

Terms & Conditions

Material UK (Scotland) Limited

Reg No: SC438407 | VAT No: 169027104

1. Introduction

- 1.1. The following terms and conditions apply to the Contract (see definition below) and each future request for the supply of services received by Material (see definition below) from the Client (see definition below) from time to time unless otherwise agreed in writing. The communication of a request by the Client to Material for the supply of services shall amount to the Client's acceptance of these terms. These terms shall take precedence over any terms and conditions of the Client, whether attached to, enclosed with or referred to in any purchase order of the Client or elsewhere. They may not be varied except by written agreement between Material and the Client.

2. Definitions

- 2.1. In these Conditions, the following definitions apply:
 - "Material" means Material UK (Scotland) Limited incorporated and registered in Scotland with company number SC438407 and whose registered office is at 20 South Frederick Street, Glasgow, G1 1HJ.
 - "Business Day" means a day (other than a Saturday, Sunday or public holiday) when banks in Scotland are open for business
 - "Charges" means the charges payable by the Client for the supply of the Services in accordance with clause 6
 - "Commencement Date" has the meaning set out in clause 3.2
 - "Conditions" means these terms and conditions as amended from time to time in accordance with clause 14.1.
 - "Contract" means the contract between Material and the Client for the supply of Services in accordance with these Conditions
 - "Client" means the person or firm who purchases Services from Material.
 - "Deliverables" means the deliverables set out in the Order, which may also be referred to as a purchase order and / or scope of work.
 - "Intellectual Property Rights" means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.



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- “Order” means the Client’s order for Services as set out in the quotation document or scope of works.
- “Pre-Existing Materials” means all documents, information and materials provided by Material relating to the Services which existed prior to the commencement of this agreement, including computer programs, data, reports and specifications and processes used in the provision of the Services.
- “Services” means the services, including the Deliverables, supplied by Material to the Client as set out in the Specification.
- “Specification” means the description or specification of the Services provided in writing by Material to the Client.

3. Basis of contract

- 3.1. The Order constitutes an offer by the Client to purchase Services in accordance with these Conditions.
- 3.2. The Order shall only be deemed to be accepted when Material issues written acceptance, which may be in the form of an email or more formal process, of the Order at which point and on which date the Contract shall come into existence (“Commencement Date”).
- 3.3. The Contract constitutes the entire agreement between the parties. The Client acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Material which is not set out in the Contract.
- 3.4. Any samples, drawings, descriptive matter or advertising issued by Material, and any descriptions or illustrations contained in Material 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.
- 3.5. These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 3.6. Any quotation given by Material is only valid for a period of 30 Business Days from its date of issue.

4. Supply of services and deliverables

- 4.1. Material shall supply the Services to the Client in accordance with the Specification in all material respects.
- 4.2. Material 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.
- 4.3. Material shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and Material shall notify the Client in any such event.
- 4.4. Material warrants to the Client that the Services will be provided using reasonable care and skill.
- 4.5. Any claim regarding the quality or condition of the Deliverables must be notified to Material within 48 hours of delivery of the Deliverables to the Client. If no such notice is received by Material within the time period specified, then the Client shall be deemed to have accepted the Deliverables. If the Client does notify Material within the 48-hour time frame then, provided Material is given a reasonable opportunity to examine the affected Deliverables, Material shall, at its option, correct, repair or replace the affected Deliverables. Material shall not be obliged to correct, repair or replace the affected Deliverables where the defect arises because the Client has failed to follow Material's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Deliverables or if the defect arises as a result of Material following any drawing or design supplied by the Client or if the Client corrects, alters or repairs the Deliverables without Material's prior written consent.
- 4.6. Title to the Deliverables shall not pass to the Client until Material has received payment in full for the Deliverables or any other goods or services that Material has supplied to the Client.

5. Client's obligations

- 5.1. The Client shall:
 - 5.1.1. Ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;
 - 5.1.2. Co-operate with Material in all matters relating to the Services and promptly provide any information relating to the Services in sufficient time to enable Material to perform its obligations;
 - 5.1.3. Provide Material with such information and materials as Material may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
 - 5.1.4. Only contact the Material team within designated working hours – 9.30am-6.00pm for full-time members of staff, Monday-Friday. Where staff are part-time designated availability hours will be provided.

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- 5.2. If Material's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation ("Client Default"):
- 5.2.1. Material shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations to the extent the Client Default prevents or delays the Material's performance of any of its obligations;
 - 5.2.2. Material shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from Material failure or delay to perform any of its obligations as set out in this clause 5.2; and
- 5.3. The Client shall reimburse Material on written demand for any costs or losses sustained or incurred by Material arising directly or indirectly from the Client Default.

