



# Standard Terms & Conditions for the Supply Of Services

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## 1 Interpretation

1.1 The following definitions and rules of interpretation apply in these Conditions.

1.2 Definitions:

1.2.1 "Beneficiary" the recipient of the Neurological Occupational Therapy and Rehabilitation Occupational Therapy provided by the Supplier.

1.2.2 "Business Day" a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

1.2.3 "Charges" the charges payable by the Referrer for the supply of the Services to the Beneficiary in accordance with clause 5 (Charges and Payment).

1.2.4 "Commencement Date" has the meaning given in clause 2.2.

1.2.5 "Conditions" these terms and conditions as amended from time to time in accordance with clause 8.4.

1.2.6 "Contract" the contract between the Supplier and the Referrer for the supply of Services to the Beneficiary in accordance with these Conditions.

1.2.7 "Control" has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.

1.2.8 "Referrer" the party paying for the provision of services by the Supplier to the Beneficiary.

1.2.9 "Referrer Default" has the meaning set out in clause 4.2.

1.2.10 "Data Protection Legislation" up to but excluding 25 May 2018, the Data Protection Act 1998 and thereafter (i) unless and until the GDPR is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998.

1.2.11 "Order" the Beneficiary's order for Services as set out in the Beneficiary's written acceptance of a quotation by the Supplier, whether or not given by the Referrer on the Beneficiary's behalf.

1.2.12 "Services" the Neurological Occupational Therapy and Rehabilitation Occupational Therapy services, supplied by the Supplier to the Beneficiary as set out in the Specification.

1.2.13 "Specification" the description or specification of the Services provided in writing by the Supplier to the Beneficiary.

1.2.14 "Supplier" Krysalis Consultancy Limited registered in England and Wales with company number 09629721.

1.2.15 "Supplier Materials" has the meaning set out in clause 4.1.5.

1.3 Interpretation:

1.3.1 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 all subordinate legislation made under that statute or statutory provision.

1.3.2 Any words following the terms including, include, in particular, for example or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.3.3 A reference to writing or written includes fax and email.

## 2 Basis of contract

2.1 The Referrer agrees to purchase, and the Supplier agrees to supply, the provision of the Services to the Beneficiary in accordance with these Conditions, with the aim of enabling the Beneficiary to make progress in their rehabilitation and everyday function.

2.2 The Order shall only be deemed to be accepted when the Supplier issues written terms of business to be signed by the Referrer, at which point, and on which date the Contract shall come into existence (Commencement Date).

2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Beneficiary seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

## 3 Supply of Services

3.1 The Supplier shall supply the Services to the Beneficiary in accordance with the Specification in all material respects.

3.2 The Supplier reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Beneficiary in any such event.

3.3 The Supplier warrants to the Beneficiary that the Services will be provided using reasonable care and skill.

## 4 Beneficiary's obligations

4.1 The Beneficiary shall:

4.1.1 ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;

4.1.2 co-operate with the Supplier in all matters relating to the Services;

4.1.3 provide the Supplier with such information and materials as the Supplier may reasonably require

in order to supply the Services, and ensure that such information is complete and accurate in all material respects;

4.1.4 comply with all applicable laws, including health and safety laws; and

4.1.5 keep all materials, equipment, documents and other property of the Supplier (Supplier Materials) at the Beneficiary's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation.

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

4.2.1 without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Beneficiary remedies the Beneficiary Default, and to rely on the Beneficiary Default to relieve it from the performance of any of its obligations in each case to the extent the Beneficiary Default prevents or delays the Supplier's performance of any of its obligations;

4.2.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Beneficiary arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2; and

4.2.3 the Referrer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Beneficiary Default.

## 5 Charges and payment

5.1 The Charges for the Services shall be calculated on a time and materials basis and an estimate of the Charges will be provided to the Referrer or Beneficiary as applicable.

5.2 The Supplier shall invoice the Beneficiary on a monthly basis.

5.3 The Referrer (or, in cases where there is no Referrer, the Beneficiary) shall pay each invoice submitted by the Supplier:

5.3.1 within 30 days of the date of the invoice; and

5.3.2 in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.

5.4 If more than 60 days from the date of the invoice the sum remains unpaid, the Supplier reserves the right to withhold the Supply of Services until it has received written confirmation that the Referrer will meet the payment. The Supplier also reserves the right to make late penalty charges in line with The Late Payment of Commercial Debts (Interest) Act 1998 as amended by the European Directive (2000/35/EC).

