

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 8 (LIMITATION OF LIABILITY).

1 Interpretation

The following definitions and rules of interpretation apply in these conditions.

1.1 Definitions:

"Applicable Data Protection Laws"	means the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data.
"Applicable Laws"	all applicable laws, statutes, regulations and codes from time to time in force.
"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 Customer for the supply of the Services in accordance with clause 5 (Charges and payment).
"Commencement Date"	has the meaning given in clause 2.2.
"Conditions"	these terms and conditions as amended from time to time in accordance with clause 11.5.
"Contract"	the contract between RSMC and the Customer for the supply of Services in accordance with these Conditions.
"Control"	has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.
"Customer"	the person or firm who purchases Services from RSMC.
"Customer Default"	has the meaning set out in clause 4.2.
"Deliverables"	the deliverables set out in the Order produced by RSMC for the Customer.
"Intellectual Property Rights"	patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, 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.

"Order"	the Customer's order for Services as set out in the Customer's purchase order form, the Customer's written acceptance of a quotation by RSMC, or agreed by RSMC in other written correspondence between the parties as the case may be.
"Services"	the services, including the Deliverables, supplied by RSMC to the Customer as set out in the Specification.
"Specification"	the description or specification of the Services provided in writing by RSMC to the Customer.
"RSMC"	Re-Sauce Marketing Consultancy Limited registered in England and Wales with company number 12984762.
"Supplier Materials"	has the meaning set out in clause 4.1.6.
"UK GDPR"	has the meaning given to it in the Data Protection Act 2018.

1.2 Interpretation:

- 1.2.1 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.
- 1.2.2 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.
- 1.2.3 A reference to **writing** or **written** includes faxes and emails.

2 Basis of contract

- 2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when RSMC issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 Any samples, drawings, descriptive matter or advertising issued by RSMC, and any descriptions or illustrations contained in the RSMC's 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.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.5 Any quotation given by RSMC shall not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue.

3 Supply of Services

- 3.1 RSMC shall supply the Services to the Customer in accordance with the Specification in all material respects.

- 3.2 RSMC shall use all reasonable endeavours to meet any performance dates specified in the specification, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 RSMC reserves the right to amend the specification 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 RSMC shall notify the Customer in any such event.
- 3.4 RSMC warrants to the Customer that the Services will be provided using reasonable care and skill.

4 Customer's obligations

- 4.1 The Customer shall:
 - 4.1.1 ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;
 - 4.1.2 co-operate with RSMC in all matters relating to the Services;
 - 4.1.3 provide RSMC, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by RSMC;
 - 4.1.4 provide RSMC with such information and materials as RSMC may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
 - 4.1.5 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
 - 4.1.6 keep all materials, equipment, documents and other property of RSMC (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to RSMC, and not dispose of or use RSMC Materials other than in accordance with RSMC's written instructions or authorisation.
- 4.2 If RSMC's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
 - 4.2.1 without limiting or affecting any other right or remedy available to it, RSMC shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays RSMC's performance of any of its obligations;
 - 4.2.2 RSMC shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from RSMC's failure or delay to perform any of its obligations as set out in this clause 4.2; and
 - 4.2.3 the Customer shall reimburse RSMC on written demand for any costs or losses sustained or incurred by RSMC arising directly or indirectly from the Customer Default.

5 Charges and payment

- 5.1 The Charges for the Services shall be calculated on a time and materials basis:

- 5.1.1 the Charges shall be calculated in accordance with RSMC's daily fee rates, as set out in the Quote;
 - 5.1.2 RSMC's daily fee rates for each individual are calculated on the basis of an eight-hour day from 9.00 am to 6.00 pm worked on Business Days;
 - 5.1.3 RSMC shall be entitled to charge an overtime rate of 150% per cent of the daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 5.1.2; and
 - 5.1.4 RSMC shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom RSMC engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by RSMC for the performance of the Services, and for the cost of any materials.
- 5.2 RSMC reserves the right to increase the Charges on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index.
- 5.3 RSMC shall invoice the Customer monthly in arrears.
- 5.4 The Customer shall pay each invoice submitted by RSMC:
- 5.4.1 within 30 days of the date of the invoice or in accordance with any credit terms agreed by RSMC and confirmed in writing to the Customer; and
 - 5.4.2 in full and in cleared funds to a bank account nominated in writing by RSMC, and
- time for payment shall be of the essence of the Contract.
- 5.5 All amounts payable by the Customer 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 RSMC to the Customer, the Customer shall, on receipt of a valid VAT invoice from RSMC, pay to RSMC 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.
- 5.6 If the Customer fails to make a payment due to RSMC under the Contract by the due date, then, without limiting RSMC's remedies under clause 9, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 5.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 5.7 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).

