



# Bonum Engineering and Consultancy GmbH

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GENERAL TERMS AND CONDITIONS

Mikael Troberg

BONUM ENGINEERING AND CONSULTANCY | RATHAUSSTRASSE 7, 6345 BAAR, SWITZERLAND



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## Composition of Agreement

- a. Each "**Agreement**" shall comprise and incorporate:
  - i. Documents executed by a director of the Company and an authorised signatory of the Client;
  - ii. these Terms;
  - iii. any of the Company's terms and conditions applicable to the Services and Products produced as part of project; and
  - iv. any Joining Instructions provided by the Company.
- b. If there is any inconsistency between any of the constituents of an Agreement, the order of priority in descending order for the purposes of resolving such ambiguity shall be the order outlined in this agreement
- c. No other document relating to the Services shall be deemed incorporated into the relevant Agreement except where such incorporation is unambiguously confirmed in writing by each party.
- d. Notwithstanding that the Company may have given a detailed quotation for Services, no request for Services shall be binding unless the parties have executed a specific Agreement
- e. Each Agreement constitutes the entire agreement and understanding between the parties relating to the transactions contemplated by or in connection with that Agreement and the other matters referred to in that Agreement, and supersedes and extinguishes any other agreement or understanding (written or oral) between the parties or any of them relating to the same.
- f. The Company's catalogues, brochures, leaflets, correspondence and information published on the Company's website are not binding and shall not form part of an Agreement. Each party acknowledges and agrees that it does not rely on, and shall have no remedy in respect of, any promise, assurance, statement, warranty, undertaking or representation made (whether innocently or negligently) by the other party or any other person except as expressly set out in an Agreement in respect of which its sole remedy shall be for breach of contract.

## Services

- a. In consideration for the payment of the fees by the Client, the Company shall provide the Services.
- b. The Company shall use reasonable endeavours to ensure that all knowledge introduced onto the project undertaken with the Client, all outcomes from project, and the Product and Services will all follow procedures in line with the Company's current practice.



## Bundling

- a. Where the Client orders a predefined selection of bundled Services at a fixed price (a "**Bundle**"), the provisions of this Agreement shall apply except as may be expressly waived (in writing) by the Company in relation to a particular order.
- b. Services within a Bundle are allocated to a particular named individual and such allocation cannot be transferred to any other person.
- c. The Client may not modify the Services within a Bundle, and may not exchange Services within a Bundle for other Services.
- d. Each Bundle is valid for twelve (12) months. The Client may only use the Services within a Bundle during the twelve (12) month period immediately following the date of the Agreement under which they are ordered. Any Services within a Bundle that remain unused will expire on the anniversary of the Agreement start date and shall be deemed used.
- e. The refund (as outlined in the "Cancellation" Section) will be a pro-rated amount of the sum paid for the Bundle which may be less than the usual price of the Service.

## Fees

- a. The Company will invoice the Client in respect of the fees due under each Agreement in accordance with the Agreement. The fees shall be as set out in the Agreement or, if no fees are specified, the standard fees charged by the Company for such Services as at the date of provision. In the case of Services provided over a period, the fees shall, at the Company's option, be either the standard fees as at date of Service provision, or the fees as at the date of invoice for the relevant Services.
- b. The fees shall be exclusive of any amounts incurred in relation to travel, subsistence, or other expenses, which shall be payable by the Client upon presentation of invoices by the Company. The Company's policy on expenses may be detailed upon request.
- c. Fees are exclusive of VAT. The Client will pay the Company any VAT properly chargeable on services supplied by the Company pursuant to an Agreement, provided the Company has delivered a correct VAT invoice as required by statute.
- d. Where the Client's accounting practices require the use of a purchase order number, the Client shall provide a valid purchase order number to the Company immediately upon signing each Agreement.