6. Charges and payment

- 6.1. Unless agreed otherwise in writing and subject to clause 6.2, the Charges are as set out in the Order.
- 6.2. Material reserves the right, by giving notice to the Client at any time, to increase the Charges at any time during the Term due to any event or factor beyond its control including but not limited to:
- 6.2.1. Any variation of duties, including re-scoping of the Order, or increase in the costs of materials, labour or printing;
 - 6.2.2. Any change in the Specification requested by the Client;
 - 6.2.3. Any delay caused by the Client.
- 6.3. Material may invoice the Client on completion of the Services or prior to a project starting. Material may charge a percentage fee before the start of a service or project. The remainder of the costs will be invoiced subject to an agreed billing schedule, with the final balance invoiced on completion of the project to the satisfaction of the Managing Director. In the absence of the Managing Director, satisfaction can be sought from the Finance Director or a Company Director.
- 6.4. Material may invoice recurring costs (retainers) upfront and can raise one or more interim invoice(s) for all or part of the Charges at any time. Charges will be agreed on acceptance of the proposal by the Client. If the Client fails to accept completion of the Services, then Material may raise any invoice at any time after the Client has been notified that the Services are finished.
- 6.5. The Client shall pay each invoice submitted by Material:
- 6.6.1. Within 30 days of the date of the invoice; and
 - 6.6.2. In full and in cleared funds to a bank account nominated in writing by Material.
- 6.6. All amounts payable by the Client under the quote provided by Material are non-inclusive of VAT. On completion of the Services the full amount payable will be inclusive of VAT. The Client shall, on receipt of invoice, pay to Material the respective amount of VAT chargeable on the supply of the Services laid out on the invoice supplied on the completion of services.



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- 6.7. If the Client fails to make any payment due to Material as per the agreement between Material and the Client, Material reserves the right to charge interest to the Client. Interest will be charged at 5% plus the Bank of England base rate, calculated on a daily basis accumulating until the overdue amount is received in full. Material shall have the right to charge interest on the overdue amount under the Late Payment of Commercial Debts (Interest Act 1998 (as the same may be amended supplemented or re-enacted to reflect the Late Payment Directive 2011 (2011/7/EU)) and the Client shall pay the interest immediately on demand. Material shall also have the right to appropriate any payments made to Material by the Client whether or not relating to the Services as Material may think fit in order to pay off the outstanding amounts.
- 6.8. The Client shall pay all amounts due under the agreement in full without any deduction or withholding except as required by law and the Client shall not be entitled to assert any credit, set-off or counter-claim against Material in order to justify withholding payment of any such amount in whole or in part. Material may, without limiting its other rights or remedies, set off any amount owing to it by the Client against any amount payable by the Material to the Client.

7. Data protection

7.1. General

- 7.1.1. Each party shall comply with Data Protection Legislation with regards to the processing of Client Personal Data under this Agreement.
- 7.1.2. The Client shall only provide Material with Client Personal Data to the extent that it is strictly necessary for Material's performance of the Services.
- 7.1.3. The Client shall ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Client Personal Data to Material for the duration and purposes of this agreement.
- 7.1.4. Material is a Data Processor in respect of the Client Personal Data processed under this Agreement. Material shall:
- 7.1.4.1. Process the Client Personal Data only on and in accordance with lawful instructions from the Client which may be specific instructions or instructions of a general nature provided directly to Material, which may include any instructions from any end client of the Client with respect to that Client Personal Data;
 - 7.1.4.2. Process the Client Personal Data only to the extent, and in such manner as is necessary for the provision of services to the Client;
 - 7.1.4.3. Inform the Client of any legal requirement under any applicable law that would require Material to process the Client Personal Data otherwise than only on the processing instructions, or if any Client instruction infringes, Data Protection Legislation; and
 - 7.1.4.4. Not transfer Client Personal Data out of the European Economic Area without the Client's prior written consent.



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7.1.5. The scope, purpose and duration of Personal Data and Processing (including the type of Personal Data, categories of Data Subjects and security details) covered by this Agreement is set out in the Schedule of this Agreement.

7.2. Security

7.2.1. Material shall implement and maintain, at its cost and expense, appropriate technical and organisational measures in relation to its processing of Client Personal Data so as to ensure a level of security in respect of Client Personal Data processed by it is appropriate to the risks that are presented by the processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Client Personal Data transmitted, stored or otherwise processed.

