

Terms and Conditions of Business

Recital: Gosling Creative Limited wishes to supply Services as requested by the Customer and detailed in an Estimate upon the terms and conditions of this Agreement.

It is agreed as follows:

1. Definitions. In this Agreement the following definitions shall have the following meanings:

“Agreement” these Terms together with any Estimate referable to these Terms.

“Gosling Creative Limited” Gosling Creative Limited whose principal place of business is Old Batford Mill, Lower Luton Road, Harpenden, Hertfordshire, AL5 5BZ.

“Change Request” a request for a change made by the Customer or Gosling Creative Limited.

“Charges” the charges to be paid by the Customer to Gosling Creative Limited in respect of the Services (including without limitation those charges set out in an Estimate).

“Customer” the party named as such in an Estimate.

“Customer Facilities” means all Data, premises, equipment, telecommunications, computer and other facilities owned or controlled by the Customer.

“Customer Representative” any person named as such in an Estimate and appointed by the Customer with Gosling Creative Limited’s approval to act as the Customer’s representative for the purpose of this Agreement.

“Data” any data, information or other materials supplied to Gosling Creative Limited by the Customer in respect of which Gosling Creative Limited will supply Services.

“Deliverables” any output, result or product of the Services in any form of media and howsoever arising.

“Estimate” a document named as such and referable to this Agreement which describes the Services and confirms certain details of this Agreement which may include, without limitation, the identity of the Customer and Charges.

“IP Right” any copyright, patent, registered design, trademark or other intellectual property right (or applications therefor) of whatever nature subsisting anywhere in the world.

“Licence” means the licence granted by Gosling Creative Limited to the Customer for the right to use Deliverables (if any).

“Rates” Gosling Creative Limited’s prevailing rates for requested goods and services which are available upon written request to Gosling Creative Limited.

“Services” any services supplied to the Customer by Gosling Creative Limited pursuant to this Agreement including without limitation those identified in an Estimate.

“Special Conditions” any terms named as such in an Estimate.

“Terms” these Supply Terms.

“Working Day” seven and a half (7.5) hours at any time between 09.00 – 17.30 Monday to Friday excluding weekends and statutory holidays.

1.2 In this Agreement (except where the context otherwise requires):-

1.2.1 any reference to a clause is to the relevant clause of this Agreement and any reference to a sub clause or paragraph is to the relevant sub clause or paragraph of the clause in which it appears;

1.2.2 the clause headings are included for convenience only and shall not affect the interpretation of this Agreement;

1.2.3 use of the singular includes the plural and vice versa;

1.2.4 use of any gender includes the other genders;

1.2.5 references to statutes, any statutory instrument, regulation or order shall be construed as a reference to such statute, statutory instrument, regulation or order as amended or re-enacted from time to time.

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2. Duration

- 2.1 This Agreement shall endure for the period set out in an Estimate or otherwise (if no such period is set out in an Estimate) until completion of the Services or, if earlier, expiry or termination in accordance with clause 16.

3. Scope of Agreement

- 3.1 In consideration of the payment by the Customer of Charges and any other sums due from the Customer, Gosling Creative Limited shall supply the Services as described in an Estimate.
- 3.2 Gosling Creative Limited shall carry out the obligations set out in Clause 3.1 with reasonable skill and care and in accordance with an Estimate and upon Working Days (unless specified otherwise in writing).
- 3.3 Unless expressly agreed in writing by Gosling Creative Limited time for performance of any obligation under this Agreement shall not be of the essence.
- 3.4 The Customer acknowledges that Gosling Creative Limited will supply Services at the request of the Customer and that it is the Customer's responsibility to determine whether the Services are suitable for its requirements.
- 3.5 The supply of the Services is subject to the Customer at all times discharging its obligations under this Agreement.

4. Special Conditions

- 4.1 Unless expressly confirmed in writing by Gosling Creative Limited the Special Conditions set out in an Estimate shall override the Terms (or any other attachment to the Terms) to the extent of any conflict or ambiguity between them.

5. Personnel

- 5.1 Gosling Creative Limited shall ensure that Gosling Creative Limited personnel engaged in supplying Services have the necessary skills, expertise and diligence to undertake such work and will conform to the professional standards generally observed for similar services.