## Terms of Payment

- a. Subject to a satisfactory credit check the Client shall pay the fees invoiced by the Company.
- b. Except where otherwise specified in an Agreement, the fees for Services shall be due and payable by the Client within fifteen (15) Working Days of the date of the Company's invoice.
- c. The Client shall not be entitled to exercise any set-off, lien or any similar claim in relation to fees due to the Company. Time of payment shall be of the essence.
- d. Without prejudice to any other rights, the Company shall be entitled to charge interest on overdue payments at the statutory rate, such interest to run from the relevant invoice date



until receipt of all outstanding payments in full in cleared funds. The Parties acknowledge that this amounts to a substantial remedy for late payment.

## Cancellations

- a. The Company reserves the right to cancel, curtail or re-schedule training courses or events, in which case it shall use reasonable endeavours to notify the Client. In the event of cancellation, the Company shall refund the course fees which the Client has already paid in advance in relation to the cancelled course. The Company reserves the right to withhold Services or provide reduced Services if course participants attending on the Client's behalf fail to satisfy course requirements or meet the course prerequisites.
- b. If the Client is an individual acting for purposes which are wholly or mainly outside that individual's trade, business, craft, or profession, then the Client may cancel an Agreement without any liability within fourteen (14) days of the date of that Agreement provided that provision of the Services have not commenced.
- c. The cancellation and/or re-scheduling fees set out below shall apply in the event a course (or the Client's attendance at a course) is cancelled or rescheduled at the Client's request. The Company may issue a supplementary fee invoice to the Client for such cancellation and/or re-scheduling fees and the Client shall make full payment to the Company within fifteen (15) Working Days of the date of that invoice:

<b>Public Scheduled Courses other than APM Practitioner Qualification Assessment Centre (residential):</b>		
<b>Date of Cancellation/Rescheduling</b>	<b>Cancellation Fee Payable</b>	<b>Rescheduling Fee Payable</b>
15-11 clear Working Days prior to the start of the course	50%	25%
10-6 clear Working Days prior to the start of the course	75%	50%
Fewer than six (6) Working Days prior to the start of the course	100%	100%
<b>All other Services:</b>		
<b>Date of Cancellation/Rescheduling</b>	<b>Cancellation Fee Payable</b>	<b>Rescheduling Fee Payable</b>
20-11 clear Working Days prior to the start of the course	50%	50%
10-6 clear Working Days prior to the start of the course	75%	75%
Fewer than six (6) Working Days prior to the start of the course	100%	100%

- a. The Client may substitute course participants by written notification to the Company provided that such substitute participants comply with all course requirements (including



pre-requisites and pre-course reading) as notified by the Company to the Client, or as detailed in the course outline or Joining Instructions.

## Intellectual Property Rights

- a. Use of the Company's name or logo is prohibited except with the Company's prior written consent except as provided by applicable law.
- b. The Company and its licensors shall retain all right, title and interest in and to all Background IPR. The Client shall not acquire any rights the Background IPR or to any materials in which Background IPR subsists, including any documents, training guides, instruction manuals, drawings, diagrams, videos or any other materials provided by the Company in connection with Services.
- c. The Company hereby grants to the Client a licence to use the Background IPR in those materials which the Company provides to the Client solely to the extent necessary for the Client to receive the Services. The Client shall not copy, reproduce, sell, licence, distribute, publish or otherwise circulate any Background IPR except with the Company's prior written consent.
- d. All Foreground IPR shall vest in the Company upon creation and the Client hereby assigns with full title guarantee all Foreground IPR which relates to the Agreement. Such assignment shall take effect as a present assignment of future rights.
- e. The Company hereby grants to the Client a worldwide, royalty-free, perpetual license to use the Foreground IPR for the Client's internal business purposes only, and provided always that the Client shall not commercialise Foreground IPR and in particular shall not sell, licence, distribute, publish or otherwise circulate Foreground IPR to any third party except with the Company's prior written consent.
- f. The Client shall promptly inform the Company in writing of any infringement or alleged infringement of Background IPR or Foreground IPR, or any allegation coming to the Client's attention that the Services, Background IPR or Foreground IPR infringe any person's intellectual property rights.
- g. Subject to the exclusions and limitations on liability, the Company shall indemnify the Client from and against all losses or expenses (including reasonable legal expenses) suffered or incurred by the Client as a result of a claim that:
  - i. Background IPR;
  - ii. Foreground IPR created by the Company;
  - iii. or the provision of the Services that infringes any person's Intellectual Property Rights.
- h. Where the Client requires Services to be provided by the Company to the Client's specifications or requires the Company to incorporate the Client's materials within the Services, the Client shall fully indemnify the Company from and against all losses or expenses (including reasonable legal expenses) suffered or incurred by the Client as a result of a claim that the provision of the Services and/or use of the Client's materials infringes any person's Intellectual Property Rights.



