

TERMS AND CONDITIONS

These terms and conditions (“the Conditions”) set out the terms on which Sanderson Forensics Limited (“the Company”) supplies all services. No variation to the Conditions will be binding on the Company unless set out in writing and accepted by an authorised representative of the Company.

1. Definitions and Interpretation

1.1 In these conditions the following words shall have the following meanings:
“the Client” means any person, firm, company or any other party with whom the Company enters into a contract whether directly or indirectly;
“Contract” means the contract between the Company and the Client which shall comprise these Conditions, the Order Confirmation and any Special Conditions;
“Contract Price” means the price charged for the supply of the Services in accordance with the Contract;
“Equipment” means the hardware, software or other materials and equipment as detailed in the Order Confirmation which is to be investigated by the Company as part of the Services;
“Intellectual Property Rights” means any and all existing and future intellectual property rights whether capable of registration or not and whether registered or not including (without limitation) trademarks, trade names, patent rights, design rights, copyright, moral rights and know-how and (without limitation to the aforesaid) all intellectual property rights in all software, inventions, discoveries, developments, designs, processes, methodologies, concepts or techniques belonging to or developed by the Company or which the Company is authorised to use;
“Order Confirmation” means the order confirmation provided to the Client detailing the Services and any Special Conditions;
“Services” means the Services to be provided by the Company as set out in the Order Confirmation and any additional services to be provided by the Company in accordance with the Conditions; and
“Special Conditions” means any additional terms and conditions applicable to the Contract which will be set out in or attached to the Order Confirmation.

The Conditions supersede all earlier sets of terms and conditions and apply to every contract made between the Company and the Client for the sale or supply of the Services.

In event of a conflict between the Conditions and any terms set out in the Order Confirmation (and any Special Conditions), the Order Confirmation (and Special Conditions) shall prevail.

2. Contract

2.1 A Contract will be created once the customer signs and returns to the Company a duly signed Order Confirmation which has been signed by the Company or if the Company commences performance of the Services.
2.2 The Company will supply the Services in accordance with the Contract.
2.3 Any prices quoted by the Company in advance of the Order Confirmation shall be an estimate only and shall not constitute an offer to the Client capable of being accepted.
2.4 Failure or neglect by the Company to enforce at any time any of the provisions of the Contract shall not be construed nor shall be deemed to be a waiver of the Company's rights hereunder.
2.5 If any provision of the Contract is held by a competent court to be invalid or unenforceable in whole or in part the validity of the other provisions and the remainder of the provision in question shall not be effected and shall remain valid and enforceable.
2.6 The Contract shall constitute the whole contract between the parties and no previous negotiations, quotations, correspondence or other communication prior to the date of the issue of the Order Confirmation shall form part of the Contract.
2.7 The Company shall not be liable for any delay in performing any obligations under the Contract if such delay is due to circumstances beyond its reasonable control and the Company shall be entitled (subject to giving the Client full particulars of the circumstances and to using its reasonable endeavours to resume full performance without avoidable delay) to a reasonable extension of time for the performance of such obligations.
2.8 The Contract shall be governed by English law and the parties submit to the non-exclusive jurisdiction of the English Courts.

3. The Services

3.1 Time for the provision of the Services by the Company shall not be of the essence and whilst the Company will use reasonable endeavours to achieve the agreed dates for the provision of the Services, the Company will not be liable for failure to achieve those dates.
3.2 The Client confirms that any hardware which is included within the Equipment is in good working order and that any software which is included in the Equipment is fully and properly functioning. The Client acknowledges that the Company has relied on this statement when calculating the Contract Price and that if faults in the Equipment are encountered by the Company and additional work is required, the Company reserves the right to charge additional fees in accordance with clause 4.4.
3.3 Due to the nature of the Services, the Company cannot warrant or guarantee that it will be able to perform and/or complete the Services as described in the Order Confirmation. In particular, with regard to the investigation or forensic processing of data:-
3.3.1 it may not be possible to recover the data in whole or in part;
3.3.2 the Company may not be able to gain access to some or all of the Equipment;
3.3.3 it may become necessary to examine additional equipment not included in the Order Confirmation;
3.3.4 the data recovered may not be of evidentially significant material;
3.3.5 the Equipment may suffer damage or further damage as a result of the data recovery process;
3.3.6 the provision of the Services may lead to a loss of business operating time or other interruption to service for the Client or any relevant third party.

