

FUSIONEX ANT FOR SME

Return, Refund & Termination Policy

Termination Policy

This Order Form shall not be terminated prematurely, in which case if a termination is initiated by the Client, the Fee paid by Client under this Order Form is non-refundable with Fusionex not having to deliver any remaining deliverables.

Terms & Conditions

Duration

1 year from Commencement Date

Fees

- All prices are in Ringgit Malaysia.
- Save for the GST amounts, all prices quoted are exclusive of any taxes applicable to any transaction covered under this Order Form. Any value added tax, (government) service tax, or any similar taxes which may from time to time be imposed by the Government or its related agencies shall be borne by the Client.

Non-Solicitation

The Client shall not, throughout the duration of this Order Form, and for a period of 3 years after termination of this Order Form (or completion thereof), whether directly or indirectly, employ, solicit or entice any of Fusionex's staff or employees to join the Client or the Client's related/associate corporation(s). For the avoidance of doubt, where an employee or staff leaves the employ of Fusionex and is subsequently employed by the Client or the other party's related/associate corporation(s) within the 3-year period stipulated above, it shall be presumed that such engagement by the Client or its related/associate corporation(s) has been by way of enticement/solicitation by the Client in breach of this section, unless otherwise proven by the Client. Without prejudice to any other legal remedies (including injunctive relief) available to Fusionex upon such occurrence, it is expressly agreed that the Client shall pay an amount equal to the latest gross annual salary of the solicited employee, such amount to be payable to Fusionex immediately upon the commencement of his/ her services.

Intellectual Property

- (i) No intellectual property rights shall be deemed to have been transferred by Fusionex to the Client pursuant to this Order Form, and Fusionex retains all intellectual property rights permitted under law towards the deliverables and any alterations, modifications, enhancements or customisations relating to the same.
- (ii) Nothing herein is intended to confer on the Client any intellectual property rights which:
 - (a) belong to or are vested in Fusionex prior to the Commencement Date, any such rights created independent of the provision of the deliverables including all software, architectural components, reusable applications, software libraries, reusable code, reusable assets, tools, processes, utilities and methodologies belonging to Fusionex and used in the provision of the deliverables, even if such intellectual property or any part thereof is incorporated into or forming part of the deliverables developed for the Client;
 - (b) any alterations, modifications, enhancements or customization made to any of the items mentioned in sub-paragraph (a) above in the course of provision of the deliverables; and
 - (c) any third party software as set forth in any license extended by any such vendor.

- (iii) All intellectual property rights in the material described in sub-paragraphs (a) and (b) of paragraph (ii) above shall continue to vest in Fusionex ("Fusionex Properties"). To the extent any such Fusionex Properties forms part of a deliverable, in order for the Client to use such Fusionex Properties to the extent incorporated into the Deliverables or required to fully use the deliverables, Fusionex grants to the Client a non-exclusive, non-transferable user license in respect of such Fusionex Properties only as part of the deliverables and not independently. The rights of the Client to use such Fusionex Properties does not include the rights to:
- (a) sell, lease, exchange, mortgage, pledge, license, sub license, assign or in any other way convey, transfer or alienate the Fusionex Properties in favour of any person (either for commercial consideration or not (including by way of transmission)); and/or
 - (b) reverse compile or in any other way arrive at or attempt to arrive at the source code of the Fusionex Properties; and/or
 - (c) provide, copy, emulate or otherwise make available the Fusionex Properties in whole or in part, in any form, to any person other than the Client's employees without Fusionex's prior written consent.

Patent and Copyright Infringement

Fusionex shall not have any liability in respect of any infringement claim, if it could be established that such infringement is caused by:

- (i) use of the deliverables for purposes manifestly different to those authorised or contemplated herein or the relevant Order Form;
- (ii) use of out of date deliverables, when prior to the date of the infringement claim Fusionex had delivered to the Client (under the terms of this Agreement) a corrected, fixed or enhanced version of the Deliverables, and this corrected, fixed or enhanced version (had it been used) would have prevented the infringement occurring;
- (iii) the combination of the deliverables with products or services not provided by Fusionex;
- (iv) the modification of the deliverables by any person other than Fusionex; or
- (v) deliverables complying with or based upon (1) designs provided by the Client's directions; or (2) specifications or other information provided by or at the Client's direction.

The Client covenants that all data, software information, material and other assistance ("Client Materials") provided to Fusionex in connection with the provision of services are either owned by it or under license from third parties, with a right and liberty given to the Client to disclose or divulge the same to Fusionex in connection with the Services and the use and possession thereof by Fusionex for or in connection with such purposes will not infringe any patent, trademark, trade secret or copyright or any other rights in respect to or in connection with the intended use of the said Client Materials by Fusionex under this Order Form. The Client shall effectively indemnify, defend and hold Fusionex harmless against all losses, damages, demands, costs and expenses (including attorney fees) which may be suffered or incurred by Fusionex in connection with any such third party claim.

Liability

Save in respect of claims of death or personal injury arising from Fusionex's negligence, in no event will Fusionex be liable for any damages resulting from loss of data or use, lost profits, loss of anticipated savings, nor for any damages that are an indirect or secondary consequence to any act or omission of Fusionex whether such damages were reasonably foreseeable or actually foreseen

Client acknowledges that software in general is not error-free and agrees that existence of such errors shall not constitute a breach of this Order Form. Fusionex shall not be liable to the Client for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with this Order Form, the deliverables and any software included in the same, its use or otherwise, except to the extent to which it is unlawful to exclude such liabilities under the applicable law.