6. Customer's Obligations

- 6.1 The Customer shall (in each case insofar as is reasonably necessary to enable Gosling Creative Limited to effectively carry out its obligations under this Agreement):
- 6.1.1 make available to Gosling Creative Limited free of charge such Customer Facilities as reasonably requested;
 - 6.1.2 ensure that its employees or other independent contractors co-operate reasonably with Gosling Creative Limited;
 - 6.1.3 promptly furnish Gosling Creative Limited with such information and documents as reasonably requested;
 - 6.1.4 pay all Charges and Rates properly invoiced by Gosling Creative Limited; and
 - 6.1.5 ensure that any IP Rights which Gosling Creative Limited is required to use or modify in order to supply Services is / are either proprietary to the Customer or properly licensed to the Customer and that Gosling Creative Limited is properly authorised to use or modify the IP Rights. The Customer shall indemnify and hold harmless Gosling Creative Limited in respect of any costs, expenses, damages, third party actions or claims arising out of any actual or alleged infringement of third party IP Rights by Gosling Creative Limited or the Customer.
- 6.2 The Customer shall be solely responsible for the protection and maintenance of all Customer Facilities.
- 6.3 All property belonging to the Customer supplied to Gosling Creative Limited must be labelled clearly or otherwise marked for ease of recognition by the Customer. Whilst every care is taken with the Customers' products or originals it is the Customers' responsibility to maintain insurance in relation to such goods. Any product or material of a highly technical or delicate nature should be under the supervision of an operator or representative of the Customer. Gosling Creative Limited cannot be held responsible for any inadvertent misuse or damage to the product or material.

7. Change Control

- 7.1 If either party identifies a requirement for a change to the Services or the Deliverables it shall send a Change Request to the other party detailing the change requirements.
- 7.2 If sent by Gosling Creative Limited, the Change Request shall state the effect such a change shall have upon the Services, Deliverables and Charges. If sent by the Customer, the receipt of the Change Request by Gosling Creative Limited will constitute a request to Gosling Creative Limited to state in writing the effect such a change shall have upon the Services, Deliverables and Charges. Gosling Creative Limited shall use reasonable endeavours to supply such details within seven (7) working days from receipt of a Change Request.

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7.3 The parties will then decide whether or not to implement the change. If the change is implemented, the amended services, deliverables and charges (as applicable) shall then become the Services, Deliverables and Charges for the purpose of this Agreement.

8. Data / Deliverables

8.1 The Customer supplies Data to Gosling Creative Limited at its own risk and Gosling Creative Limited shall not be liable for any loss or damage to Data. The Customer acknowledges that Gosling Creative Limited may disseminate, split, sectionalise, annotate, highlight, mark or otherwise treat Data in the course of supplying Services.

8.2 The Customer remains at all times responsible for the accuracy of Data and Gosling Creative Limited assumes no responsibility for indicating errors or omissions. Proofs of Deliverables may be submitted by Gosling Creative Limited for Customer's approval and Gosling Creative Limited shall not be liable for any errors not corrected by the Customer in proofs submitted. Customer's alterations and additional proofs necessitated thereby shall be charged in addition. Gosling Creative Limited will not be responsible for poor reproduction due to low quality Data or origination supplied by the Customer.

8.3 The Customer warrants that:

8.3.1 the use of Data by Gosling Creative Limited will not infringe any third party IP Right; and

8.3.2 the Customer has obtained all necessary consent to supply Data to Gosling Creative Limited as required by applicable law.

8.4 Gosling Creative Limited shall deliver the Deliverables and arrange insurance during transit (unless the Customer requests otherwise) and the Customer shall be responsible for such delivery and insurance costs. Any dates specified by Gosling Creative Limited for delivery are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time. 8.5 Risk in the Goods shall pass to the Customer on delivery.

8.6 If for any reason the Customer fails to accept delivery of any of the Deliverables when they are ready for delivery, or Gosling Creative Limited is unable to deliver the Deliverables on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:

8.6.1 risk in the Deliverables shall pass to the Customer (including for loss or damage caused by Gosling Creative Limited's negligence);

8.6.2 the Deliverables shall be deemed to have been delivered; and

8.6.3 Gosling Creative Limited may store the Deliverables until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

8.7 Unless the Customer notifies Gosling Creative Limited in writing of a material fault within the Deliverables (or part of the Deliverables) within 7 days following such delivery / transmission the Customer shall be deemed to have accepted the Deliverables (or part of the Deliverables).

