



[www.xilemapayments.com](http://www.xilemapayments.com)

## **TERMS OF BUSINESS FOR THE PROVISION OF SERVICES –Version 1.2**

**Strictly Commercial in Confidence**

**01 January 2019**

**Ver. 1.2**

## 1. Definitions

In these general terms and conditions and each Engagement Letter or Statement of Work, the following words and expressions shall have the following meaning:

“Affiliate” shall mean a party and its ultimate holding company and all direct and indirect subsidiaries of such holding company.

“Agreement” shall mean these terms and conditions.

“Assigned Personnel” shall mean individuals assigned by Xilema to provide the Services.

“Client” shall mean the party procuring Services from Xilema and who is a signatory to the relevant Engagement Letter or Statement of Work.

“Client Materials” shall mean documentation, reports, data and software provided by the Client to Xilema or its representative in furtherance of an Engagement Letter or Statement of Work and identified as such in the Engagement Letter or Statement of Work.

“Charges” shall mean the sums payable by the Client to Xilema, as set out in the Engagement Letter or Statement of Work.

“Contract” shall mean these terms and conditions together with the relevant Engagement Letter or Statement of Work.

“Deliverables” shall mean those items, if any, identified as such in the Engagement Letter or Statement of Work.

“Engagement Letter” shall mean the document, which is signed by an authorised representative of both Xilema and the Client, which details the Services to be provided by Xilema and Charges to be paid by the Client subject to the terms of this Agreement.

“Intellectual Property Rights” shall mean patents, trademarks, service marks, design rights (whether capable of registration or not), applications for any of the foregoing, copyright, know how, trade or business names or other similar rights or obligations whether capable of registration or not in any country including but not limited to the United Kingdom.

“Man Day Rate(s)” shall mean the charge payable in respect of each Working Day, or part thereof, of resource provided, by Xilema, in the provision of the Services on a time and materials basis and shall mean Xilema’s rates prevailing at the time of provision unless otherwise stated in the Engagement Letter or Statement of Work.

“Services” shall mean the services to be provided by Xilema as detailed in the Engagement Letter or Statement of Work.

“Statement of Work” shall mean the document, signed by an authorized representative of both Xilema and the Client, which describes the scope and work to be performed by Xilema, the Charges to be paid by the Client, the location where the work is to be undertaken, any agreed acceptance or testing criteria and any specific identified deliverables.

“Terms” shall mean the terms and conditions set out in this document.

“Working Day” shall mean 7.5 hours excluding lunch performed during normal business hours (for example between the hours of 0900-1730 Monday to Friday in the UK) and shall exclude Bank and Public holidays in the location where the work is being performed or as referred to in the appropriate Engagement Letter or Statement of Work.

## 2. Scope of Work

2.1 In consideration of the Charges Xilema shall provide the Services to the Client as set out in each agreed Engagement Letter or Statement of Work.

2.2 Any work undertaken by Xilema at the request of the Client, not defined within an Engagement Letter or Statement of Work, shall be undertaken subject to these terms and conditions and all such work undertaken shall be chargeable to the Client at Xilema's then prevailing Man Day Rates.

2.3 Any estimates provided by Xilema are subject to the Client's timely delivery of its responsibilities as set out in these terms and the Engagement Letter or Statement of Work. If the Services are delayed for any reasons other than an act or omission of Xilema, Xilema will be entitled to charge and receive payment from the Client in respect of idle time and other costs and expenses reasonably incurred as a result of such delay and/or may extend any timescales given for the performance of the Services accordingly.

2.4 All timescales given in respect of the Services are estimates only and time shall not be of the essence.

2.5 Xilema shall use reasonable endeavours to maintain continuity of any assigned personnel named in the Engagement Letter or Statement of Work for the term of such Assignment. However Xilema reserves the right to substitute any assigned personnel with personnel of equivalent grade with similar skills and experience. Similarly, the Client may request Xilema to substitute any assigned personnel subject to reasonable business reasons and notice.