6 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 Customer) shall be owned by RSMC.
- 6.2 RSMC grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence

to use and to copy the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business.

- 6.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 6.2 without the prior written consent of RSMC.
- 6.4 The Customer grants RSMC a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to RSMC for the term of the Contract for the purpose of providing the Services to the Customer.

7 DATA PROTECTION

- 7.1 For the purposes of this clause 7, the terms **Commissioner, controller, data subject, personal data, personal data breach, processor** and **processing**, shall have the meaning given to them in the UK GDPR.
- 7.2 Both parties will comply with all applicable requirements of the Applicable Data Protection Laws. This clause 7.2 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Applicable Data Protection Laws.
- 7.3 The parties have determined that, for the purposes of Applicable Data Protection Laws RSMC shall process personal data as processor on behalf of the Customer.
- 7.4 If the determination in clause 7.3 change, the parties shall use all reasonable endeavours to make any changes that are necessary to this clause 7.
- 7.5 Without prejudice to clause 7.27.2, RSMC shall, in relation to Customer Personal Data:
 - 7.5.1 process that personal data only on the documented written instructions of the Customer unless RSMC is required by Applicable Laws to otherwise process that Customer Personal Data;
 - 7.5.2 implement appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Customer Personal Data and against its accidental loss, damage or destruction, including inter alia as appropriate:
 - 7.5.2.1 the pseudonymisation and encryption of Customer Personal Data;
 - 7.5.2.2 the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
 - 7.5.2.3 the ability to restore the availability and access to Customer Personal Data in a timely manner in the event of a physical or technical incident; and
 - 7.5.2.4 a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.
 - 7.5.3 ensure and procure that that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential;
 - 7.5.4 promptly assist the Customer, at the Customer's expense, in responding to any request from a data subject and in ensuring compliance with the Customer's obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with the Commissioner, supervisory authorities or other regulators and, in particular, RSMC shall promptly notify the Customer if it receives any complaint, notice or communication (whether from the

Commissioner, any data subject, supervisory authority or other third party) which relates to processing of Customer Personal Data;

- 7.5.5 notify the Customer without undue delay (and no later than 24 hours) after becoming aware of a personal data breach;
 - 7.5.6 at the written direction of the Customer, delete or return to the Customer all Customer Personal Data on termination or expiry of the agreement unless RSMC is required by Applicable Law to continue to process that Customer Personal Data, in which case RSMC shall promptly notify the Customer, in writing, of what that Applicable Law is and shall only be permitted to process that Customer Personal Data for the specific purpose so-notified, and all other requirements set out in this clause shall continue to apply to such Customer Personal Data notwithstanding the termination or expiry of this Agreement for as long as such Customer Personal Data is processed by RSMC; and
 - 7.5.7 maintain adequate records, and, on the Customer's request, make available such information as the Customer may reasonably request, and allow for and submit its premises and operations to audits, including inspections, by the Customer or the Customer's designated auditor, to demonstrate its compliance with Applicable Data Protection Laws and this clause 7.
- 7.6 RSMC shall not, without the prior written consent of the Customer (and in any event subject to RSMC providing the Customer with reasonable evidence that such activity is being undertaken in full compliance with Applicable Data Protection Laws):
- 7.6.1 appoint or replace (or change the terms of the appointment of) any other processor in relation to Customer Personal Data or transfer any Customer Personal Data to the same; or
 - 7.6.2 carry out, via itself or via any other processor, any processing of Customer Personal Data, or transfer any Customer Personal Data, outside of the UK, including processing Customer Personal Data on equipment situated outside of the UK.
- 7.7 Either party may, at any time on not less than 30 days' notice, revise clause 7.5 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Agreement).
- 7.8 The Customer shall be responsible for any liability arising from the Customer's own actions.

