



## Terms and Conditions

- 1. Interpretation** The following definitions and rules of interpretation apply in these Conditions. 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 Client for the supply of the Services in accordance with clause 5 (Charges and payment). **Commencement Date:** has the meaning given in clause 2.3. **Conditions:** these terms and conditions as amended from time to time in accordance with clause 11.5. **Contract:** the contract between the Supplier and the Client for the supply of Services in accordance with these Conditions. **Client:** the individual who purchases Services from the Supplier. **Client Default:** has the meaning set out in clause 4.2. **Data Protection Legislation:** means the Data Protection Act 2018 and the General Data Protection Regulations, as amended or updated from time to time, in the UK. **Discovery Call:** free call to determine services to be supplied by the Supplier to the Client. **Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), 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. **Services:** the services supplied by the Supplier to the Client as set out in the Terms of Engagement. **Supplier:** The Clever Fox Group Ltd registered in England and Wales with company number 12456446. **Terms of Engagement:** the order for Services annexed to these Conditions. Interpretation:
- 1.2**
- (a) 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.
- (b) 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. A reference to **writing** or **written** includes email.
- (c) email.
- 2. Basis of contract** The Supplier shall send a draft Terms of
- 2.1** Engagement for the Services requested from the Client following the Discovery Call. The Client shall either confirm that it agrees with the Terms of Engagement or request further information.
- 2.2** Once the Client has

agreed the Terms of Engagement it constitutes an offer by the Client to purchase Services in accordance with these Conditions.

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

~~These~~ 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.

### **Supply of Services**

~~The~~ The Supplier shall supply the Services to the Client in accordance with the Terms of Engagement in all material respects. The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Terms of Engagement, however, time shall not be of the essence for performance of the Services.

**3.2** The Supplier reserves the right to amend the Services 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 Client in any such event.

**3.3** The Supplier warrants to the Client that the Services will be provided using reasonable care and skill.

### **4. Client's obligations**

**4.1** The Client shall (i) ensure that the terms of the Terms of Engagement are complete and accurate; (ii) co-operate with the Supplier in all matters relating to the Services; (iii) provide the Supplier with access to the Client's premises and other facilities as reasonably required by the Supplier; (iv) provide the Supplier with such (complete and accurate) information and materials as the Supplier may reasonably require; (v) 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; and (vi) comply with all applicable laws and any additional obligations of the Supplier.

**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 Client or failure by the Client to perform any relevant obligation (**Client Default**):

- (a) 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 Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations in each case to the extent the Client Default prevents or delays the Supplier's performance of any of its obligations; the
- (b) Supplier shall not be liable for any costs or losses sustained or incurred by the Client 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 the Client shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Client Default.
- (c)

**5. Charges and payment** The Charges for the Services shall be calculated on a fixed price basis, the amount of those charges shall be as set out in the Terms of Engagement.

**5.2** The Supplier shall invoice the Client monthly, in arrears, unless otherwise stated in the Terms of Engagement. The Client shall pay each invoice submitted by the Supplier within 14 days of the date of the invoice in full and in cleared funds to a bank account nominated in writing by the Supplier (time for payment shall be of the essence of the Contract).

**5.3** All amounts payable by the Client 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 Client, the Client 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.

**5.4** 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).

#### **Intellectual property rights**

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

The Supplier grants to the Client, or shall procure the direct grant to the Client of, a fully paid-up, worldwide, non-exclusive, royalty-free, perpetual and revocable licence to use Deliverables (excluding materials provided by the Client) for the purpose of receiving and using the Services and the Deliverables in its business.

**6.3** The Client shall not sub-license, assign or otherwise transfer the rights granted in clause 6.2. The Client grants the Supplier a fully

**6.4** paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Client to the Supplier for the term of the Contract for the purpose of providing the Services to the Client. **Data protection and data processing**

#### **7.**

**7.1** Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 7 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

**7.2** The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the data controller and the Supplier is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation).

**7.3** Without prejudice to the generality of clause 7.1, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data (as defined in the Data Protection Legislation) to the Supplier for the duration and purposes of the Contract.

**Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**

**8.1** Nothing in the Contract shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the
- (b) negligence of its employees, agents or subcontractors;
- (c) fraud or fraudulent misrepresentation; or 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.

**8.2** Subject to clause 8.1, the Supplier shall not be liable to the Client, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for: (i) loss of profits, (ii) loss of sales or business (iii) loss of agreements or contracts, (iv) loss of anticipated savings, (v) loss of use or corruption of software, data or information, (vi) loss of or damage to goodwill; or (vii) any indirect or consequential loss. Subject to clause 8.1, the Supplier's total liability to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to the total Charges paid under that Contract.

**8.4** 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.

**8.5** This clause 8 shall survive termination of the Contract.

#### **9. Termination**

**9.1** Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party one months' written notice.

**9.2** 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 Client if the Client commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of the Client being notified in writing to do so; and/or the Client fails to pay any amount due under the Contract on the due date for payment.

**9.3** 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 Client and the Supplier if the Client becomes subject to any of the events listed in clause 9.2.

#### **10. Consequences of termination**

**10.1** On termination of the Contract the Client 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 Client immediately on receipt.

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

## **11. General**

**11.1 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.

### **11.2 Assignment and other dealings.**

Neither party shall 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 without the prior written consent of the other party (not to be unreasonably withheld or delayed).

### **11.3 Confidentiality.**

- (a) 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 11.3(b). Each
- (b) party may disclose the other party's confidential information:
  - (i) 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; and
  - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

### **11.4 Entire agreement.**

- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous ~~agreements~~, promises, assurances, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) 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 based on any statement in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

**11.5 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).

**11.6 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.

**11.7 Insurance.** During the term of the Contract, the Supplier shall maintain in force a limited professional indemnity insurance and public liability insurance. For the avoidance of doubt such insurance policies shall not indicate any liability of the Supplier or reliance or benefit to the Client and the Client should make its own arrangements regarding insurance.

**11.8 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.

### **11.9 Notices.**

- (a) 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 email to the address specified in the Terms of Engagement. Any notice or other
- (b) 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 email, at 9.00 am on the next Business Day after transmission. This clause does not apply to the service of any proceedings or other documents in
- (c) any legal action or, where applicable, any other method of dispute resolution.

### **11.10 Third party rights.**

- (a) 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. The
- (b) rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

**11.11 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.

**11.12 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.