The Client acknowledges that such problems cannot be identified by the Company until it has commenced the Services and therefore the Contract Price (or such proportion of the Contract price as the Company may in its absolute discretion determine) shall still be payable in full by the Client and the Company shall not be liable to the Client for any loss suffered by the Client or any third party in the event of such problems (or similar problems) arising.

3.4 Should further work become necessary (for example reverse engineering) or should the required services be found to be of a substantially different nature to that initially expected, the Company reserves the right to amend the Contract Price and/or charge additional fees in accordance with clause 4.4.

3.5 Reports prepared by the Company are sent by normal mail service unless otherwise specified by the Client who will be liable for any additional cost incurred should an alternative method of delivery be required. Additional copies of such reports may be provided at an additional cost.

3.6 The Company reserves the right to change the dates for the provision of the Services or to replace any consultant nominated to provide the Services, provided that prior notification is given to the Client.

3.7 Where the Services are to be provided (in full or in part) at the premises of the Client or a third party, the Client undertakes to ensure that:

3.7.1 the Company's representatives have unrestricted and safe access to the relevant premises and working space; and
3.7.2 all relevant security and health and safety rules and procedures are brought to the attention of the Company's representatives attending the relevant premises.

3.8 Where the Services are to be provided (in full or in part) at the premises of the Client or a third party, the Client acknowledges that, when calculating the Contract Price, the Company has assumed that it will have access to such premises without delay or restriction. If as a result of any delay or restriction on the access to such premises, the Company incurs additional expense in providing the Services, the Company shall be entitled to increase the Contract Price in accordance with clause 4.4. If the Services cannot be completed as result of access to the premises being restricted or denied, the Contract Price (or such proportion of the Contract price as the Company may in its absolute discretion determine) shall still be payable by the Client.

3.9 If the Client does not permit the Company to provide the Services or fails to take all steps within its power to facilitate the provision of the Services, the Company shall be entitled to increase the Contract Price in accordance with clause 4.4 and if the Client fails (after receipt of a written notice requiring it to do so) to permit the Company to perform the Services, the Company shall be entitled to render an invoice as if the Services had been duly completed. Payment shall become due as if the Services had been completed.

3.10 If the work is to be funded by the Legal Services Commission (“the LSC”), the Client must provide a copy of the relevant LSC authority before commencing the Services. For the avoidance of doubt, the Contract is between the Company and the Client and the Client is responsible for payment of all fees payable under the Contract by the relevant due dates and non-payment by the LSC to the Client will not justify any delay in the payment of the fees to the Company.

3.11 The Client will indemnify the Company against:
3.11.1 any liability which it may have to any of its representatives who are engaged in providing the Services as a result of the negligence of the Client, its staff or agents and/or as a result of the Client's breach of contract; and
3.11.2 (without prejudice to the generality of the foregoing) any loss or damage which the Company might suffer as a result of the Client's breach of this clause 3.

4. Prices, Charges and Payments

4.1 Unless otherwise stated all fees charged by the Company are subject to VAT and all estimates are given exclusive of VAT.
4.2 The Client shall reimburse the Company for all reasonably incurred travel, accommodation and other expenses relating to the provision of the Services.
4.3 Unless otherwise stated in the Order Confirmation, the Contract Price does not include:-

4.3.1 attendance by a representative of the Company at any case conference, meetings or court hearing; or
4.3.2 the storage of any property or data by the Company following the completion of the Services;

4.3.3 the cost of transporting the Equipment to and from the Company's premises for which the Company reserves the absolute right to charge additional fees in accordance with clause 4.4.

4.4 The Company reserves the right to increase the Contract Price to reflect any additional costs or expenses incurred or additional services provided by the Company and in the following circumstances:-

4.4.1 in the event that there is a defect in any of the software or hardware which is included within the Equipment;

4.4.2 in the event that the Client does not permit the Company to commence or provide the services (or fails to take all steps within its power to facilitate the performance of the Services);

4.4.3 if it is required to store any property or data once the Services have been completed;

4.4.4 if it is required to send a representative to any meeting, case conference or court hearing;

4.4.5 if it is required to transport Equipment to and/or from the Company's premises.

