Terms of business

Dynamicweb Software A/S
July 2020

Dynamicweb terms of business

1. DEFINITIONS AND GENERAL TERMS

These terms of business ("Agreement") apply to services (collectively referred to as "Services") from Dynamicweb Software A/S ("Dynamicweb"). Services are, collectively defined as any service provided on an hourly basis where the product is a service or other value added to the standard software. The terms of business do not apply to standard software or cloud services, for which reference is made to the license conditions or the service level agreement.

1.2. These general terms take precedence to the extent of inconsistencies between this Agreement and Solution Description (as defined in clause 1.5) and/or any other written agreement entered into, the terms of business constitute the contractual basis.

1.3. The terms of business apply only to Services by/from Dynamicweb and not to any third party Services.

1.4. "Customer" means the legal person instructing Dynamicweb to deliver a task (the "Service").

1.5. "Solution Description" means the specific description of the Service agreed by the parties. The Solution Description incorporates these terms of business by reference.

1.6. The terms of business also apply to minor tasks reported through the Dynamicweb helpdesk ("Dynamicweb Helpdesk") case system or by email even if such tasks do not directly refer to the terms of business.

1.7. Dynamicweb enters into consultancy, delivery and development agreements on a fixed price, shared risk basis or on the basis of hours spent. Unless otherwise stated in the Solution Description, the Agreement is based on hours spent. Fixed price or share risk agreements are entered into only in respect of the contractual elements for which Dynamicweb is in charge of the Project Management and the management of the consultants involved in the Service.

1.8. A fixed price for tasks is enforceable and applicable only if a written Solution Description, including a price for provision of the Service, has been entered into or executed. A Solution Description applies only if it has been prepared by Dynamicweb or approved by Dynamicweb in writing as the basis of the provision of the Service.

2. THE SERVICE

2.1. Quotations must be accepted by the parties in writing.

2.2. Any changes to the Solution Description must be agreed in writing by the parties to be valid and any additional services delivered according hereto shall be invoiced on an hours spent basis.

2.3. Unless otherwise agreed, the Customer carries the full responsibility for ensuring that the Service has been clearly and exhaustively described in the Solution Description.

2.4. The Customer must make all necessary information available concerning the Service.

3. PROVISION AND ARRANGEMENT

3.1. Dynamicweb must provide the Service in accordance with the agreement set out in the Solution Description and if specifically agreed a Project Plan ("Project Plan").

3.2. If no Project Plan has been agreed, the Service must be provided at the speed deemed reasonable taking into account the scope of the Service and the circumstances in general. If a Project Plan has been prepared, Dynamicweb must provide the Services materially in accordance with the Project Plan.

3.3. The Service must be provided in consultation between the parties. Such consultation must be carried out through regular contact between the parties' contact persons.

3.4. If, within the time-limits materially agreed in the Project Plan, the Customer fails to accept, adjust or reject a Solution Description or any details concerning the Service, Dynamicweb will be entitled to decide to defer the provision of the Service until a response has been given, or initiate the performance of specific tasks materially in accordance with the Project Plan and the Solution Description provided. If the performance of tasks is initiated against that background, the Customer must pay for the time spent and other related costs until the response has been given. Dynamicweb must notify the Customer of any failure to respond on the part of the Customer prior to initiating the provision of the Service or parts of the Service.

3.5. Unless otherwise agreed, the Customer is responsible for coordinating and arranging the Service within its own business. A named employee of the Customer must act as the Customer's Project manager ("Project Manager") and, as such, will be entitled to accept with binding effect the Service and any agreements with Dynamicweb.

3.6. In connection with the provision of the Service, Dynamicweb is entitled to use subcontractors provided that such use does not cause any unnecessary inconvenience to the Customer.

3.7. To the extent that Dynamicweb uses subcontractors, Dynamicweb is subject to the same liability in respect of their work as if the work had been performed by Dynamicweb itself.

3.8. Dynamicweb must inform the Customer's Project Manager as soon as possible if there is a need for supplementary services or an extension of the Service. If a need arises for supplementary services during the provision of the Service, such services may be provided as an addition to the Solution Description.

4. PRICES AND PAYMENT

4.1. Support is invoiced based on time spent and according to the agreed hourly rate in the Support Agreement. Eventual included hours in the Support Agreement is deducted from time spent.

4.2. For Minor Tasks, of up to 3 days of work, and Support in ongoing projects time will be invoiced based on time spent and at the standard hourly rate.

4.3. In terms of Major Services, an estimate is stated in connection with the accepted Solution Description. A payment schedule can be part of the Solution Description. Services will be invoiced on the basis of time spent.

4.4. Dynamicweb will invoice Services on a weekly basis based on time spent and invoices fall due for payment 14 days after issuance.

4.5. Time spent on transport, meetings and costs in relation to meetings, which are not included in the Services Plan, will be invoiced separately if not otherwise specifically agreed.

4.6. Services not included in the Solution Description will be invoiced based on time spent, unless a fixed price has been quoted for them.

4.7. If overdue invoices are not paid, Dynamicweb may decide to suspend work until these invoices is paid.

4.8. Dynamicweb may demand payment of a reminder fee and default interest as from the due date at the rate provided for by the Danish Interest Act.

4.9. All amounts are stated exclusive of VAT.

5.   DELIVERY AND GUARANTEE

5.1. Upon completion of a Service, Dynamicweb must deliver the agreed Service to the Customer. The nature of the delivery will depend on scope and complexity.

5.2. Dynamicweb is responsible for ensuring that the Service delivered complies with the solution specified in the Solution Description and any appendices.

