set out in the Contract.

11.6 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the Supplier and the Customer.

11.7 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any

other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

11.8 **Severance.** Each clause under these Conditions operates separately. If any court or relevant authority decides that any of the clauses under these Conditions is unlawful or unenforceable, the remaining clauses under these Conditions shall remain in full force and effect.

11.9 **Notices.**

11.9.1 Any notice or other communication given under the Contract shall be in writing and signed by or on behalf of the party giving it and shall be served by delivering it by hand or sending it by pre-paid recorded delivery or registered post to the party due to receive it, to its registered office address or principal place of business.

11.9.2 Subject to clause 11.8.1, in the absence of evidence of earlier receipt, any notice or other communication given pursuant to this clause shall be deemed to have been received:

(a) if delivered by hand, at the time of actual delivery to the address referred to in clause 11.8.1; and

(b) in the case of pre-paid recorded delivery or registered post, on the second Business Day after the date of posting.

11.9.3 If deemed receipt under clause 11.8.2 occurs before 9:00 am on a Business Day, the notice shall be deemed to have been received at 9:00 am on that day. If deemed receipt occurs on any day which is not a Business Day or after 9:00 am on a Business Day the notice shall be deemed to have been received at 9:00 am on the next Business Day.

11.9.4 For the avoidance of doubt, notice given under the Contract shall not be validly served if sent by e-mail or by fax.

11.10 **Third party rights.** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

- 11.11 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.
- 11.12 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

SCHEDULE 1

[TO BE COMPLETED BY THE FINCH CONNECTION LTD.]