5.5 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## 6 Data protection and data processing

6.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 6 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

6.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Beneficiary is the data controller and the Supplier is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation).

6.3 Without prejudice to the generality of clause 6.1, the Referrer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data (as defined in the Data Protection Legislation) of the Beneficiary to the Supplier for the duration and purposes of the Contract.

6.4 Without prejudice to the generality of clause 6.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under the Contract:

6.4.1 process that Personal Data only on the written instructions of the Referrer unless the Supplier is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Supplier to process Personal Data (Applicable Data Processing Laws). Where the Supplier is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Supplier shall promptly notify the Referrer of this before performing the processing required by the Applicable Data Processing Laws unless those Applicable Data Processing Laws prohibit the Supplier from so notifying the Referrer;

6.4.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Referrer, to protect against unauthorised or unlawful processing of Personal Data of the Beneficiary and against accidental loss or destruction of, or damage to, Personal Data of the Beneficiary, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data of the Beneficiary, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data of the Beneficiary can be restored in a timely manner after an incident, and regularly assessing and

evaluating the effectiveness of the technical and organisational measures adopted by it);

6.4.3 ensure that all personnel who have access to and/or process Personal Data of the Beneficiary are obliged to keep the Personal Data confidential; and

6.4.4 not transfer any Personal Data of the Beneficiary outside of the European Economic Area unless the prior written consent of the Referrer has been obtained and the following conditions are fulfilled:

(a) the Referrer or the Supplier has provided appropriate safeguards in relation to the transfer;

(b) the Data Subject (as defined in the Data Protection Legislation) has enforceable rights and effective legal remedies;

(c) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data of the Beneficiary that is transferred; and

(d) the Supplier complies with reasonable instructions notified to it in advance by the Referrer with respect to the processing of the Personal Data of the Beneficiary;

6.4.5 assist the Referrer, at the Referrer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

6.4.6 notify the Referrer without undue delay on becoming aware of a Personal Data breach;

6.4.7 at the written direction of the Referrer, delete or return the Personal Data of the Beneficiary and copies thereof to the Referrer on termination of the agreement unless required by Applicable Data Processing Law to store the Personal Data; and

6.4.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 6.

## **7 Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**

7.1 The Supplier has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £6,000,000 per claim. The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange, and the Customer is responsible for making its own arrangements for the insurance of any excess loss.

7.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

7.2.1 death or personal injury caused by negligence;

7.2.2 fraud or fraudulent misrepresentation; and

7.2.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

7.3 Subject to clause 7.2, the Supplier shall not be liable to the Referrer (or the Beneficiary) whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

(a) Loss of profits;

(b) Loss of sales or business;

(c) Loss of agreements or contracts;

(d) Loss of anticipated savings;

(e) Loss of use or corruption of data or information;

(f) Loss of or damage to goodwill;

(g) Indirect or consequential loss.

7.4 Subject to clause 7.2, the Supplier's total liability to the Beneficiary, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to £10,000.

7.5 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.

7.6 This clause 7 shall survive termination of the Contract.

## **8 General**

8.1 Force majeure

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

8.2 Confidentiality

8.2.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 8.2.2.

8.2.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 8.2; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

8.2.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

### 8.3 Entire agreement

8.3.1 The Contract 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.

8.3.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

8.3.3 Nothing in this clause shall limit or exclude any liability for fraud.

### 8.4 Variation

Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

### 8.5 Prevalence

In the event of any conflict between these Standard Terms and any Neurological Occupational Therapy Rehabilitation Services Agreement with by Supplier, the terms of the Services Agreement shall prevail.

### 8.6 Waiver

A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

### 8.7 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.

### 8.8 Notices

8.8.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office or its principal place of business.

8.8.2 Any notice or communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or, if sent by fax, at 9.00am on the next Business Day after transmission.

8.8.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

### 8.9 Third party rights

Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

### 8.10 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.

### 8.11 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.



Krysalis  
Neuro Occupational Therapy

t. 01722 466117  
e. [enquiries@krysalisconsultancy.co.uk](mailto:enquiries@krysalisconsultancy.co.uk)  
[www.krysalisconsultancy.co.uk](http://www.krysalisconsultancy.co.uk)

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