



# Terms and Conditions of Business

2011

---

**PLEASE NOTE: unless otherwise agreed in writing these are the Focus On Business standard trading terms of business.**

# Table of Contents

- 1 TERMS AND CONDITIONS ..... 3**
- 1.1 FOCUS ON BUSINESS TERMS OF BUSINESS ..... 3
  - 1.1.1 *Definitions* ..... 3
  - 1.1.2 *Other documents* ..... 3
  - 1.1.3 *Standard of services and governance* ..... 3
  - 1.1.4 *Tax and Carriage* ..... 4
  - 1.1.5 *Governing law* ..... 4
  - 1.1.6 *Purchase orders* ..... 4
  - 1.1.7 *Acceptance of order* ..... 4
  - 1.1.8 *Payment terms* ..... 4
  - 1.1.9 *Rates* ..... 4
  - 1.1.10 *Cancellation* ..... 5
  - 1.1.11 *Data & Liability* ..... 5
  - 1.1.12 *Force Majeure* ..... 5
  - 1.1.13 *Title to Intellectual Proprietary and other Rights* ..... 6
  - 1.1.14 *Project charges* ..... 6
  - 1.1.15 *Travel & expenses* ..... 6
  - 1.1.16 *Support* ..... 6
  - 1.1.17 *Confidentiality* ..... 6
  - 1.1.18 *Warranties* ..... 7
  - 1.1.19 *Termination* ..... 8
  - 1.1.20 *No assignment* ..... 8
  - 1.1.21 *Severance* ..... 8
  - 1.1.22 *Waiver of breach* ..... 9
  - 1.1.23 *Relationship* ..... 9
  - 1.1.24 *Survival* ..... 9

# 1 Terms and Conditions

---

## 1.1 Focus On Business Terms of Business

Below are standard Focus On Business Terms for reference. Where there is an adjustment to the Terms of Business these are defined in Section 1.2 Terms and Conditions of business adjustments.

### 1.1.1 Definitions

The words below are agreed to mean as follows:

“Focus On Business” means Focus On Business Limited.

“The Client” means you the client.

“This Agreement” means the terms and conditions contained herein.

“The Contract” means the Project Investment Summary, Purchase Order, this Agreement and any other supplementary or ancillary written agreement as may entered into between Focus On Business and The Client for the provision of the Service(s) hereunder in respect to the Supported Product(s), as may be amended or supplemented from time to time.

“The Service(s)” means the provision by Focus On Business of any of (but not limited to) the following service(s):

- Software
- Consultancy
- Training
- Maintenance
- Support

### 1.1.2 Other documents

Other than as specifically provided in any separate formal agreement between The Client and Focus On Business, these terms and conditions may not be altered, supplemented, or amended by the use of any other document(s) unless agreed between both parties.

### 1.1.3 Standard of services and governance

Focus On Business warrants that, at all times, the Service(s) (i) shall be performed with reasonable skill and care in a timely and professional manner by appropriately skilled, experienced and qualified persons; (ii) shall be performed in accordance with The Client internal health and safety policies, procedures and requirements, as updated from time to time; and (iii) shall be performed in compliance with all applicable laws, enactments, orders, regulations, standards and other similar instruments.

The Client reserves the right and authority to periodically inspect the management, internal control mechanisms and strategy (“Internal Controls”) of Focus On Business, for the purposes of determining suitability, appropriateness, adherence and completeness of the business processes for or relating to the provision of the Service(s). Failure to meet acceptable standards will, without prejudice to any other available rights or remedies hereunder or at law, result in The Client requesting a review of the Service(s) and fees payable and/or redesign of these Internal Controls and/or a review of the relationship and the Contract between The Client and Focus On Business.

#### **1.1.4 Tax and Carriage**

All sums payable under this Agreement are excluding any applicable Tax and Carriage.

#### **1.1.5 Governing law**

This Agreement shall be subject to the laws of the country of purchase and the parties hereto agree to submit to the jurisdiction of the courts of the country of purchase.

#### **1.1.6 Purchase orders**

Focus On Business cannot commence the Service(s) until receipt of a valid Purchase Order and compliance with our payment terms outlined in the Payment Terms section. If The Client does not use such documentation, Focus On Business can supply a copy of the Purchase Order Form.

#### **1.1.7 Acceptance of order**

Focus On Business reserve the right not to accept orders where, in their opinion the Services requested is not a good match for The Client requirements, and shall promptly notify The Client.

#### **1.1.8 Payment terms**

Terms of payment are within Focus On Business discretion, and unless otherwise agreed between both parties in writing by Focus On Business or in the relevant Purchase Order. Payment terms are as below:

1. For all annual Software licensing, Maintenance and annual Support items:

a) 100% upon receiving Purchase Order.

2. For Services (Project Implementation, including Consultancy and Training)

a) 50% upon receiving Purchase Order.

b) 20% upon Requirements Acceptance.

c) 20% upon User Acceptance.

d) 10% upon Go-Live.