7.2.2. In respect of any Security Incident involving Client Personal Data, Material shall without undue delay notify by telephone to and provide the Client with details of the Security Incident.

7.3. Material Staff and Other Processors

7.3.1. Material shall not engage another person to perform specific processing activities in respect of the Client Personal Data without the Client's prior written consent. Material shall remain fully liable to the Client for the Sub-Processor's performance, as well as for any acts or omissions of the Sub-Processor as regards its processing of Client Personal Data.

7.3.2. Material shall ensure that its personnel processing Client Personal Data have signed agreements requiring them to keep Personal Data confidential and take all reasonable steps to ensure the reliability of Material personnel processing Client Personal Data and that personnel processing Client Personal Data receive adequate training on compliance with the data protection provisions of this Data Processing Schedule and the Data Protection Legislation.

7.4. Other Obligations

7.4.1. Material shall forward to the Client and otherwise co-operate with and assist the company with any requests received from data subjects of any Client Personal Data.

7.4.2. Material shall provide reasonable assistance, information and cooperation to the Client to ensure compliance with the Client's obligations under Data Protection Legislation in relation to the processing of Client Personal Data under this Agreement. This includes assistance with any data protection impact assessments and consultations with (or notifications to) relevant data protection regulators.

7.4.3. Material shall not transfer any Client Personal Data to any country outside the European Economic Area without the Client's prior written consent.

7.4.4. Material shall make available to the Client on request in a timely manner such information as is required by the Client to demonstrate the Material's compliance with its obligations under Data Protection Legislation and this Data Processing Schedule.



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- 7.4.5. Material shall permit audits conducted by the Client or another auditor mandated by the Client for the purpose of demonstrating the Material's compliance with its obligations under Data Protection Legislation and this Data Protection Schedule. This shall be subject to the Client giving Material reasonable prior notice of such audit and/or inspection, and ensuring that any auditor is subject to binding obligations of confidentiality and that such audit or inspection is undertaken so as to cause minimal disruption to the Material's business.
- 7.4.6. Material shall without delay, at the Client's request, either securely delete or return all the Client Personal Data to the Client at the end of this Agreement, or if earlier, as soon as processing by Material of any Personal Data is no longer required for Material's performance of its obligations under this Agreement, and securely delete existing copies (unless storage of any data is required by applicable law).
- 7.4.7. Material shall enter into the Controller-To-Processor EU Model Clauses where Client Personal Data is processed outside the EU; or in countries which do not ensure an adequate level of data. In the event of any inconsistency between this Data Processing Schedule and the Controller-To-Processor EU Model Clauses, the Controller-To-Processor EU Model Clauses shall override this Data Processing Schedule.

8. Intellectual property rights

- 8.1. As between the Client and Material, all Intellectual Property Rights in the Deliverables and the Pre-existing Materials shall be owned by Material. At no point will the Intellectual Property Rights in the Pre-Existing Materials be transferred, assigned or licensed to the Client. Subject to clause 4.6 (including for the avoidance of doubt the condition precedent of full payment of the Charges) the Intellectual Property Rights in the Deliverables but not the Pre-Existing Materials will be deemed to transfer to the Client.
- 8.2. Material will use reasonable endeavours to ensure that any third party which is either engaged by it to produce (or which otherwise owns) any creative works or materials in respect of the Deliverables shall agree to assign to the Client any Intellectual Property Rights owned by them in relation to the Deliverables upon payment of their fees.
- 8.3. The Client acknowledges that, in respect of any third-party Intellectual Property Rights, the Client's use of any such Intellectual Property Rights is conditional on Material obtaining a written licence from the relevant licensor on such terms as will entitle Material to license such rights to the Client.

9. Confidentiality

- 9.1. A party (“Receiving Party”) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (“Disclosing Party”), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party’s business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party’s obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause shall survive termination of the Contract.

10. Limits of liability

- 10.1. The Client will indemnify and keep indemnified Material from and against any and all proceedings, claims, damages, losses, expenses or liabilities which Material may incur or sustain as a direct or indirect result of or in connection with the use of any information, representation, reports, data or materials supplied to it by the Client including but not limited to the Consumer Protection from Unfair Trading Regulations 2008.
- 10.2. Material does not warrant or guarantee the success of any marketing exercise or program and the Client is responsible for checking the proposed Services and ensuring their accuracy and the veracity of the statements therein. Material is not responsible for checking the accuracy of any information or data provided to it by the Client.
- 10.3. The Client warrants that it is not a consumer as defined under the Unfair Terms in Consumer Contract Regulations 1999.
- 10.4. Nothing in these Conditions shall limit or exclude Material’s liability for:
- 10.4.1. Death or personal injury caused by its negligence, or the negligence of its employees, agents or sub-contractors;
 - 10.4.2. Fraud or fraudulent misrepresentation; or
 - 10.4.3. Breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 10.5. Subject to clause 10.4:
- 10.5.1. Material shall under no circumstances whatever be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - 10.5.2. Material’s total liability to the Client in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the value of the contract in question.