5.3. The Customer must notify Dynamicweb of any defects discovered as soon as possible. Dynamicweb will remedy free of charge any defects in a Service notified within 1 month after delivery.

5.4. Any defects received by Dynamicweb more than 1 month after delivery and change requests received will be handled as a new Service and invoiced on the basis of time spent or at a fixed price, as agreed.

5.5 If the Customer decides to deploy its solution to production in full or in part, such deployment will be deemed an acceptance, and the Delivery will be deemed to have been made and delivered.

6.   LATE DELIVERY

6.1. If the parties have agreed on a Project Plan, cf. clause 3.4, the delivery will be late if the Service has not been delivered materially by the agreed delivery date. The delay runs until the date when delivery is made.

6.2. If the delay is due to circumstances not relating to the Service from Dynamicweb, Dynamicweb will be entitled to defer the agreed delivery date by at least the same number of days as the delay. If other circumstances justify a further delay, Dynamicweb will be entitled to such delay if it is able to state the reasonableness of such delay. Dynamicweb is entitled to compensation for any loss suffered directly as a result of the delay.

6.3. Unless otherwise agreed in writing in connection with the specific Service, the Customer will not be entitled to any compensation for direct or indirect losses caused by a delay.

7.   DEFECTS

7.1. On delivery, the Customer must perform its own tests of the Service and verify that the Service complies with the Solution Description and any appendices. If the Customer fails to notify Dynamicweb of any defects ("Defects") within 1 month after delivery, the Customer will not be entitled to have such Defects remedied by Dynamicweb free of charge.

7.2. If Dynamicweb is responsible for a Defect, the remedy of such Defect must be initiated within a reasonable time, or the Customer must be instructed how to remedy the Defect.

7.3. If, when remedying a Defect, Dynamicweb discovers that Dynamicweb has not caused the Defect, Dynamicweb will be entitled to compensation based on time spent in accordance with the price list in force at the time.

7.4. Defects caused by operational matters and third party software are not attributable to Dynamicweb. Defective standard software must be reported to the Dynamicweb Help Desk through the usual channels. As regards error correction and prioritisation of defects in standard software, reference is made to the licence conditions and the service levels in force.

8.   HARDWARE AND OPERATIONS

8.1. If not deployed in the Dynamicweb Cloud, Dynamicweb assumes no responsibility for the performance of hardware, software, etc. made available by the Customer for the provision of the Service.

8.2. The Customer must ensure that hardware, software, etc. is made available in time to ensure that the provision of the Service is not delayed. If the solution is deployed in the Dynamicweb Cloud, Dynamicweb will take care of all hosting and deployment related matters as part of the delivery.

8.3. If the Customer itself or a third party handles hosting, access to the Dynamicweb solution must not be impeded in any way to the effect that Dynamicweb spends an unnecessary amount of time on upgrades and support. By way of example, such impediment could consist in time-limited access or a limited number of simultaneous administrators on the solution.

8.4. Dynamicweb reserves the right to invoice the Customer for any extra time spent as a result of the Customer handling hosting itself. The Customer is also obligated to inform Dynamicweb of any changes relating to access.

8.5. Dynamicweb must be allowed access 24/7 and on its own initiative.

9.   INTELLECTUAL RIGHTS AND LIMITATIOIN OF LIABILITY

9.1. Dynamicweb holds all rights in the technical design of the Service.

9.2. The copyright in the graphical design delivered by Dynamicweb will be assigned to the Customer in its entirety when payment has been made.

9.3. After payment in full, the Customer will obtain a non-exclusive licence to use the developed solution.

9.4. At the Customer's request and subject to approval from Dynamicweb, the source code for customised modules may be handed over to the Customer to the extent possible. The source code may only be used for the further development of the specific Service and may not be disclosed to any third party. Any costs involved in handing over the source code will be invoiced separately on the basis of time spent.

9.5. The Customer will have no copyright in any source code or methods developed by Dynamicweb in connection with the provision of the Service.

9.6. Dynamicweb's entire liability under this agreement shall be limited to the fees paid for the Services causing the liability. Dynamicweb shall not be liable for any incidental, punitive, indirect, or consequential damages whatsoever (including, but not limited to, damages for loss of profits, data or goodwill or confidential or other information, for business interruption, for personal injury, for loss of privacy, for failure to meet any duty including of good faith or of reasonable care, for negligence, and for any other pecuniary or other loss whatsoever) arising out of or in any way related to the Services.

10. DUTY OF CONFIDENTIALITY

10.1. Dynamicweb undertakes not to disclose confidential information to third parties in connection with the provision of specific Services and the collaboration between the parties.

10.2. Dynamicweb is entitled to use the Customer as a reference for marketing purposes.

11. FORCE MAJEURE

11.1. Dynamicweb is not liable for any damage to or defect in the provision of the Service, which is due to force majeure or similar circumstances. As a result, Dynamicweb is exempted from liability to the Customer if Dynamicweb is prevented from performing its obligations under the Agreement due to circumstances beyond the control of Dynamicweb, which Dynamicweb could not reasonably be expected to foresee at the time of the Agreement.

12. DISPUTES

12.1. Any dispute concerning the interpretation of this Agreement or arising in connection with its conclusion, performance or termination will be settled by arbitration with final and binding effect in accordance with the rules of arbitration of the Danish Institute of Arbitration. This Agreement shall be governed by and construed in accordance with Danish Law disregarding its principles on the choice of law. The place of arbitration shall be Aarhus or Copenhagen at the choice of Dynamicweb.