

## TERMS AND CONDITIONS

These terms and conditions ("**Terms**") govern the provision of services by Stewart Design Studio, 2, Stewart Place, Bridge Of Weir Road, Kilmacolm. PA13 4AF(the "**Service Provider**").

### 1. Definitions

1.1. In these Terms the following words and phrases shall have the following meanings unless the context otherwise requires:

"**Additional Services**" means any services not forming part of the Services which the Client requests from the Service Provider;

"**Client**" means the person specified in the Proposal;

"**Client Deliverables**" means all information, records and other material of the Client necessary to enable the provision of the Services by the Service Provider including any materials of the Client set out in the Proposal and any version thereof as amended by the Service Provider at the instruction or request of the Client;

"**Conditions**" means the Service Provider's terms and conditions of supply set out in this document;

"**Confidential Information**" means all information relating to the business and affairs of a Party,

"**Consequential Loss**" means (i) pure economic loss (ii) losses incurred by any third party (iii) loss of profits (whether categorised as direct or indirect) (iv) losses arising from business interruption (v) loss of business revenue, goodwill, anticipated savings (vi) losses occurring in the normal course of business, or pertaining to wasted management or staff time, and (vii) loss or corruption of data;

"**Contract**" means the agreement between the Service Provider and the Client for the supply and purchase of Services incorporating these Conditions and the Proposal;

"**Controller**" shall have the meaning given to it in applicable Data Protection Laws from time to time;

#### "Data Protection Laws"

means, as binding on either party or the Services:

- (a) the GDPR, as applicable in the United Kingdom;
- (b) the Data Protection Act 2018;
- (c) any laws which implement any such laws; and
- (d) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing;

"**Data Subject**" shall have the meaning given to it in applicable Data Protection Laws from time to time;

"**Fees**" means the fees of the Service Provider for the provision of the Services as specified in or calculated in accordance with the Proposal (together with any other charges including Further Fees made in accordance with these Terms where the context permits or requires);

**"Force Majeure"** means anything outside the reasonable control of a party, including but not limited to, acts of God, fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, war, rebellion, insurrection, sabotage, epidemic, pandemic, quarantine restriction, labour dispute, labour shortage, power shortage, including without limitation where the Service Provider ceases to be entitled to access the internet for whatever reason, server crashes, deletion, corruption, loss or removal of data, transportation embargo, failure or delay in transportation, any act or omission (including laws, regulations, disapprovals or failures to approve of any government or government agency) but for the avoidance of doubt, the term Force Majeure shall exclude any obligations of the Client to pay the Fee, any Further Fees or other sums;

**"Further Fees"** means the fees of the Service Provider at the Service Provider's standard rates from time to time or as otherwise expressly agreed;

**"GDPR"** means the General Data Protection Regulation, Regulation (EU) 2016/679;

**"Party"** means the Service Provider or the Client;

**"Personal Data"** shall have the meaning given to it in applicable Data Protection Laws from time to time;

**"Personal Data Breach"** shall have the meaning given to it in applicable Data Protection Laws from time to time;

**"Processing"** has the meaning given to it in applicable Data Protection Laws from time to time (and related expressions, including **process**, **processing**, **processed**, and **processes** shall be construed accordingly);

**"Processor"** shall have the meaning given to it in applicable Data Protection Laws from time to time;

**"Proposal"** means the proposal provided by the Service Provider to the Client;

**"Protected Data"** means Personal Data received from or on behalf of the Customer in connection with the performance of the Supplier's obligations under the Contract.

**"Services"** means the services to be provided by the Service Provider to the Client as set out in the Proposal.

1.2. Unless the context otherwise requires references to clauses shall be construed as references to clauses of these Terms.

1.3. Unless the context otherwise requires references:

1.3.1. to any document is a reference to that document as varied, novated or replaced from time to time;

1.3.2. the singular includes the plural and vice versa;

1.3.3. a reference to a gender includes all other genders;

1.3.4. a reference to a person or entity includes a natural person, a partnership, corporation, trust, association, an unincorporated body, authority or other entity; and

1.3.5. a reference to a person includes that person's legal personal representative, successors and permitted assigns.