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- 10.6. 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.
- 10.7. The Client acknowledges that the limitations and exclusions contained in these Conditions are reasonable and if they had not been included, the Charges would have been increased significantly.
- 10.8. This clause shall survive termination of the Contract.

11. Termination

- 11.1. Either party may terminate this Contract without cause by giving no less than three (3) months' written notice to the other party, unless otherwise agreed by both parties in writing in advance of the Commencement Date.
- 11.2. Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
 - 11.2.1. The other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing of the breach;
 - 11.2.2. An order is made or a resolution is passed for the dissolution or winding-up of the other party or an order is made for the appointment of an administrator to manage the affairs, business and property of the other party or such an administrator is appointed or documents are filed with the court for the appointment of an administrator or notice of intention to appoint an administrator is given by the other party or its trustees, officers, directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a receiver and/or manager or administrative receiver is appointed in respect of all or any of the other party's assets or undertaking or circumstances arise which entitle the Court or a creditor to appoint a receiver and/or manager or administrative receiver to which entitle the Court to make a winding-up or bankruptcy order or the other party takes or suffers any similar or analogous action in consequence of debt.
- 11.3. Without limiting its other rights or remedies, Material may terminate the Contract with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under this Contract on the due date for payment.
- 11.4. Without limiting its other rights or remedies, if the Client becomes subject to any of the events listed in clause 11.1.2 or if Material reasonably believes that the Client is about to become subject to any of them, or if the Client fails to pay any amount due under this Contract on the Due Date for payment then Material shall have the right to suspend the provision of the Services under the Contract or any other contract between the Client and Material and may demand payment of the Charges in full which shall be payable forthwith.

12. Consequences of termination

- 12.1. On termination of the Contract for any reason:
- 12.1.1. The Client shall immediately pay to Material all of Material's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Material shall submit an invoice, which shall be payable by the Client immediately on receipt;
 - 12.1.2. The Client shall return all of Material's Deliverables which have not been fully paid for. If the Client fails to do so, then Material may enter the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safekeeping and will not use them for any purpose not connected with this Contract;
 - 12.1.3. The accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
 - 12.1.4. Clauses which expressly or by implication have effect after termination shall continue in full force and effect.
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13. Notices

- 13.1. All communications between the parties about this Contract must be in writing and delivered: by hand; or sent by pre-paid first-class post; or by email to its registered office or such changed address as shall be notified to the other party from time to time.
- 13.2. Communications shall be deemed to have been received:
- 13.2.1. If sent by pre-paid inland first-class post, 2 days after posting (exclusive of the day of posting);
 - 13.2.2. If delivered by hand, on the day of delivery;
 - 13.2.3. If sent by email on a working day (in the UK) prior to 4.00pm at the time of transmission and otherwise on the next working day.

14. Force majeure

- 14.1. Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control. In such circumstances, the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for 3 months the party not affected may terminate this agreement by giving 14 days' written notice to the other party.
 - 14.2. Any party that is subject to a force majeure event shall not be in breach of this agreement provided that it promptly notifies the other parties in writing of the nature and extent of the force majeure event causing its failure or delay in performance.
 - 14.3. Under no circumstances shall the Client be entitled to delay or refuse payment because of a force majeure event.
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15. General provisions

- 15.1. Any variation of the Contract must be in writing and signed on behalf of both parties. If a court decides that any part of the Contract cannot be enforced, that particular part of the Contract will not apply, but the rest of the Contract will. A waiver by a party of a breach of any provisions shall not be deemed a continuing waiver or a waiver of any subsequent breach of the same or any other provisions. Failure or delay in exercising any right under the Contract shall not prevent the exercise of that or any other right. The Client may not assign or transfer any benefit, interest or obligations under the Contract but Material may assign or transfer any benefit, interest or obligation under this Contract without the consent of the Client. The provisions of the Contract (Rights of Third Parties) Act 1999 shall not apply to any person not a party to this Contract.
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16. Governing law and jurisdictions

- 16.1. This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of Scotland.
- 16.2. The parties remotely agree that the courts of Scotland shall have exclusive jurisdiction to settle any disputes or claims that arise out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).