8.8 The Customer agrees that 7 days is a reasonable period for the purpose of inspecting the Deliverables (or part of the Deliverables) and testing the same for material faults.

9. Licence

9.1 Upon payment in full of any due Charges, Gosling Creative Limited grants to the Customer who accepts a perpetual, non-exclusive, non-transferable Licence to use Deliverables for its own internal business purposes and in accordance with any licence restrictions set out in this clause 9 and / or in an Estimate.

The Customer may not disclose or make available Deliverables to any third party whatsoever nor permit others to use it outside the scope of this Licence. Any use of Deliverables outside the scope of this licence will be subject to additional charges which shall be agreed by the parties in advance of any such use.

9.2 The Customer agrees that breach of this clause 9 may cause loss and damage to Gosling Creative Limited and that Gosling Creative Limited may terminate this Licence forthwith upon any breach by the Customer of the terms of this clause 9 (in which case) the Customer shall return all Deliverables (including copies) to Gosling Creative Limited to include erasure of the same from computer memory. The provisions of this clause 9 will survive the expiry or termination of this Agreement.

10. Charges

10.1 In consideration of Gosling Creative Limited supplying Services, the Customer shall pay to Gosling Creative Limited Charges specified in an Estimate or otherwise in accordance with Rates calculated upon a time and materials basis and subject to the terms set out in Clause 11.

10.2 The Customer shall pay Gosling Creative Limited in respect of all reasonable travelling and other out of pocket

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expenses as set out in an Estimate.

11. Terms of Payment

- 11.1 Charges, Rates and other sums are expressed exclusive of all duties and taxes including without limitation value added tax which shall be paid by the Customer at the rate and in the manner provided by the law governing this Agreement.
- 11.2 Payment of sums due from the Customer to Gosling Creative Limited shall be made within thirty (30) days of the receipt of an invoice from Gosling Creative Limited. All payments hereunder shall be made in Pounds Sterling.
- 11.3 In the event that the Customer fails to pay any sum by the due date Gosling Creative Limited reserves the right to charge interest on the outstanding amount in accordance with The Late Payment of Commercial Debts Regulations 2002.
- 11.4 Notwithstanding clause 11.3, if the Customer fails to pay any sum by the due date Gosling Creative Limited may at its option, and without prejudice to any other remedy at any time after payment has become due, terminate or suspend performance of this Agreement.
- 11.5 If Gosling Creative Limited shall terminate this Agreement for any reason, any sums (including interest for the late payment) will immediately become payable in full.

12. IP Rights

- 12.1 The Customer acknowledges that any and all of the IP Rights subsisting in or used in connection with the Deliverables and the Services shall be and shall remain the sole property of Gosling Creative Limited or such other party as may be identified therein or thereon ("Owner") and the Customer shall not at any time dispute such ownership.
- 12.2 In the event that new inventions, designs or processes evolve in performance of or as a result of this Agreement, the Customer acknowledges that the same shall be the property of Gosling Creative Limited or any applicable Owner unless otherwise agreed in writing by Gosling Creative Limited.

13. Indemnities

- 13.1 Gosling Creative Limited agrees to indemnify and save harmless and defend at its own expense the Customer from and against any and all claims of infringement of IP Rights affecting the Deliverables or the Services provided that the Customer:
 - 13.1.1 has complied with its undertakings and obligations hereunder; and
 - 13.1.2 has otherwise exercised a reasonable standard of care in preventing such infringement protecting the same failing which the Customer shall indemnify Gosling Creative Limited against all actions, proceedings, costs, claims and expenses incurred in respect thereof.
- 13.2 The Customer undertakes that Gosling Creative Limited shall be given prompt notice of any claim specified in clause 13.1 above that is made against the Customer and Gosling Creative Limited shall have the right to defend any such claims and make settlement thereof at its own discretion and the Customer shall give such assistance as Gosling Creative Limited may reasonably require to settle or oppose any such claims.
- 13.3 In the event that any such infringement occurs or may occur, Gosling Creative Limited may at its sole option and expense:
 - 13.3.1 procure for the Customer the right to continue using the Deliverables or receiving the supply of the Services or infringing part thereof;
 - 13.3.2 modify or amend the Deliverables or Services or infringing part thereof so that the same becomes non-infringing; or
 - 13.3.3 replace the Deliverables or Services or infringing part thereof by other deliverables or services of similar capability; or
 - 13.3.4 repay to the Customer an equitable portion of Charges relating to the infringing part of the Deliverables or Services.
- 13.4 The Customer undertakes fully and effectively to indemnify and keep indemnified at all times Gosling Creative Limited against all actions, proceedings, costs, claims, demands, liabilities and expenses whatsoever (including legal and other fees and disbursements) sustained, incurred or paid by Gosling Creative Limited directly or indirectly in respect of:
 - 13.4.1 any breach by the Customer of any of the provisions of this Agreement (including without limitation the warranties given in clause 8.3) or of any law, code or regulation relating to this Agreement; and
 - 13.4.2 work done in accordance with the Customer's specifications involving infringement of any IP Rights.

