

SMJ FALCONRY & CRAFTS

BOOKING TERMS AND CONDITIONS

1. INTERPRETATION

1.1 Definitions:

Booking Form: the form to be completed by the Customer requesting SMJ Falconry to supply the Services in accordance with these Conditions.

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 set out in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 10.4.

Contract: the contract between SMJ Falconry and the Customer for the supply of Services in accordance with these Conditions and the Booking Form.

Customer: the person or firm who purchases Services from SMJ Falconry.

Customer Default: has the meaning set out in clause 4.2.

Order: the Customer's order for Services as set out in the Booking Form or as accepted by SMJ Falconry.

Services: the services agreed to be supplied by SMJ Falconry to the Customer as set out in the Booking Form.

SMJ Falconry: means SMJ Falconry & Crafts of Ox Heys, Long Ridging Farm, Hawksbridge Lane, Oxenhope, West Yorkshire, BD22 9QY, the supplier of the Services.

1.2 Interpretation:

- (a) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (b) Any phrase introduced by the terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (c) A reference to **writing** or **written** includes fax and email.

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 only be deemed to be accepted when SMJ Falconry issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 Any descriptive matter or advertising issued by SMJ Falconry, and any descriptions or illustrations contained in SMJ Falconry's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They 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 that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5 Any quotation given by SMJ Falconry shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

3. SUPPLY OF SERVICES

- 3.1 SMJ Falconry shall supply the Services to the Customer in accordance with the terms set out in the Booking Form in all material respects.
- 3.2 SMJ Falconry shall use all reasonable endeavours to meet any performance dates specified in the Booking Form, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 SMJ Falconry shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and SMJ Falconry shall notify the Customer in any such event. SMJ Falconry shall have the option, at their sole discretion, to suspend, delay or postpone any part of the Services if they believe that the conditions are unsuitable for the Services to be carried out.
- 3.4 SMJ Falconry warrants to the Customer that the Services will be provided using reasonable care and skill.

4. CUSTOMER'S OBLIGATIONS

4.1 The Customer shall:

- (a) ensure that the terms of the Order and any information it provides in the Booking Form are complete and accurate;
- (b) co-operate with SMJ Falconry in all matters relating to the Services;
- (c) if required, provide SMJ Falconry, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by SMJ Falconry;
- (d) provide SMJ Falconry with such information and materials as SMJ Falconry may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
- (e) prepare the Customer's premises for the supply of the Services;
- (f) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;
- (g) keep and maintain all materials, equipment, documents and other property of SMJ Falconry (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain SMJ Falconry Materials in good condition until returned to SMJ Falconry, and not dispose of or use SMJ Falconry Materials other than in accordance with SMJ Falconry's written instructions or authorisation; and
- (h) comply with any additional obligations as set out in the Booking Form.

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

- (a) SMJ Falconry shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays SMJ Falconry's performance of any of its obligations;
- (b) SMJ Falconry shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from SMJ Falconry's failure or delay to perform any of its obligations as set out in this clause 4.2; and
- (c) the Customer shall reimburse SMJ Falconry on written demand for any costs or losses sustained or incurred by SMJ Falconry arising directly or indirectly from the Customer Default.

5. CHARGES AND PAYMENT

- 5.1 The Charges for the Services shall be as detailed within the Booking Form.
- 5.2 The Customer agrees to pay SMJ Falconry a non refundable deposit of 20% of the Charges on the date that the Booking Form is completed by the Customer.
- 5.3 If the Contract is cancelled by the Customer within 14 days of the date that the Services are due to be delivered as detailed within the Booking Form then the balance of the Charges shall be paid in full within 7 days of the Contract being cancelled.
- 5.4 SMJ Falconry reserves the right to increase the Charges if there are any changes in the circumstances or requirements relating to the delivery of the Services.
- 5.5 SMJ Falconry shall invoice the Customer on completion of the Services.
- 5.6 The Customer shall pay each invoice submitted by SMJ Falconry either before the Services are delivered or on the date that the Services are delivered. Payment can be made by cash, cheque, debit or credit card or bank transfer and time for payment shall be of the essence.
- 5.7 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). VAT will be added to the invoice.
- 5.8 If the Customer fails to make any payment due to SMJ Falconry under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 5% per cent per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 5.9 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). SMJ Falconry may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by SMJ Falconry to the Customer.

6. INTELLECTUAL PROPERTY RIGHTS

- 6.1 All intellectual property rights in or arising out of or in connection with the Services shall be owned by SMJ Falconry. All Supplier Materials are the exclusive property of SMJ Falconry.

7. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 7.1 Nothing in the Contract shall limit or exclude SMJ Falconry's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - (b) fraud or fraudulent misrepresentation; or
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.
- 7.2 Subject to clause 7.1, SMJ Falconry shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for loss of profits; loss of sales or business; loss of agreements or contracts; loss of anticipated savings; loss of use or corruption of software, data or information; loss of damage to goodwill; and any indirect or consequential loss.
- 7.3 SMJ Falconry's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to the total Charges paid under the Contract.
- 7.4 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 7.5 This clause 7 shall survive termination of the Contract.

8. TERMINATION

- 8.1 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (b) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

9. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to SMJ Falconry all amounts due to SMJ Falconry whether such amounts are due under clause 5 or otherwise.

- (b) clauses which expressly or by implication survive termination shall continue in full force and effect.

10. GENERAL

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

10.2 Assignment and other dealings.

- (a) SMJ Falconry may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- (b) The Customer shall not, without the prior written consent of SMJ Falconry, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

10.3 Entire agreement.

- (a) This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in this agreement.

10.4 **Variation.** No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

10.5 **Waiver.** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:

- (a) waive that or any other right or remedy; or
- (b) prevent or restrict the further exercise of that or any other right or remedy.

10.6 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent

necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

- 10.7 **Third parties.** No one other than a party to the Contract shall have any right to enforce any of its terms.
- 10.8 **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.
- 10.9 **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.