4.5 Any increase in the Contract Price pursuant to clause 4.4 shall be notified by the Company to the Client in writing and the amount of the increase shall be invoiced to the Client once the additional costs or expenses giving rise to the increase have been incurred by the Company or the additional services provided.

4.6 All sums due to the Company from the Client under the Contract shall be paid without any set-off or counterclaim.

4.7 Unless otherwise stated in the Conditions or the Order Confirmation, the Contract Price shall be payable by the Client 28 days from the date of the Company's invoice (“the Due Date”). **Time for payment shall be of the essence.**

4.8 If payment remains outstanding after the Due Date, the Company may suspend all Services in respect of this Contract or any other contract between the Company and the Client, and/or:

4.8.1 charge the Client interest on outstanding sums at the rate of 6% per annum above the base lending rate from time to time of Barclays Bank Plc from the Due Date until payment in full is received in cleared funds;

4.8.2 charge the Client for all costs and expenses incurred by the Company as a result of the Client's non-payment and in collecting the outstanding amount due; and/or

4.8.3 terminate the Contract in whole or in part and seek to recover damages for breach of contract.

4.9 If the Client requires any alteration to the Services ordered after the supply of the Order Confirmation by the Company, the request must be confirmed by the Company in writing and the Company shall be entitled to increase the Contract Price accordingly.

4.10 Should the Client become insolvent, be unable to pay its debts as they fall due, (being an individual or partnership) commit any act of bankruptcy, or (being a company) go into liquidation, have a receiver appointed or make any voluntary arrangement with its creditors or suffer any similar action to be taken:

4.10.1 if the Services have been completed but not paid for the Contract Price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary; or

4.10.2 if the Services have not been completed the Company shall have the right to determine the Contract and suspend the provision of any further Services and recover from the Client an appropriate proportion of the Contract Price to reflect the Services provided and all costs incurred by the Company in connection with the Contract.

5. Cancellation / Postponement

The Client may not cancel or postpone any Contract except with the written agreement of the Company and on terms that the Client shall:-

5.1 pay for all unpaid work to date;

5.2 pay such cancellation or postponement fee as the Company may at its discretion consider reasonable; and

5.3 indemnify the Company in full against all loss (including loss of profit) costs (including cost of all time and materials purchased or used), damages, charges and expenses incurred by the Company as a result of such cancellation or postponement.

6. Warranties

6.1 Save as expressly provided in the Contract all warranties, conditions or other terms implied by statute or common law are hereby excluded to the fullest extent permitted by law. By signing the Order Confirmation and/or requesting the commencement of the Services, the Client acknowledges that it accepts the Conditions in lieu of all implied terms, conditions and warranties.

6.2 The Company warrants that the Services shall be provided with all reasonable care and skill.

6.3 The Company shall be under no liability under the warranty in clause 6.2 (or any other warranty, condition or guarantee) if the Contract Price has not been paid in accordance with the payment terms set out in clause 4.

6.4 Any claim for breach of warranty must be notified to the Company within 14 days of discovery of the relevant fault or defect by the Client.

6.5 The benefit of the warranty contained in clause 6.2 shall ensure only for the benefit of the Client and shall not be assigned, transferred or otherwise dealt with.

7. Liabilities

7.1 Nothing in this Agreement shall exclude or limit the liability of the Company for death or personal injury caused by the negligence of the Company or any representative of the Company.

7.2 The Company shall not be liable to the Client (or any party represented by the Client) in contract, tort (including negligence), breach of statutory duty or otherwise for any indirect loss or consequential loss or damage (including (without limitation) loss of profit, loss of revenue, loss of goodwill, loss of business opportunity and loss of contracts).

7.3 Whilst the Company shall comply with its obligations under clause 6.2 the Company cannot guarantee the accuracy of the information, reports and advice (“Data”) which it provides in the course of the Services and accordingly the Company cannot accept any liability to the Client (or any party represented by the Client) should the Data prove to be inaccurate in any respect.

7.4 Save as provided in clause 7.1, in no circumstances shall the Company's liability to the Client exceed the amount paid by the Client in respect of the Services.

7.5 Further and without prejudice to the foregoing the Company shall in no circumstances be liable for any loss or damage covered by insurance or which would normally be covered by insurance or for any loss or damage in excess of the Contract Price paid for the Services and the above limitations shall apply even in the case of a fundamental breach of a fundamental term or repudiation by the Company and even if further performance of the Contract is frustrated.