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14. Warranties and Liability

- 14.1 Except as expressly provided in this Agreement no warranty, condition, undertaking or term, expressed or implied, statutory or otherwise as to the condition, quality, performance or fitness for purpose of any Deliverables, goods or Services provided hereunder will be assumed by Gosling Creative Limited and except as expressly provided in this Agreement all such warranties, conditions, undertaking and terms are hereby excluded.
- 14.2 Neither party excludes or limits liability to the other party for death or personal injury or any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.
- 14.3 The liability of Gosling Creative Limited in respect of breaches of this Agreement or of any other duty to the Customer or for negligence in connection with the subject matter of this Agreement shall be limited to the value of payments due to Gosling Creative Limited hereunder.
- 14.4 Subject always to Clause 14.2, in no event shall either party be liable to the other for any of the following however and whenever arising:
- 14.4.1 loss of profits, business, revenue, data (including without limitation Data), goodwill or anticipated savings; and / or
 - 14.4.2 indirect or consequential loss or damage.
- 14.5 Each party agrees that the limitations of liability contained in this Clause 14 have been agreed between the parties in the context of the other provisions of this Agreement and satisfy the requirement of reasonableness within the meaning of sub-section 2(2) and Section 11 of the Unfair Contract Terms Act 1977.
- 14.6 The parties expressly agree that should any limitation or provision contained in this Agreement be held to be invalid under any applicable statute or rule of law it shall to that extent be deemed omitted but if any party thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out herein.

15. Force Majeure

- 15.1 Neither party will be under any liability to the other for, damage, delay or any other matters of that nature whatsoever arising out of war, rebellion, civil commotion, strikes, lock outs and industrial disputes, fire, explosion, earthquake, acts of God, flood, drought, or bad weather or the requisitioning or other act or order by any Government department, council or other constituted body ("Force Majeure"), provided always that both parties will use all reasonable endeavours (but without an obligation to incur cost) to minimise the period of disruption caused by the Force Majeure.

16. Termination and Suspension

- 16.1 Either party may forthwith terminate this Agreement by written notice to the other if any of the following events occur:
- 16.1.1 if either party commits any breach of the terms or conditions of this Agreement and fails to remedy such breach within thirty (30) days after receiving written notice requiring remedy;
 - 16.1.2 if either party becomes bankrupt or compounds or makes any arrangement with or for the benefit of its creditors or (being a company) enters into compulsory or voluntary liquidation or amalgamation (other than for the purpose of a bone fide reconstruction or amalgamation without insolvency) or has a receiver or manager appointed of the whole or substantially the whole of its undertakings or if the other party is unable to pay its debts in accordance with the law relating to this Agreement;
 - 16.1.3 a Force Majeure continues for a period of more than 3 months.
- 16.2 Without prejudice to any right of termination either party shall be entitled by immediate notice to suspend performance of some or all of the Services specified in this Agreement upon the occurrence of circumstances specified in clause 16.1, and the Agreement will in any event be deemed suspended in the event of Force Majeure.
- 16.3 Termination or suspension of this Agreement will be without prejudice to any accrued rights or obligations of either party.

17. Confidential Information

- 17.1 All information which either party imparts to the other pursuant to or in contemplation of this Agreement in whatever media is proprietary and confidential. The parties hereby agree that they shall use the same solely in accordance with the provisions of this Agreement and shall not at any time during or after expiry or termination of this Agreement disclose the same whether directly or indirectly to any third party without the prior written consent of the other party.

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17.2 The foregoing provisions shall not prevent the disclosure or use of any information which is public knowledge or to the extent permitted by law.