## 2. **The Services**

- 2.1. The Service Provider shall provide the Services subject to and in accordance with these Terms.
- 2.2. Any Additional Services shall be agreed between the Parties and performed by the Service Provider at its sole discretion.
- 2.3. All Additional Services shall be performed subject to these Terms except where specified otherwise under these Terms as if they formed part of the Services.
- 2.4. Time shall not be of the essence in the performance of the Service Provider's obligations under these Terms, and all delivery times as set out in the Proposal are estimates only.
- 2.5. The Client warrants and undertakes to ensure that any instructions supplied by the Client to the Service Provider shall be complete, correct, accurate, legible, in sequence and in the correct form.
- 2.6. The Service Provider undertakes that the Services shall be provided in a professional manner and in all material respects in accordance with the Proposal.

## 3. **Assignment**

The Client may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without the Service Provider's prior written consent, such consent not to be unreasonably withheld or delayed.

## 4. **Indemnity**

The Client shall, without prejudice to any other right of action which the Service Provider may have, at all times indemnify and keep the Service Provider fully and effectively indemnified against any liability (which liability shall include, without limitation, all losses, costs, claims, expenses, demands, actions, damages, legal and other fees and expenses) which the Service Provider may suffer or incur as a result of, or by reason of, any breach or non-fulfilment by the Client of any of the Client's obligations or warranties under these Terms.

## 5. **Changes to the Services**

The Service Provider reserves the right to make any changes to the Services which are necessary to comply with any applicable regulatory, security or other statutory requirements, or which do not materially affect the nature or quality of the Services, without prior notice to the Client.

## 6. **Nature of this relationship**

The Service Provider and the Client expressly acknowledge and agree that in performance of the Services, the Service Provider is an independent contractor and not an employee, partner, joint author or a joint venture partner of the Client.

## 7. **Fees**

- 7.1. All deposits paid may vary in cost depending on work to be carried out and are non refundable.
- 7.2. All Fees shall be inclusive of any VAT to be charged.
- 7.3. In respect of its provision of any Additional Services the Service Provider shall be entitled to charge the Further Fees In Agreement With Client. The Service Provider shall be entitled to invoice any Further Fees on undertaking to provide the Additional Services In Agreement With Client.

- 7.4. All reasonable expenses incurred in delivering the Services, shall be included in the Fees, unless the Proposal states otherwise.
- 7.5. In respect of any other sums becoming due hereunder the Service Provider shall be entitled to invoice such sums as and when such sums become due.
- 7.6. The Client shall reimburse the Service Provider for payments made by the Service Provider (or its agents or contractors) to third parties for the provision of goods and services in connection with the Services which have been approved by the Client and the Service Provider reserves the right to require payment in advance.
- 7.7. The Client undertakes to pay any invoices in full on day of completion of all the work agreed. If payment of any sum due under this Agreement is not received by any due date specified for that sum, the Service Provider may charge interest on the outstanding amount at the rate of 4% per annum above the base lending rate of Royal Bank of Scotland plc, accruing daily.
- 7.8. In consideration of the fees payable under this Agreement, and conditional upon the Service Provider receiving such fees in full, the Service Provider assigns to the Client all the present and future Intellectual Property Rights in any work created by the Service Provider exclusively in the course of providing the agreed Services to the Client.

## 8. **Breach**

If the Client breaches any part of these Terms including without limitation fails to pay any Fees, any Further Fees or any element thereof or any other sums due hereunder by any due date, the Service Provider may without prejudice to any other right or remedy it may suspend the provision of the Services or any part thereof;

## 9. **Confidential Information**

- 9.1. Each Party may use the Confidential Information of the other Party only for the purposes of these Terms and shall keep confidential all Confidential Information of the other Party except as provided for hereunder.
- 9.2. Either Party may disclose Confidential Information of the other Party to those of its employees and agents (including professional advisers) who have a need to know the Confidential Information for the purposes of these Terms provided always that such employees and agents are bound to use and maintain the confidentiality of such Confidential Information on terms no less onerous than those provided hereunder.
- 9.3. The Service Provider may disclose Confidential Information of the Client to any sub-contractors who are appointed by the Service Provider to assist with the Services.
- 9.4. Each Party undertakes to return to the other Party all Confidential Information of that Party within seven (7) days of a request from that Party. Notwithstanding the foregoing should the Client request the return of Confidential Information from the Service Provider preventing the Service Provider from providing the Services the Service Provider shall be deemed not to be in breach of these Terms as a consequence thereof.
- 9.5. The obligations contained within Clause 10.1 to Clause 10.3 shall not extend to any Confidential Information:
  - 9.5.1. which can be proven by the Party to whom such Confidential Information is disclosed to have been rightfully in the possession of that Party and at its free disposal prior to any negotiations in respect of the provision of the Services;
  - 9.5.2. is or becomes public knowledge (otherwise than as a result of a breach of these Terms); or
  - 9.5.3. is required under law or by order of any competent authority to be disclosed (but only to the extent of such law or order).