## 3. Charges

3.1 Where no fixed price for the Services is stated in the relevant Engagement Letter or Statement of Work, the Services provided shall be charged at the appropriate Man Day Rates for the time made available to the Client.

3.2 Man Day Rates assume a 7.5 (seven and a half) hour Working Day excluding lunch and are payable in respect of hours worked and travelling time in excess of 2 (two) hours per day to any location other than the locations designated in the Engagement Letter or Statement of Work. Such hours shall be rounded up to the nearest half day on a weekly basis. Any agreements on Overtime shall be agreed in writing between the parties or in a specific Engagement Letter or Statement of Work.

3.3 Where the Engagement Letter or Statement of Work provides for the Charges to be calculated on a fixed price basis, invoices shall be submitted on completion of the milestones and deliverables or as agreed within each Engagement Letter or Statement of Work.

3.4 Unless otherwise expressly stated in the Engagement Letter or Statement of Work, Xilema reserves the right to review its Man Day Rates from time to time.

3.5 Reasonable expenses incurred by Xilema in the provision of the Services shall be chargeable to the Client at cost unless otherwise expressly stated in the Engagement Letter or Statement of Work. Expenses shall be as agreed with the Client and shall be invoiced monthly as incurred supported by appropriate receipts.

3.6 The Client shall not be obliged to pay holiday pay, sick pay, company benefits or pension contributions to Xilema or its assigned personnel in any circumstances.

3.7 The Charges are exclusive of all sales, use, value added, and other national or local taxes which shall be payable by the Client in addition to all other payments due hereunder at the rate prevailing at the date of invoice.

#### 4. Invoicing and Payment

4.1 Unless otherwise expressly stated in the Engagement Letter or Statement of Work, Xilema shall invoice the Client monthly in arrears in respect of Services provided.

4.2 The Client shall make payment of all invoices within 30 (thirty) calendar days of date of invoice.

4.3 Xilema may, without prejudice to any other rights and remedies at its option, charge the Client interest on any payments which have not been made within the 30 (thirty) day period specified above at 4% (four percent) per annum above the prevailing Bank of Spain Base Rate of Interest commencing upon the date a payment becomes overdue until the outstanding amount is received in full.

4.4 Xilema shall have the right, at its sole discretion and without liability, to suspend Services to be provided to the Client and/or withhold Deliverables until any amounts due from the Client are paid in full.

4.5 Payments due under an Engagement Letter or Statement of Work shall be made in full, and, free from any deduction, right of set off or counterclaims.

#### 5. Client Responsibilities

The Client shall:

5.1 at all times afford such access to its premises, equipment, information and personnel as may be reasonably required by Xilema in the provision of the Services;

5.2 promptly make available such documentation, information, data and computer facilities (including but not limited to data preparation facilities, storage and computer consumables) as may be required by Xilema in the provision of the Services;

5.3 appoint a representative with responsibility for all matters relating to this Agreement;

5.4 indemnify Xilema against all costs, claims, demands, expenses and liabilities of whatever nature arising out of or in connection with any claim that the use by Xilema of any information or material supplied by the Client for the purposes of this Agreement and/or an Engagement Letter or Statement of Work infringes the Intellectual Property Rights of any third party;

5.5 ensure that all copyright or other proprietary notices on any Deliverable are not removed or obscured and are reproduced in full on all copies of such Deliverable;

5.6 ensure that no additional logos, trademarks, or other notice or whatever nature is included on/in the Deliverables or part thereof without the express prior written consent of Xilema.

5.7 fulfil its obligations as set out in the Engagement Letter or Statement of Work in a timely manner and without undue delay and where applicable, in accordance with the project implementation plans and as agreed necessary for the provision of the Services;

5.8 raise a purchase order, if applicable, and submit such purchase order to Xilema prior to the commencement of work;

5.9 be responsible for the back-up of its own data at all times including but not limited to the back up of data made available to Xilema.