18. Restrictive Covenant

18.1 The Customer undertakes that (for a period of six (6) months after the termination or expiry of this Agreement) it shall not solicit or entice away or engage any personnel of Gosling Creative Limited or offer or cause to be offered any employment to any such personnel. If the Customer breaches this restriction it shall pay to Gosling Creative Limited as compensation a sum equivalent to the annual salary paid to the personnel by the non-breaching party.

19. Data Protection

19.1 Gosling Creative Limited will process personal information ("Information") provided by the Customer as defined in the Data Protection Act 1998 ("DPA") in accordance with applicable data protection law and this clause 19. The Customer consents to Gosling Creative Limited using Information as follows:

19.1.1 Gosling Creative Limited will obtain, record, store and use Information as necessary to perform Services including transfer of Information to employees, agents and third parties as required for this purpose.

19.1.2 Gosling Creative Limited may transfer its business assets (which include Information) on re-organisation, sale or merger of the whole or any part of its business.

19.1.3 Gosling Creative Limited reserves the right to process Information as required for marketing purposes, to obtain legal advice, comply with legal requirements, enforce or apply any agreements (including this Agreement) and protect the rights, property or safety of Gosling Creative Limited, its employees, Customers and others.

19.1.4 Gosling Creative Limited may transfer Information outside the European Economic Area for any of the purposes listed in this clause 19.

19.2 If Gosling Creative Limited intends to process Information other than as set out above the Customer will receive notice and be given the opportunity to decline the processing.

20. Entire Agreement

20.1 This Agreement:

20.1.1 represents the whole agreement and understanding between the parties in respect of the matters referred to herein; and

20.1.2 shall, except in the case of fraud, override and no reliance shall be placed upon any other verbal or written representations, warranties or understandings in respect of the subject matter of this Agreement including, without limitation, any conflicting provisions of any terms of purchase notified by the Customer.

20.2 The remedies available to the parties are exclusively those available under this Agreement.

20.3 The parties acknowledge that they have expressly negotiated and agreed the terms of this clause 20.

21. General

21.1 No amendment to this Agreement shall be binding unless made in writing and signed by both the Customer Representative and Gosling Creative Limited's authorised representative.

21.2 The Customer shall not sub-contract, assign, charge or otherwise transfer to a third party any of its rights or obligations hereunder without the prior written consent of Gosling Creative Limited.

21.3 No waiver of any breach of the other party's obligations hereunder shall represent a waiver of the waiving party's rights hereunder or of any subsequent breach.

21.4 The parties respectively shall and shall procure that any other necessary party shall execute and do all such documents, acts and things as may reasonably be required on or subsequent to completion of this Agreement for securing each of the obligations of the parties under this Agreement.

21.5 None of the provisions of this Agreement are intended to or will operate to confer any benefit pursuant to the Contracts (Rights of Third Parties) Act 1999 on a person who is not named as a party to this Agreement.

21.6 Any notice to effect suspension or termination of the whole or any part of this Agreement:

i) shall be made in writing and either delivered personally or sent by first class recorded delivery to the party to whom the notice is addressed at its address as set out in this Agreement or such other address as one party may specify by notice in writing to the other;

(ii) in the absence of evidence of earlier receipt notice shall be deemed to have been duly given:

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- (a) if delivered personally, when left at the address referred to in clause 21.6 (i);
 - (b) if sent by first class recorded delivery, at the time recorded by the delivery agent.
- 21.7 For the avoidance of doubt electronic mail shall be deemed to be “writing” for the purpose of this Agreement but this shall not prejudice the express requirements for delivery of notices under clause 21.6.
- 21.8 If any provision of this Agreement is held to be void or unenforceable in whole or in part, this Agreement shall continue to be valid as to the other provisions thereof and the remainder of the affected provision.
- 21.9 This Agreement shall be binding on and shall continue for the benefit of the permitted successors and permitted assigns (as the case may be) of each of the parties hereto.
- 21.10 All provisions of this Agreement shall so far as they are capable of being performed and observed continue in full force and effect notwithstanding any expiry or earlier termination.
- 21.11 Gosling Creative Limited will be entitled to claim full credit for its work, and as such may display a design credit on the work in a manner to be agreed with the Customer.

22. Applicable Law

- 22.1 This Agreement shall be governed by and construed in accordance with English law and each party to this Agreement submits to the exclusive jurisdiction of the English courts.