

# Terms and Conditions

Version 4



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## 1. INTERPRETATION

### THE FOLLOWING DEFINITIONS AND RULES OF INTERPRETATION APPLY IN THESE CONDITIONS.

#### 1.1 Definitions:

"Business Day"	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
"Charges"	the charges payable by the Customer for the supply of the Services in accordance with clause 5 (Charges and payment).
"Commencement Date"	has the meaning set out in clause 2.2.
"Conditions"	these terms and conditions as amended from time to time in accordance with clause 12.5.
"Contract"	the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions.
"Control"	shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression <b>change of Control</b> shall be construed accordingly.
"Customer"	the person or firm who purchases Services from the Supplier as set out in the particulars hereto.
"Customer Default"	has the meaning set out in clause 4.2.
"Deliverables"	the deliverables set out in the Order produced by the Supplier for the Customer including but not limited to any Conceptual Designs, Designs for Manufacturer or Prototypes.
"Intellectual Property Rights"	Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
"Order"	the Customer's order for Services as set out in the particulars hereto including any supplemental documentation specifically referred to and annexed to this Agreement.
"Prototypes"	any visual or working prototypes supplied by the Supplier to the Customer.
"Services"	the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Specification.
"Specification"	the description or specification of the Services provided in writing by the Supplier to the Customer as set out in the Order.
"Supplier"	the person or firm who provides Services to the Customer as set out in the particulars hereto.

"Supplier Materials" has the meaning set out in clause 4.1.7.

1.2 **Interpretation:**

1.3 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.

1.4 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.

1.5 A reference to **writing** or **written** includes faxes and emails.

**2. BASIS OF CONTRACT**

2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

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

2.5 Any quotation given by the Supplier shall not constitute an offer.

**3. SUPPLY OF SERVICES**

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

3.2 The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

3.3 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 Customer in any such event.

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

**4. CUSTOMER'S OBLIGATIONS**

4.1 The Customer 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, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier;
  - 4.1.4 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;
  - 4.1.5 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
  - 4.1.6 comply with all applicable laws, including health and safety laws;
  - 4.1.7 keep all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer'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; and
  - 4.1.8 comply with any additional obligations as set out in the Specification.
- 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 Customer or failure by the Customer to perform any relevant obligation (**Customer 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 Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer 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 Customer 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 Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

## 5. CHARGES AND PAYMENT

- 5.1 Where the Charges have not been detailed within the Order, the Charges for the Services shall be calculated on a time and materials basis:
- 5.1.1 the Charges shall be calculated in accordance with the Supplier's daily fee rates, as set out in the Order;
  - 5.1.2 the Supplier's daily fee rates for each individual are calculated on the basis of an eight-hour day from 9.00 am to 5.00 pm worked on Business Days; and
  - 5.1.3 the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.
- 5.2 Where Charges are calculated in accordance with clause 5.2 the Supplier reserves the right to increase the Charges on an annual basis with effect from each anniversary of the Commencement

Date in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be the latest available figure for the percentage increase in the Retail Prices Index.

- 5.3 Unless otherwise detailed within the Order, the Customer shall pay the Charges in two instalments in accordance with clause 5.4 and 5.5 hereto.
- 5.4 The Customer shall pay 50% of the total Charges plus any applicable VAT prior to commencement of the supply of the Services.
- 5.5 The Customer shall pay any remaining balance of the Charges plus any applicable VAT on completion of the Services and receipt of an invoice from the Supplier.
- 5.6 The Customer shall pay each invoice submitted by the Supplier:
- 5.6.1 within 30 days of the date of the invoice; and
- 5.6.2 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.
- 5.7 The following may at the sole discretion of the Supplier constitute additional Charges payable by the Customer above and beyond any Charges agreed within the Order either fixed or otherwise:
- 5.7.1 additional time spend by the Supplier providing the Services above and beyond any such time estimate stated in the Order;
- 5.7.2 more than two sets of authors corrections where such corrections are requested by the Customer;
- 5.7.3 any change in the brief stated within the Order;
- 5.7.4 the cost of postage or courier services; and
- 5.7.5 any additional Services provided outside of the scope of the Order;
- 5.8 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.9 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under Clause 10, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this Clause 5.9 will accrue each day at 2% a month above the Bank of England's base rate from time to time, but at 2% a month for any period when that base rate is below 0%.
- 5.10 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. INTELLECTUAL PROPERTY RIGHTS**

- 6.1 All Intellectual Property Rights in or arising out of or in connection with the Services or any Deliverables (other than Intellectual Property Rights in any materials provided by the Customer to the Supplier) shall be owned by the Supplier.

