

Project Cosmic

General Terms for the supply of Services

This document sets out the relationship between us. Such documents can be long and complex but we have tried to keep this to a minimum in two ways:

- We have attempted to use plain English but if there are areas you do not understand: please ask.
- The Terms are divided into Sections: the first applies to all contracts with us (these General Terms) and there are further terms for specific services (Specific Terms). This means that you will only be given those terms that apply to your particular contract with us.

1. Definitions

So as to be clear, the following words shall have the following meanings:

Contract: the Commercial Terms, these General Terms, any Specific Terms applying to your order and your order

Data Protection Legislation: unless and until the General Data Protection Regulation ((EU) 2016/679) (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 any successor legislation to the GDPR or the Data Protection Act 1998.

Good Industry Practice: that degree of skill, care, prudence, foresight, operating systems and practice which would ordinarily be expected of a skilled and experienced supplier engaged in the same or similar type of undertaking as that of Cosmic under similar circumstances

Intellectual Property Rights: all intellectual property rights wherever in the world arising, whether registered or unregistered (and including any application), including copyright, know-how, confidential information, trade secrets, business names and domain names, trade marks, service marks, trade names, patents, design rights and database rights.

Personal data, controller, processor, data subject and **processing** have the meanings respectively set out in the GDPR.

Services: the services to be supplied by us listed in the Commercial Terms.

Third Party Software: any operating system or other third-party software listed in the Commercial Terms to be supplied by us.

Terms used in the Commercial Terms: have the same meaning here and in the Specific Terms.

2. The terms that apply to the Contract

- 2.1. These General Terms (and the relevant Specific Terms) shall apply to all dealings between us and you and take precedence over anything inconsistent in or referred to in your purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.
- 2.2. Only additions to, variations of, exclusions or attempted exclusions of any term of the Contract will be binding on us if they are in writing and signed by a Director.

3. Quotations and Orders

- 3.1. A binding contract shall not come into existence between us and you unless and until we issue the Commercial Terms to you, or, if earlier, when we begin to deliver the Services.
- 3.2. The Services shall be as set out in our Commercial Terms.

- 3.3. Upon our request, you will appoint a project manager with authority to bind you and through whom all communication will be passed. Each project manager is entitled to call a meeting by telephone or skype within 48 hours, where the matter is urgent. Each project manager shall appoint a deputy.
- 3.4. All drawings, descriptive matter, specifications and advertising issued by us are provided for illustrative purposes only and do not form part of the Contract.
- 3.5. We reserve the right to make any changes in the specification of the Services which do not materially affect its quality or performance.
- 3.6. Our employees are not authorised to make any contractually binding promises or representations concerning the Services. In entering into the Contract, you acknowledge that you do not rely on, and waive any claim for breach of, any such representations which have not been confirmed in writing by a Director or Senior Manager.
- 3.7. Any advice or recommendation given by us or our employees to you or your employees about the use of the Services, which is not confirmed in writing, is followed or acted on entirely at your own risk.

4. Payment and Price

- 4.1. All Charges shall be as stated in our Commercial Terms. All prices are exclusive of VAT.
- 4.2. Invoices shall be paid within 30 days of their date, whether or not delivery has taken place.
- 4.3. Time for payment of our invoices shall be of the essence of the Contract.
- 4.4. If you do not pay on time, the whole of the balance of the price of the Services then outstanding shall become immediately due and payable and, without prejudice to any other right or remedy available to us, we may appropriate any payment made by you to any outstanding sum, charge interest on the amount and suspend all further delivery of equipment and the provision of any services.
- 4.5. We shall be entitled to increase the Charges by the corresponding increase in CPI for the equivalent period since the previous increase.

5. Warranties

- 5.1. We will carry out our duties in accordance with Good Industry Practice.
- 5.2. In respect of Third Party Software we will:
 - 5.2.1. use all reasonable endeavours to pass on the warranties provided by the manufacturer of the same; and
 - 5.2.2. during the manufacturer's warranty period, provide assistance in communicating with the manufacturer of the Third Party Software regarding faults so far as it is reasonable to do so.

6. Remedies

- 6.1. If our performance of our obligations under the Contract is prevented or delayed by your act or omission (other than by reason of a Force Majeure Event), you shall pay us all reasonable costs, charges or direct losses sustained by us as a result.