## 6. Warranty

6.1 Xilema warrants that it will use reasonable care and skill in providing the Services and that the Services shall be performed in a timely manner by appropriately skilled personnel in accordance with standards generally observed in the industry for similar services.

6.2 Xilema warrants that in performing the Services it will comply with appropriate health, safety, security and other relevant policies and processes as explicitly notified by the Client and all relevant laws and regulations in force.

6.3 Xilema's sole liability arising under this warranty shall be to re-perform the Services so that such Services comply with the warranty stated in Clause 6.1 above. Without prejudice to any rights that the Client may have under this Agreement, if Xilema receives written notice from the Client of any breach of the warranty stated in Clause 6.1 above, a representative from each of Xilema and the Client shall meet and, acting reasonably, agree an appropriate remedial plan.

6.4 The above warranty is in lieu of all other warranties or conditions, whether express or implied, statutory or otherwise including but not limited to any implied warranties as to quality or purpose which are, to the fullest extent permitted by law, hereby expressly excluded.

## 7. Ownership

7.1 Intellectual Property Rights in the materials identified as "Client Materials" or in each specific Client Deliverable described in the Engagement Letter or the Statement of Work shall vest in the Client in so far as is permissible. Such ownership shall take effect upon the creation of each of the Intellectual Property Rights. All Intellectual Property Rights in all other materials that may arise in the course of performing the Services, including but not limited to any general deliverables or know-how, shall vest in Xilema in so far as is permissible. Notwithstanding the vesting of Intellectual Property Rights, Xilema shall not be prevented from using or exploiting knowledge, ideas, methodologies or skills learned including software code produced during the performance of the Services in its normal business.

## 8. Confidentiality

8.1 Except as expressly permitted by the terms of this Agreement each party to an Engagement Letter or Statement of Work undertakes to keep and treat as confidential and not, without the prior written consent of the disclosing party, disclose to any third party, any information, in whatever form, relating to the business, customers, suppliers, trade secrets or similar commercially sensitive information of the other except to those employees or associates of the parties who need to know for the purposes of an Engagement Letter or Statement of Work nor make use of such information for any purpose whatsoever other than to fulfil its obligations pursuant to an Engagement Letter or Statement of Work provided that the foregoing shall not apply to information which is:

8.1.1 in, or comes into, the public domain other than by breach of this Agreement or an Engagement Letter or Statement of Work; or

8.1.2 in possession of the receiving party prior to receipt from the disclosing party; or

8.1.3 received bona fide by one party from a third party who has not received the information directly or indirectly from the disclosing party; or

8.1.4 is independently developed by an employee or associate of the receiving party without access to or knowledge of such information.

8.2. Nothing in this Clause 8 shall operate so as to prevent either party from making use of know-how and knowledge acquired during the execution of this Agreement or an Engagement Letter or Statement of Work however for the avoidance of doubt the application of this Clause 8.2 does not extend to any proprietary information or data of the disclosing party.

## 9. Liability

9.1 Notwithstanding anything else contained within an Engagement Letter or Statement of Work or this Agreement, Xilema shall indemnify the Client against any injury or death of a person caused by any negligent act or omission or wilful misconduct of Xilema, its directors, employees, agents or sub-contractors.

9.2 Subject always to Clause 9.1 above for which Xilema's liability shall be unlimited, and to the fullest extent permitted by law, Xilema's total liability to the Client for loss or damage whether in contract, tort or otherwise caused by the breach or non-performance of any obligation or duty (including but not limited to a duty of care) owed by Xilema to the Client or to any third party, howsoever arising out of or in connection with this Agreement or an Engagement Letter or Statement of Work, or any act or omission shall be limited to damages and shall not in any event exceed a sum equal to the Charges paid by the Client to Xilema under the relevant Engagement Letter or Statement of Work.

9.3 Notwithstanding anything else contained within an Engagement Letter or Statement of Work or this Agreement, Xilema shall have no liability for consequential or indirect loss.