All invoices payable within 14 days of the date of receipt by The Client of the relevant invoice

#### **1.1.9 Rates**

Unless otherwise specified in the relevant Purchase Order or the Contract, the rate for Consultancy Days for The Client is as per Focus On Business standard rate of agreed day rate per man-day and excludes all travel and accommodation expenses.

At Post Implementation a 15% discount is available for prepaid Consultancy Days.

Conditions for Consultancy Days:

- A minimum of 5 days must be purchased in any one Purchase Order to secure the 15% discount.
- The invoice must be paid in full 14 days from the date of receipt of the invoice to secure the 15% discount.
- Prepaid Consultancy Days must be paid in full prior to scheduling.
- Normally, 2 weeks notice is required for scheduling Consultancy Days.
- Prepaid Consultancy Days have an expiry date of 2 years from purchase date.
- Consultancy Days, prepaid or otherwise, may be used for project work or for resolution of logged support issues. Should they be used for support issues the Consultancy Day conditions apply.

**1.1.10 Cancellation**

The following charging regime will be levied for the cancellation by The Client of any Service(s) (e.g. project implementation, consultancy, training, etc):

<b>Notice Period (number of working days in the country of purchase to scheduled start date of Service(s))</b>	<b>Charge</b>
16+ working days	No Charge
11 – 16 working days	50% of total charge
6 – 10 working days	75% of total charge
1 – 5 working days	100% of total charge

**1.1.11 Data & Liability**

Focus On Business accepts no liability for loss of business, lost profits or other consequential losses resulting from the failure of The Client’s computer systems. Focus On Business will make every effort to safeguard The Client data. Focus On Business accepts no liability for lost or corrupted data of the Client and the damage to systems, lost profits, loss of business or other consequential, special, indirect, or punitive damages arising from such loss or corruption, however caused, except where caused by any fraud, negligence, breach or malicious intent by Focus on Business or any of its employees, agents or contractors.

**1.1.12 Force Majeure**

Both parties shall not be liable for delay or the consequences of any delay in performing any of its obligations or for the failure to perform obligations if such delay or failure resulted from circumstances or is due to any cause whatsoever beyond both parties reasonable control.

### **1.1.13 Title to Intellectual Proprietary and other Rights**

Title to all products and services remains the property of Focus On Business until payment is received in full. Title to software will remain with the applicable licensor(s).

Focus On Business will not use or refer to the name, logo or trade mark of The Client or any of its affiliates in marketing and promotional material or on its website, unless authorized by The Client.

### **1.1.14 Project charges**

Unless otherwise specified in the relevant Purchase Order or the Contract, Focus On Business operates a fixed price charging regime for project work. Project costs will be realistically calculated and an estimate given to The Client at the proposal stage. Additional charges at our standard daily rates will be levied as required to complete the project subject to change control.

Change Control procedures will apply after acceptance of the Focus On Business proposal. Please refer to the Services and Support Contract for the Change Management Process.

### **1.1.15 Travel & expenses**

During the times of on-site visits, all reasonable expenses of accommodation, travel, and subsistence incurred by Focus On Business for the purposes are chargeable to The Client unless otherwise specified. All such on-site visits and expenses are to be pre-approved by The Client before commencing. A policy of 'reasonable expenses' is applied by Focus On Business, unless under unusual circumstances, and with the pre-approval of The Client.

### **1.1.16 Support**

Focus On Business offers no complimentary support for any product not mentioned in the Service and Support Contract agreed between The Client and Focus on Business.

### **1.1.17 Confidentiality**

All communications between the parties and all information and other material supplied to or received by any party ("recipient") from, and accessed by, the other party ("disclosing party") which is marked "confidential", or is by its nature intended to be exclusively for the knowledge of the recipient alone, or contained or embodied in any software licensed or provided hereunder or conveyed during training or is entered into, stored in, generated by, processed through or accessible from any other computer, system, software or products used as a result of the Service(s), or becomes otherwise available in course of performance of the Contract (whether oral, written, or received through an electronic or optical media) of or relating to the business, operations, finances, and affairs of the disclosing party or any of its affiliates, customers, agents, correspondents, vendors or proprietors, shall be kept confidential by the recipient and shall not be disclosed or used except strictly for the purposes of the Contract, unless it is or be disclosed or used except strictly for the purposes of the Contract, unless it is or part of it is, in the public domain without a breach of this provision whereupon, to the extent that it is public, this obligation shall cease.

Focus On Business undertakes not, save with the prior written consent of The Client, to use any agents or sub-contractors in the performance of the Contract. In the event that written consent is given, Focus On Business shall:

- i) ensure that such agents or subcontractors permitted access to The Client's premises or Information are first made aware that such Information is confidential and that they owe a duty of confidence to The Client, and Focus On Business shall be responsible for any breach of the abovementioned duty of confidence; and
- ii) obtain from such agents and sub-contractors who may have access to the Information enforceable undertakings that they will neither disclose the Information or any part of it to any third party nor use any Information otherwise than as required for the performance of the Contract.