7.6 The Company shall not be responsible for any Equipment transported to or from the Company (or a third party) and/or stored by the Company during the provision of the Services and the risk of damage to or loss of such Equipment will at all times remain with the Client.

7.7 The Client acknowledges that it does not rely on and waives any claim for breach of, any representation which is not confirmed in writing and that advice given by the Company regarding the Services which is not confirmed in writing is followed entirely at the Client's own risk.

7.8 The Client acknowledges that the estimated and actual contract price reflect the limitation of liability contained in this Clause 7, and the allocation of risk. The total liability of the Company or its suppliers to the Client under this Agreement shall in no event exceed the total sums paid by the Client to the Company.

8. Acknowledgement of Existing Conditions

8.1 The Client acknowledges that equipment/data/media may be damaged prior to receipt by the Company.

8.2 The Client further acknowledges that the efforts of the Company and/or its suppliers to complete the Services may result in the destruction of or further damage to the equipment/data/media.

8.3 The Company for itself and its suppliers regrets that in such circumstances it will not assume responsibility for additional damage that may occur to the Clients' equipment/data/media during the Company's efforts to complete the Services.

9. Uncontrollable Circumstances

9.1 Either parties' performance of any part of this Agreement shall be excused to the extent that such performance is hindered, delayed or made impractical by:

a. The acts or omissions of the other party or any third party;
b. Flood, fire, strike, war or riot;
c. Unavailability of parts or software.

9.2 Upon the occurrence of any such event, the party whose performance is so affected shall notify the other party of the nature and extent of the events so that decisions to mitigate the negative effects of such events may be made promptly.

10. Intellectual Property Rights

10.1 Nothing in this Contract shall be construed as assigning to the Client or granting the Client any interest in any Intellectual Property Rights in the Services and the Client shall not at any time in any way question or dispute the ownership by the Company or any other party of the Intellectual Property Rights.

10.2 The Intellectual Property Rights in any material produced in the conduct of the Services are the exclusive property of the Company and the Client shall not acquire any right, title or interest in such Intellectual Property Rights.

10.3 Any Intellectual Property Rights which are created or contributed to by the Company in the course of providing the Services belong to the Company and the Client acknowledges that it shall have no right or interest in such Intellectual Property Rights and the Client shall not be entitled to use it in any other form or in any other media without the Company's prior consent.

10.4 Without prejudice to the general rights of the Company under this clause 8, any software used or written by the Company during the provision of the Services shall be and shall remain the absolute property of the Company.

10.5 The Company shall retain copyright in all documentation, reports and other material which the Company creates. The Client will not acquire any intellectual property rights in that publication or material and the Client will not be entitled to use it in any other form or in any other media without the Company's prior written consent.

10.6 It is acknowledged by the Client that there is no warranty either express or implied on the part of the Company that the Client can make use of the Services free from any infringement of the intellectual property rights of third parties.

11 Notices

Any notice required to be given under the Contract shall be delivered by hand or pre-paid first class recorded delivery post to the address of the relevant party set out in the Order Confirmation. A notice delivered by hand shall be deemed served at the time of delivery and a notice served by pre-paid first class recorded delivery post will be deemed served on the second working day following the date of posting (provided that Saturday, Sunday and English Bank Holidays shall not be working days).

12 Governing Law and General Matters

12.1 The parties agree that this Agreement shall be governed by English Law in every particular, including formation and interpretation and shall be deemed to have been made in England.

12.2 The parties submit to the exclusive jurisdiction of the Courts of England and Wales.

12.3 The parties agree that if any provision of this Agreement is held unenforceable the validity of the remaining portions or provisions of the Agreement shall not be affected.

12.4 Any revision or modification of this Agreement shall be effective only if it refers to this Agreement, is in writing and is signed by an authorised representative of each party to this Agreement.

12.5 Facimile signatures for this Agreement and any subsequent modifications are effective to bind the signing party and admissible in any Court and/or for any lawful purpose.

12.6 This Agreement and any revisions or modifications agreed under Clause 12.4 constitute the entire Agreement between the parties in relation to its' subject matter. No provisions in any other standard business forms employed by either party will apply.