9.4 Notwithstanding anything else contained within an Engagement Letter or Statement of Work or this Agreement, Xilema shall have no liability for economic loss including but not limited to loss of profit or revenue, loss or damage to goodwill, loss or corruption of data, failure to realise anticipated savings, loss of production time, and loss of contracts.

## 10. Insurance

10.1 The parties shall both effect and maintain, throughout the term of the Engagement Letter or Statement of Work, insurance cover, sufficient to cover their respective potential liabilities hereunder.

## 11. Termination

11.1 The Client or Xilema may terminate this Agreement for convenience at any time upon ninety (90) days written notice. Such termination shall not in any way affect any Engagement Letter or Statement of Work which has already been executed by the parties prior to the date of termination of this Agreement.

11.2 Either party may terminate the relevant Engagement Letter or Statement of Work where the other party:

11.2.1 enters into a voluntary arrangement with its creditors; or

11.2.2 has a receiver or administrative receiver appointed over any of its assets or an undertaking or a resolution or petition to wind up is passed or presented (other than for the purposes of bona fide amalgamation or reconstruction); or

11.2.3 if any circumstances arises which would entitle a court of competent jurisdiction or a creditor to appoint a receiver, administrative receiver or administrator or to present a winding up petition or make a winding up order.

11.3. Either party may terminate the relevant Engagement Letter or Statement of Work where the other party:

11.3.1 is in material breach of its obligations hereunder, (other than a failure to pay by the Client in which event the provisions of Clause 11.4.1 below shall apply), and where the breach is capable of remedy, fails to remedy the same within 30 (thirty) Working Days of written notice to do so.

11.4 Xilema may, without prejudice to its other rights arising hereunder, terminate any Engagement Letter or Statement of Work forthwith in the event that;

11.4.1 the Client fails to pay any invoice due in accordance with Clause 4.2 of this Agreement on two or more occasions in any 4 (four) month period; or

11.4.2 there is a change of control as defined in section 416 of the Income and Corporation Taxes Act 1988 in the Client or its parent company.

11.5. Upon termination of an Engagement Letter or Statement of Work, the Client shall promptly pay Xilema for all work carried out, pursuant to such Engagement Letter or Statement of Work, up to the effective date of termination together with all sums which are due or outstanding under this Agreement and/or the relevant Engagement Letter or Statement of Work.

## **12. Changes to Agreement**

12.1. No alteration, modification, addition or other change to this Agreement and/or an Engagement Letter or Statement of Work shall be valid unless made in writing and signed by the duly authorised representatives of both parties.

## **13. Force Majeure**

13.1 Subject to Clause 13.2 below neither party shall be under any liability to the other party for any failure to perform any of its obligations hereunder or delay if such failure or delay is attributable to a force majeure event which shall mean any event beyond a party's reasonable control including, without limitation, acts of God, war, riot, civil commotion, flood, storm, accident, fire, failure of communication links, strikes and labour disputes, and failure to procure raw material. Malicious damage caused by a party and failure to pay shall not constitute an event beyond the reasonable control of that party.

13.2 In the event of a force majeure event, the party affected shall, immediately, advise the other party, in writing of the circumstances of the force majeure event and the obligations of both parties shall, so far as such obligations cannot be fulfilled be suspended for a period of 90 (ninety) Working Days from the date of such event. If the period of non-performance exceeds 90 (ninety) Working Days from the date of occurrence of the force majeure event the party not suffering the force majeure event may, by written notice, without liability, terminate the Engagement Letter or Statement of Work affected by such event forthwith.

## **14. Non Solicitation**

14.1 It is an express condition that for the duration of each Engagement Letter or Statement of Work and for a period of 6 (six) months thereafter neither party shall:

14.1.1 make an unsolicited approach, whether directly or indirectly, to any employee or contractor of the other who has been involved in the performance of such Contract with a view to potentially making an offer of employment or engagement to such employee and/or contractor. For the avoidance of doubt this Clause 14.1 does not apply to offers of employment or engagement to personnel who have responded to advertisements in the public domain or where the parties have been introduced by a third party acting independently and not on the instruction of the recruiting party.