## Term and termination

- a. The term of each Agreement shall be set out in the relevant documentation such as this Agreement. The Company may, in its sole discretion, terminate or suspend any and all Agreements upon ten (10) days prior written notice to the Client if:
  - i. the Client ceases to do business or otherwise suspends business operations;
  - ii. becomes insolvent or seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding or any proceeding is instituted against the Client;
  - iii. undergoes a change of ownership or similar arrangement; or
  - iv. fails to make timely payments as required under an Agreement.
- b. The Company may, in its sole discretion, immediately terminate or suspend any and all Agreements upon written notice if the Client commits a material breach of any Agreement, or a series of breaches the combination of which constitutes a material breach of an Agreement, and fails to remedy the breach within ten (10) days after receipt of notice giving particulars of breach and requiring it to be remedied.

## Liability

- a. Notwithstanding any contrary provision in an Agreement, neither party limits or excludes its liability in respect of:
  - i. any death or personal injury caused by its negligence;
  - ii. any fraud or fraudulent misrepresentation; or
  - iii. any statutory or other liability which cannot be excluded under applicable law.
- b. The Company shall not be liable to the Client for any loss of profit or loss of revenue arising out of or in connection with
  - i. an Agreement; or
  - ii. any breach or non-performance of an Agreement,
  - iii. no matter how fundamental (including by reason of that party's negligence).
- c. The Company shall not be liable to the Client for:
  - i. any indirect loss;
  - ii. any loss of goodwill, business, reputation or opportunity;
  - iii. any loss caused by supply of inaccurate or incomplete information by the Client; or
  - iv. any loss of or corruption of data or software,

in each case arising out of or in connection with an Agreement or any breach or non-performance of it no matter how fundamental (including by reason of that party's negligence) whether or not that party had been informed of or was aware that there was a serious possibility of such loss.

- d. The Company's total aggregate liability arising under or in connection with an Agreement or any breach or non-performance of it no matter how fundamental (including by reason of that party's negligence) in contract, tort or otherwise shall be limited to an amount equal to the fees paid by the Client under that Agreement in the previous twelve (12) months.
- e. The parties agree that each of Clauses 10.b, 10.c, and 10.d are separate and independent terms.



## Warranties and Representations

- a. Each party warrants and represents that, as at date of each Agreement, it has full capacity and authority to enter into that Agreement.
- b. If requested, the Company may help the Client to choose training or other Services but the Company does not provide any warranties that such Services will be fit for the Client's purpose and assessment and selection of Services remains the Client's ultimate responsibility.
- c. The Company warrants that it will provide the Services with reasonable skill and care.
- d. All other warranties (express or implied) are hereby excluded to maximum extent permitted by applicable law.