Every original, copy or thing reproducing, containing, embodying or made according to the Information, material or any part of it whether supplied by the disclosing party or made by the recipient (i) shall not be retained by the recipient save as required for the purposes of the Contract and (ii) when no longer required for the purposes of the Contract shall at the discretion of the disclosing party, either be returned to the disclosing party or destroyed by the recipient.

#### 1.1.18 Warranties

All software is provided subject to the license agreement of the manufacturer. The Client agrees that it will be bound by the license agreement.

Focus On Business will extend the warranty period against the agreed number of days for the Service(s) to The Client from date of Go Live of which fixes to the solution and software shall be provided without charge. Additional requirements or system changes requested during this period will be considered chargeable unless otherwise agreed upon between Focus On Business and The Client.

Focus on Business warrants that it has or will have the full power and authority to supply to The Client for resale or sublicense as the case may be all products, services and other assistance represented by it in and for the duration of the term of the Contract and will indemnify The Client against any actions, claims, demands, liabilities, damages, costs and expenses arising out of a breach or claimed breach of this warranty or arising out of Focus on Business' intentional or negligent acts or omissions or default under the Contract.

Focus on Business warrants that Deliverable (including but not limited to hardware, software and firmware, and all enhancements, upgrades, new releases and new versions thereof included in the Contract) delivered under this Agreement shall be able to accurately process data (including, but not limited to, calculating, comparing and sequencing) from, into and between the twentieth and twenty-first centuries, including leap year calculations, when used in accordance with the product documentation provided by Focus on Business provided that all products (e.g. hardware, software,) used in combination with such listed product properly exchange date data with it, and shall ensure that no virus is introduced or transmitted by it to The Client's computer system, server or workstation.

### 1.1.19 Termination

The Contract may be terminated forthwith by either party by notice in writing to the other party if;

- i) such other party is in breach of any of the provisions of the Contract or warranties made under this Agreement and if such breach is capable of remedy has failed to remedy the breach within 30 days after the receipt of a notice from the first-mentioned party requiring such remedy or
- (ii) any part of the products or software is encumbered, pledged, seized, attached or subject to any judicial process (save where such judicial process relates to an alleged infringement of the intellectual property rights of a third party); or
- (iii) such party being a company, shall pass a resolution for winding-up (otherwise than for the purpose of a solvent amalgamation or reconstruction where the resulting entity assumes all of the obligations of the party), or
- (iv) a court shall make an order to that effect, or
- (v) such other party being a partnership shall be dissolved, or
- (vi) if such other party (whether a company or not) shall cease to carry on its business or substantially the whole of its business, or becomes or is declared insolvent or becomes bankrupt or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors or if a liquidator, receiver, judicial manager, administrator, trustee, manager or similar officer is appointed of, or of any of the assets of, that party or any analogous step is taken in connection with that party's insolvency, bankruptcy or dissolution.

The exercise by the first-mentioned party of its right of termination in this Agreement shall be without prejudice to any right to damages or otherwise or other remedy which it may have under this Agreement. The first-mentioned party's foregoing right of termination shall not be affected by any previous waiver of its rights.

In the event of any termination by The Client pursuant to this Agreement, Focus On Business shall within thirty (30) days after such termination refund any pre-paid fees paid under the Contract from such date for the remainder of the term calculated on a pro-rata basis.

### 1.1.20 No assignment

Subject to the provisions of this clause, the Contract shall be binding on the parties and their successors and assigns. Neither party may assign this Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld). Upon any assignment the party making the assignment shall be released and discharged from all of its obligations under the Contract.

### 1.1.21 Severance

In the event that any provision of the Contract would, under any applicable law, be invalid or unenforceable in any respect, such provision shall, to the extent permitted under the applicable law, be construed by modifying or limiting it so as to be valid or enforceable to the maximum extent compatible with and possible under such applicable law. The provisions of the Contract are severable and in the event that any provision of the Contract shall be held invalid or unenforceable in any respect it shall not invalidate, render unenforceable or otherwise affect any other provision of the Contract.

### **1.1.22 Waiver of breach**

The waiver of any breach or default shall not constitute a waiver of any other right under the Contract or any subsequent breach or default.

### **1.1.23 Relationship**

Nothing contained in the Contract or herein shall in any way constitute any partnership or agency. The parties' relationship is solely that of independent contractors.

### **1.1.24 Survival**

Sections 1.1.3, 1.1.5, 1.1.13, 1.1.17, 1.1.18, 1.1.23 and this Section 1.1.24 shall survive the expiration or earlier termination of the Contract and shall remain in full force and effect.