14.1.2 solicit or seek to solicit any person or organization with regard to whom they have been involved in the performance of such Contract to terminate any contractual relationship with the other party, or discourage any such organization from entering into or enhancing contractual relations with the other party.

## **15. Disputes**

15.1 In the event that a dispute arises in relation to or in connection with this Agreement or an Engagement Letter or Statement of Work which cannot be resolved at a working level, the matter may be referred, by either party to Xilema's Assignment Director and the Client's Project Director or equivalent. Where these parties are unable to resolve the matter within 5 Working Days of the matter being escalated, the matter may be referred, by either party, to Xilema's CEO and the Client's CEO/Managing Director or equivalent.

15.2 In the event that a technical dispute has not been resolved within 30 (thirty) Working Days of it first arising then the dispute may be referred to a single arbitrator to be agreed by Xilema and the Client, failing agreement, to be appointed by the President of the Institution of Engineering and Technology or such other body as may supersede it.

15.3 Nothing in this Clause 15 is intended to nor shall be interpreted as limiting the rights and remedies which may be available to either of the parties under the terms of this Agreement or at law.

## 16. Data Protection

16.1 The parties acknowledge that Xilema may have access to “personal data” of the Client. Where this is the case the Client, as data controller appoints Xilema as its data processor to process such personal data on the Client’s behalf.

16.2 The Client, as data controller, warrants it has all authority and consents necessary to enable Xilema to process any personal data in accordance with the DPA for the purposes of this Agreement.

16.3 Xilema undertakes that it shall:

16.3.1 maintain appropriate operational and technological processes and procedures to safeguard against any unauthorised access, loss, destruction, theft, use or disclosure of the Client’s personal data; and

16.3.2 process the Client’s personal data only in accordance with the terms of this Agreement and the relevant Engagement Letter or Statement of Work unless required to do otherwise by an order of a court of competent jurisdiction or a regulatory body with lawful authority over the Client’s personal data in Xilema’s possession; and

16.3.3 process the Client’s personal data in accordance with the Client’s lawful instructions from time to time provided always that those instructions are consistent with and do not extend the agreed scope of Services.

16.4. Both parties acknowledge their respective responsibilities arising under the DPA and each party shall indemnify the other in respect of any claims by any person or body in respect of their respective responsibilities arising under the DPA.

## 17. Notices

17.1 All notices required to be given hereunder shall be given in writing and sent to the address of the recipient as set out in the Engagement Letter or Statement of Work or such other address in England or Wales as the recipient may designate by notice given in accordance with the provisions of this Clause.

17.2 Notices may be delivered personally or by first class pre-paid registered letter and shall be deemed to have been served on acknowledged receipt.

17.3 Notices may also be delivered by Email for which the sender must receive an answer back acknowledgement or any comparable evidence indicating notice has been received.

## 18. Assignment

18.1. The Client shall not assign, charge or otherwise deal with all or any of its rights and obligations hereunder whether in whole or in part without the prior written consent of Xilema, such consent not to be unreasonably withheld or delayed. Similarly Xilema shall not assign any of its rights or obligations hereunder unless agreed in writing with the Client, such consent not to be unreasonably withheld or delayed.



## 19. Publicity

19.1 Except as expressly permitted above, neither party shall disclose the terms of this Agreement or any Engagement Letter or Statement of Work nor make any public announcement or press release in respect of the matter hereof, without the prior written consent of the other save where such disclosure is required by law, government regulation or the regulations of any stock exchange.

19.2 Xilema may in its general sales and marketing activities disclose that the Client is a customer of Xilema and the nature of the services provided. Similarly, the Client may in its general sales and marketing activities disclose that it is a customer of Xilema.