## 10. **Processing of Personal Data**

- 10.1. The Service Provider shall process Protected Data in compliance with the obligations placed on it under Data Protection Laws and the terms of the Contract.
- 10.2. The Client shall indemnify and keep indemnified the Service Provider against all losses, claims, damages, liabilities, fines, sanctions, interest, penalties, costs, charges, expenses, compensation paid to Data Subjects, demands and legal and other professional costs (calculated on a full indemnity basis and in each case whether or not arising from any investigation by, or imposed by, a supervisory authority) arising out of or in connection with any breach by the Client of its obligations under this clause
- 10.3. The Service Provider shall not process and/or transfer, or otherwise directly or indirectly disclose, any Protected Data in or to countries outside the United Kingdom.

## 11. **Warranties**

- 11.1. Each Party warrants to the other that it has authority to enter and to perform its obligations under these Terms and it has the ability to perform its obligations under these Terms.
- 11.2. The Service Provider warrants to the Client that the Services will be provided using reasonable care and skill. Except where specified hereunder the Service Provider does not give any warranty, guarantee or other term as to the quality, fitness for purpose or otherwise in respect of the Services. All other warranties, conditions and other terms implied by statute or common law applicable to the Service Provider are excluded from these Terms to the fullest extent permitted by law.

## 12. **Liability**

- 12.1. The Service Provider shall have no liability to the Client for any loss, damage, costs, expenses or other claims for compensation arising from any exercise of the Service Provider's rights or remedies under these Terms.
- 12.2. The Service Provider's total liability in contract, delict, (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of the Services shall be limited to an amount equal to the Fees and any Further Fees payable hereunder.
- 12.3. Except where specified hereunder, in no event shall the Service Provider be liable to the Client whether arising under these Terms or in delict (including negligence or breach of statutory duty), misrepresentation or however arising, for any Consequential Loss.
- 12.4. Nothing in these Terms excludes or limits the liability of either Party for fraud, fraudulent misrepresentation or for death or personal injury caused by their negligence.

## 13. **Subcontracting**

The Service Provider may in its absolute discretion subcontract the performance of any of its obligations under these Terms.

## 14. **Termination**

- 14.1. Upon termination of these Terms for whatever reason all outstanding Fees and other sums due by the Client to the Service Provider shall immediately become due and payable, and subject as otherwise provided by these Terms to any rights or obligations which have accrued prior to termination, neither Party shall have any further obligation to the other under these Terms.

15. **Force Majeure**

- 15.1. If a Party is wholly or partially precluded from complying with its obligations under these Terms by Force Majeure, then that Party's obligation to perform in accordance with these Terms will be suspended for the duration of the Force Majeure.
- 15.2. As soon as reasonably practicable after an event of Force Majeure arises, the Party affected by Force Majeure must notify the other Party of the extent to which the notifying Party is unable to perform its obligations under this Agreement.
- 15.3. If the inability to perform obligations continues for a period in excess of three (3) calendar months, as a result of the Force Majeure event, then the Party who is not precluded from complying with its obligations shall be entitled forthwith to terminate these Terms by service of notice in writing to the other Party.

16. **Law**

- 16.1. This Agreement shall be governed by the laws of Scotland and the Parties submit to the jurisdiction of the Scottish courts to determine any disputes arising hereunder subject to the foregoing provision.
- 16.2. Nothing in this Agreement shall prevent the Service Provider from commencing or pursuing proceedings against the Client in any other jurisdiction, whether concurrently or not, in respect of the breach by the Client of these Terms.