- 6.2 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.
- 6.3 The Customer may request to purchase all Intellectual Property Rights in or arising out of or in connection with the Services or any Deliverables from the Supplier for consideration of £1.00 (One Pound) subject to:
- 6.3.1 such request being made within 5 years of completion of the Services; and
  - 6.3.2 all Charges and invoices being paid in full to the Supplier; and
  - 6.3.3 the Customer granting to the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to such Intellectual Property Rights for the purpose of both online and offline marketing and promotion of the Supplier.

## **7. DATA PROTECTION**

- 7.1 "Data Protection Legislation": means (i) unless and until the GDPR is no longer directly applicable in the UK, the GDPR and any national implementing law, 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.
- 7.2 "GDPR": General Data Protection Regulations ((EU) 2016/679).
- 7.3 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 7.4 The Customer may request details of all Personal Data (as defined in the Data Protection Legislation) held by the Supplier by emailing [accounts@centreline.co.uk](mailto:accounts@centreline.co.uk).
- 7.5 The Customer may request correction of any incorrect or incomplete Personal Data held by the Supplier by emailing [accounts@centreline.co.uk](mailto:accounts@centreline.co.uk).
- 7.6 The Customer may request deletion of any Personal Data held by the Supplier by emailing [accounts@centreline.co.uk](mailto:accounts@centreline.co.uk) provided that the Customer shall be deemed to have simultaneously served notice to terminate the Contract pursuant to clause 9.1 hereto should deletion of such Personal Data make it impossible or impractical for the Supplier to fulfil their obligations under the Contract.

## **8. STANDARDS AND TESTING**

- 8.1 The Customer shall remain solely responsibility for ensuring that any of the Deliverables or products made from the Deliverables are fit for purpose and safe for use by the Customer or any third party and that they comply with any applicable national or international legislation, regulations or standards.
- 8.2 Where the Supplier has provided a Prototype to the Customer, the Customer must ensure that the Prototype has been tested and that certification has been provided by a suitably qualified and competent person that the Prototype complies with any applicable national or international legislation regulations or standards before it is used by the Customer or any third party.
- 8.3 Where the Supplier has provided Deliverables, including but not limited to Designs for Manufacturer, the Customer must ensure that any product or part thereof that has been produced from such Deliverables has been tested and that certification has been provided by a suitably qualified and competent person that such product or part thereof complies with any applicable

national or international legislation, regulations or standards before it is used by the Customer or any third party.

**9. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

- 9.1 Save for Clause 8 hereof nothing in the Contract shall limit or exclude the Supplier's liability for:
- 9.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
  - 9.1.2 fraud or fraudulent misrepresentation; or
  - 9.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.
- 9.2 Subject to clause 9.1, the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
- 9.2.1 loss of profits;
  - 9.2.2 loss of sales or business;
  - 9.2.3 loss of agreements or contracts;
  - 9.2.4 loss of anticipated savings;
  - 9.2.5 loss of use or corruption of software, media, correspondence, data or information;
  - 9.2.6 loss of damage to goodwill; and
  - 9.2.7 any indirect or consequential loss.
- 9.3 Subject to clause 8.1, the Supplier's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to £5,000,000.
- 9.4 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.
- 9.5 This clause 9.1 shall survive termination of the Contract.

**10. TERMINATION**

- 10.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party written notice.
- 10.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 10.2.1 the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of that party being notified in writing to do so;
  - 10.2.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the

court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

10.2.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

10.2.4 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

10.3 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment there is a change of Control of the Customer.

10.4 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 10.2.2 to clause 10.2.4 or the Supplier reasonably believes that the Customer is about to become subject to any of them.

## 11. CONSEQUENCES OF TERMINATION

11.1 On termination of the Contract:

11.1.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice (, which shall be payable by the Customer immediately on receipt;

11.1.2 the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

11.2 Where an invoice is raised pursuant to clause 9.1.1 the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials

11.3 Termination of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

11.4 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

## 12. GENERAL

12.1 **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.

12.2 **Assignment and other dealings.**



12.2.1 The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

12.2.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

12.3 **Confidentiality.**

12.3.1 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 12.3.2 including but not limited to any information received oral, written or otherwise comprising technical or commercial information.

12.3.2 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 12.3; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority; and
- (c) to the extent that such confidential information is in the public domain; and
- (d) to the extent that such confidential information is already within their possession prior to its disclosure by the other party.

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

12.4 **Entire agreement.**

12.4.1 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.

12.4.2 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.

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

12.5 **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).

12.6 **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 breach or default. 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.

- 12.7 **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.
- 12.8 **Notices.**
- 12.8.1 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 (if a company) or its principal place of business (in any other case); or sent by fax to its main fax number or sent by email to the address specified by the Supplier.
- 12.8.2 Any notice or other 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 or email, on the next Business Day after transmission.
- 12.8.3 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.
- 12.9 **Third party rights.**
- 12.9.1 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.
- 12.9.2 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 12.10 **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.
- 12.11 **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.