- 6.2. We will not be liable for a breach of the warranty contained in condition 5 unless you give written notice of the defect to us within fourteen days of when you discover or ought to have discovered the defect.

7. Training

- 7.1. We will provide training in relation to the Services for your staff as set out in our Commercial Terms.
- 7.2. Any additional training required by you will be provided in accordance with our then current scale of charges.

8. Change control and technology substitution

- 8.1. You may, by giving written notice to us at any time during the term of this Contract, request a change to any of the Services.
- 8.2. Within seven working days of receipt of such notice, we will prepare a written estimate of any increase or decrease in the Charges, and of any effect that the requested change would have on any Project Plan created under the Specific Terms (Website).
- 8.3. Within 14 working days of receipt of the written estimate referred to above, you should tell us in writing of whether or not you want the requested change to be made. If you require the change, then the Project Plan, the Charges and any other term of the Contract affected shall be deemed varied.

9. Limitation of liability

- 9.1. The following provisions set out our entire liability (including any liability for the acts or omissions of our employees) to you in respect of any breach of the Contract and any representation, statement or tortious act or omission (including negligence) arising out of or in connection with the Contract.
- 9.2. All warranties, conditions and other terms implied by statute or common law are excluded from the Contract to the fullest extent permitted by law.
- 9.3. Nothing in these General Terms excludes or limits our liability for death or personal injury caused by our negligence or fraud or fraudulent misrepresentation.
- 9.4. Subject to condition 9.3:
- 9.4.1. Because we cannot work out the potential harm to your organisation, we will not be liable for any loss of profits, loss of business, depletion of goodwill or similar losses or for any special, indirect or consequential loss, costs, damages, charges or expenses howsoever arising; and
- 9.4.2. our total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price payable for the Services under condition 4.

10. Intellectual Property Rights

We hereby assign to you all existing and future Intellectual Property Rights in any documentation written specifically by us for you and included in the Services.

11. Non-Solicitation

Neither of us shall, during the continuance of the Contract, or within 6 months of its termination, whether on behalf of itself or a third party, solicit or seek to entice away



any employee of the other. In the event of breach of this condition the party in default shall pay the other a sum equal to six months' gross pay of the employee concerned being a pre-estimate of the cost of recruitment and training a replacement.

12. Confidentiality

- 12.1. For the purposes of this Contract, **Confidential Information** shall mean all information whether technical or commercial (including all specifications, drawings, designs, disclosed in writing, on digital media, orally or by inspection of documents or pursuant to discussions between us), where the information is:
 - 12.1.1. identified as confidential at the time of disclosure; or
 - 12.1.2. ought reasonably to be considered confidential given the nature of the information or the circumstances of disclosure.
- 12.2. Each of us shall protect the Confidential Information of the other against unauthorised disclosure by using the same degree of care as taken to preserve and safeguard their own confidential information of a similar nature, being at least a reasonable degree of care.
- 12.3. Confidential Information may be disclosed by the receiving party to its employees, affiliates and professional advisers, provided the recipient is bound to maintain the confidentiality of the Confidential Information received.
- 12.4. The obligations set out in this paragraph shall not apply to Confidential Information which the receiving party can demonstrate:
 - 12.4.1. is or has become publicly known other than through breach of this clause;
 - 12.4.2. was in possession of the receiving party prior to disclosure by the other party;
 - 12.4.3. was received by the receiving party from an independent third party who has full right of disclosure;
 - 12.4.4. was independently developed by the receiving party; or
 - 12.4.5. was required to be disclosed by governmental authority, provided that the party subject to such requirement to disclose gives the other prompt written notice of the requirement.
- 12.5. The obligations of confidentiality in this paragraph shall not be affected by the expiry or termination of this Contract.

13. Data Protection

- 13.1. Both of us will comply with the applicable requirements of the Data Protection Legislation.
- 13.2. We both acknowledge that, in respect of any personal data with which we are provided or to which we have access as a result of us providing the Services, you are the data controller and we are the data processor. We shall ensure that we each complete a register as required by the Data Protection Legislation.
- 13.3. You will ensure that we have the necessary consents or have complied with another processing condition and that you have the appropriate notices and privacy policies in place to enable the lawful transfer of personal data to us for the duration and for the purposes of the Services.