## Modifications and Third Party Terms

- a. The Company reserves the right to modify these Terms without prior notice on the following basis:
  - i. When changes are made, the Company will post the new Terms on the following page of the Company's website (<http://www.bonumec.com/>).
  - ii. Such changes shall apply to each Agreement entered into prior to such publication unless the Client notifies the Company within thirty (30) days of their publication on the Company's website that it does not accept the changes.
  - iii. Where notification under Clause 12.a.ii is given, the previous Terms shall remain in full force and effect for the remaining term of each Agreement entered into prior to publication of the new Terms.
  - iv. The new (modified) Terms shall apply to any Agreement entered into on or after the date of publication of those Terms.
- b. Upon the Client's request and in order to meet the Client's requirements, the Company may from time to time book courses (and / or accommodation) provided by third parties on the Client's behalf. In such instances the third party contractual terms shall govern the booking of those third party courses (and / or accommodation) and in particular, the third party payment and cancellation terms shall prevail over terms of this Agreement with respect to those third party courses (and / or accommodation). The Company will provide to the Client a copy of relevant third party contractual terms upon the Client's request. In the event that the Client wishes to reschedule or cancel such third party course (and / or accommodation) booking(s) the Client will be required to pay any cancellation or rescheduling fees levied by the third party along with an administration fee (minimum +12%). The Client shall indemnify the Company for all costs incurred in booking such courses (and / or accommodation), and for any loss or expense suffered or incurred by the Company as a result of the Client's acts or omissions in relation to such third party courses (and / or accommodation).

## Confidentiality

- a. The Client will keep confidential all of the Company's Confidential Information which is disclosed to it.





- b. The Client may not disclose the Company's Confidential Information to any third party without the Company's prior written consent.
- c. The Client may share the Company's Confidential Information with only those of its employees who have a need to know the information and who are subject to legally binding obligations to keep such information confidential.
- d. Confidential information disclosed by the Client to the Company in relation to this Agreement shall be clearly labelled and identified as confidential by the Client at the time of disclosure ("**Client's Confidential Information**"). When concurrent written identification of Client's Confidential Information is not feasible at the time of such disclosure, the Client shall provide such identification in writing promptly thereafter.
- e. Oral communications pertaining to the Services shall be presumed to be confidential unless otherwise indicated by the disclosing party.
- f. The Company shall not disclose the Client's Confidential Information, to any person except to those individuals who need access to such confidential information to ensure proper performance of the Services.
- g. Neither party shall be liable for disclosure or use of confidential information which is:
  - i. generally available to the public without breach of this Agreement;
  - ii. disclosed with the prior written approval of the disclosing party; or
  - iii. required to be disclosed by applicable law or court order.
- h. If the Client is required by a government body or court of law to disclose any the Company Confidential Information, the Client shall give the Company reasonable advance notice so that the Company has an opportunity to contest disclosure (to the extent the Client is not prohibited from doing so by law).
- i. The Company shall be entitled to retain a copy of the Client's Confidential Information for its internal records subject to on-going compliance with the restrictions set out in this Agreement.
- j. All that has been outlined in this Agreement shall survive termination or expiry of each Agreement.

## Notices and Contact Details

- a. Notices must be given in writing. A notice shall be deemed effectively served:
  - i. if sent by email, on the date when receipt has been personally acknowledged by return email (electronically generated receipts shall not be valid);
  - ii. if delivered personally, on the date when left at the Company's registered office or the Client's address (as applicable) and signed for; or
  - iii. if given by post, on the date when the notice has been signed for at the Company's registered office or the Client's address.
- b. For the Company, notices shall be sent to: Bonum Engineering and Consultancy, Rathausstrasse 7, 6340 Baar, Switzerland
- c. For the Client, notices shall be sent to the attention of the person and address/email identified in the relevant Agreement.
- d. In the event of general queries, the Company may be contacted as follows:
  - i. by telephone: +41 (0) 78 705 05 01;
  - ii. by e-mail: [mikael.troberg@bonumec.com](mailto:mikael.troberg@bonumec.com); or
  - iii. via our website: <http://www.bonumec.com/>
- e. Contactable during working hours: 9-17:30 Mondays to Fridays.