## 20. Anti-Bribery and Corruption

20.1. Xilema will and will procure that persons associated with it will:

20.1.1. comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption;

20.1.2. not engage in any activity, practice or conduct which would constitute an offence if such activity, practice or conduct had been carried out in the EEUU;

20.1.3. not do, or omit to do, any act that may lead the Client to be in breach of any of the Relevant Requirements;

20.1.4. promptly report to the Client any request or demand for any undue financial or other advantage received by it in connection with this Agreement;

20.1.5. have and maintain in place throughout the term of the Agreement its own policies and procedures to ensure compliance with the Relevant Requirements and Clause 20.1.2, and will enforce them where appropriate; and

20.1.6. if requested, provide the Client with reasonable assistance, to enable it to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with any of the Relevant Requirements.

20.2. Xilema will promptly notify the Client if, at any time during the term of the Agreement if its circumstances, knowledge or awareness changes such that it would not be able to repeat the obligations set out in special condition 20.1 at the relevant time.

20.3. Breach of this Clause 20 shall be deemed a material breach under clause 11.3.1.

## 21. Rights of Third Parties

21.1 Except as expressly stated in Clause 21.2 below no provision of this Agreement or any Engagement Letter or Statement of Work shall be enforceable by any third party whether pursuant to the Contracts (Rights of Third Parties) or otherwise save to the extent that the law otherwise requires.

21.2 Notwithstanding Clause 21.1 above Xilema shall have the right to enforce any rights accruing to it pursuant to Clause 8 and Clause 14 above.

## 22. Waiver

22.1 No waiver by either party shall be effective unless in writing.

22.2 No delay, neglect or forbearance on the part of either party in enforcing, against the other, any provision of this Agreement or an Engagement Letter or Statement of Work shall be deemed to be a

waiver or in any way prejudice any rights of the other under the terms of the Agreement or any Engagement Letter or Statement of Work.

22.3 Any waiver by either party shall constitute a waiver in respect of the specified breach or default and shall not constitute a waiver in respect of any subsequent breach or default.

## **23. Relationship of the Parties**

23.1. Nothing in this Agreement is intended to nor shall be it be deemed to create an agency, partnership, employment or joint venture between the parties and neither party shall have the right to bind the other.

## **24. Headings**

24.1 The headings to these terms and conditions are included for ease of reference only and shall not affect the interpretation of such terms and conditions.

## **25. Order of Precedence**

25.1 In the event of any conflict between the terms and conditions herein, or any other document the following order of precedence shall apply:

25.1.1 The Engagement Letter or Statement of Work

25.1.2 These terms and conditions

## **26. Severability**

26.1 If any part, term or provision of this Agreement or Engagement Letter or Statement of Work is held to be illegal or unenforceable the validity or enforceability of the other provisions of the Agreement or relevant Engagement Letter or Statement of Work and the remainder of the part, term or provision in question to the extent that such part, term or provision is not illegal or unenforceable shall remain in full force and effect and the parties shall, in good faith, negotiate a replacement enforceable term to reflect the intention of the parties as of the date of the relevant Engagement Letter or Statement of Work.

## **27. Survivability**

27.1 Any Clauses which by their nature are capable of surviving termination or expiry of an Engagement Letter or Statement of Work shall be deemed to continue, after such expiry or termination, in full force and effect.

## **28. Entire Agreement**

28.1 This Agreement and each relevant Engagement Letter or Statement of Work constitute the entire agreement between the parties with respect to the Services and supersedes all previous communications, representations, proposals, correspondence, purchase orders, prior agreements, whether written or oral, made by either party in respect of such subject matter and the Client hereby acknowledges that no reliance has been placed on any representation made but not embodied in this Agreement.

28.2 Any purchase orders issued by the Client shall be issued for invoicing and payment purposes only. Any pre-printed terms appearing on such purchase order or any other pre-printed document, whether issued by Xilema or the Client, shall not apply to Services provided in furtherance of this Agreement.

## **29. Law**

29.1 This Agreement and each Engagement Letter shall be governed, construed and interpreted in accordance with the law of Spain and the parties hereby agree to submit to the exclusive jurisdiction of the courts of Spain.