13.4. We shall:

- 13.4.1. act only on your written instructions;
 - 13.4.2. have in place appropriate technical and organisational security measures against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data. Such measures shall be appropriate to the harm that might result from the unauthorised or unlawful processing;
 - 13.4.3. ensure any staff who have access to the personal data are obliged to keep it confidential;
 - 13.4.4. assist you to respond to an individual's request to enforce their rights of subject access, rectification, erasure and any other rights conferred by the Data Protection Legislation;
 - 13.4.5. assist you (if requested) with respect to security, breach notifications, impact assessments and any investigations by a supervisory authority;
 - 13.4.6. notify you without undue delay in the event of a data security breach and assist you with any investigations;
 - 13.4.7. maintain and keep up to date the data processing register referred to above;
 - 13.4.8. delete or return all personal data to you as requested at the end of the Contract (unless already deleted in line with your retention policy); and
 - 13.4.9. submit to audits and inspections and provide you with whatever information you need to ensure that we are both complying with our obligations under the Data Protection Legislation and inform you immediately if we are asked to do something infringing the Data Protection Legislation or other law of the EU or a member state.
- 13.5. We shall not appoint a third-party sub-processor without giving you prior written notice. We shall ensure that any third-party processor will enter into an Contract with the same or substantially similar terms in relation to the Data Protection Legislation.
- 13.6. If this Contract will involve or require a transfer of any personal data from one country to a country outside the country of origin and if required by applicable law, we will enter into a data transfer agreement that is consistent with the requirements of applicable law and ensures that:
- 13.6.1. the individuals have enforceable rights and effective legal remedies in relation to any transferred personal data; and
 - 13.6.2. we have ensured adequate levels of protection in relation to any personal data that is transferred.

14. Termination

- 14.1. Either of us may terminate this Contract forthwith on giving notice in writing to the other if the other ceases to carry on business or commits any serious breach of any term of this Agreement and (in the case of a breach capable of being remedied) shall have failed, within 7 days after the receipt of the request in writing to do so, to remedy the breach.
- 14.2. Termination of the Contract, however arising, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive or implicitly surviving termination.

15. Dispute Resolution Procedure

- 15.1. If any dispute arises in connection with this Contract, directors or other senior representatives of the parties with authority to settle the dispute will, within 7 days of a written request from one party to the other, meet promptly in good faith to resolve the dispute.
- 15.2. If the dispute is not resolved in accordance with condition 15.1, the dispute shall be referred to mediation and the mediator shall be appointed by the Centre for Dispute Resolution.

16. Exit Assistance

- 16.1. This paragraph will take effect during the Exit Period. The Exit Period begins when either of us give notice to terminate the Contract and ends 1 month after all Services have ended.
- 16.2. During the Exit Period, we will assist you and/or your replacement supplier and be available to answer any reasonable queries to enable you to transfer the Services subject to payment of our Charges calculated on our then current consultancy rate.

17. Force Majeure

- 17.1. We will not be liable to you for any breach of our obligations under this the Contract if such breach is due to an act, event, omission or accident beyond our reasonable control (**Force Majeure Event**).
- 17.2. If a Force Majeure Event occurs, we will inform you as soon as possible and take all reasonable steps to mitigate the effects of the Force Majeure Event and resume performance of our obligations as soon as possible.

18. Waiver

A waiver of any right under the Contract is only effective if it is in writing and signed by or on behalf of the waiving party, and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

19. Third Parties

A person who is not a party to the Contract shall not have any rights under the Contract.

20. Entire Agreement

- 20.1. The Contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.
- 20.2. Each party acknowledges that, in entering into this Contract, it has not relied on, and shall have no right or remedy (other than for breach of contract) in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this Contract.

21. Assignment

You shall not, without our prior written consent (such consent not to be unreasonably withheld), assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

22. Notices

- 22.1. Any notice required to be given pursuant to this Contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the address of the party as set out in the Commercial Terms, or, if to us, by email to info@cosmic.org.uk or such other address as may be notified by one party to the other.
- 22.2. Termination of a particular Service in accordance with the relevant Specific Terms will only operate to terminate the Contract if it is the sole remaining Service.

23. Governing law and jurisdiction

The Contract is governed by the law of England and Wales and the courts of England and Wales shall have exclusive jurisdiction.