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

- 8.1 RSMC has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £1,000,000 per claim. The limits and exclusions in this clause reflect the insurance cover RSMC has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.
- 8.2 References to liability in this clause 8 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 8.3 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
- 8.4 Nothing in this clause 8 shall limit the Customer's payment obligations under the Contract.

- 8.5 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- 8.5.1 death or personal injury caused by negligence;
 - 8.5.2 fraud or fraudulent misrepresentation; or
 - 8.5.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 8.6 Subject to clause 8.3 (No limitation in respect of deliberate default), and clause 8.5 (Liabilities which cannot legally be limited), RSMC's total liability to the Customer:
- 8.6.1 for loss arising from RSMC's failure to comply with its data processing obligations under clause 7 shall not exceed £100,000; and
 - 8.6.2 for all other loss or damage shall not exceed £50,000.
- 8.7 The caps on RSMC's liabilities shall be reduced by:
- 8.7.1 payment of an uncapped liability;
 - 8.7.2 amounts awarded by a court or arbitrator, using their procedural or statutory powers in respect of costs of proceedings or interest for late payment.
- 8.8 Subject to clause 8.3 (No limitation in respect of deliberate default), clause 8.4 (No limitation of customer's payment obligations) and clause 8.5 (Liabilities which cannot legally be limited), this clause 8.8 sets out the types of loss that are wholly excluded:
- 8.8.1 loss of profits
 - 8.8.2 loss of sales or business.
 - 8.8.3 loss of agreements or contracts.
 - 8.8.4 loss of anticipated savings.
 - 8.8.5 loss of use or corruption of software, data or information.
 - 8.8.6 loss of or damage to goodwill; and
 - 8.8.7 indirect or consequential loss.
- 8.9 RSMC has given commitments as to compliance of the Services with relevant specifications in clause 3. In view of these commitments, the terms implied by sections 3 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 8.10 Unless the Customer notifies RSMC that it intends to make a claim in respect of an event within the notice period, RSMC shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire 12 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 8.11 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 three months' written notice.

- 9.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 9.2.1 the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so;
 - 9.2.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - 9.2.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - 9.2.4 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 9.3 Without affecting any other right or remedy available to it, RSMC may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 9.4 Without affecting any other right or remedy available to it, RSMC may suspend the supply of Services under the Contract or any other contract between the Customer and RSMC if
- 9.4.1 the Customer fails to pay any amount due under the Contract on the due date for payment;
 - 9.4.2 the Customer becomes subject to any of the events listed in clause 9.2.3 to clause 9.2.4, or RSMC reasonably believes that the Customer is about to become subject to any of them; and
 - 9.4.3 the RSMC reasonably believes that the Customer is about to become subject to any of the events listed in clause 9.2.2.

10 Consequences of termination

- 10.1 On termination or expiry of the Contract:
- 10.1.1 the Customer shall immediately pay to RSMC all of RSMC's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, RSMC shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - 10.1.2 the Customer shall return all of RSMC Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then RSMC may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 10.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, 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.

- 10.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry 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.

- 11.2.1 RSMC may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

- 11.2.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, 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 RSMC.

11.3 Confidentiality.

- 11.3.1 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 11.3.2.

- 11.3.2 Each party may disclose the other party's confidential information:

- 11.3.2.1 to its employees, officers, representatives, contractors, 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, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11.3; and

- 11.3.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

- 11.3.3 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.

- 11.4.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

- 11.4.2 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 or negligent misstatement based on any statement in the Contract.

- 11.4.3 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 right 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 **Severance** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement. If any provision or part-provision of this Contract deleted under this clause 11.7 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 11.8 **Notices.**
- 11.8.1 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 fax to its main fax number or sent by email to the address specified in in the acceptance of order
- 11.8.2 Any notice or other communication shall be deemed to have been received:
- 11.8.2.1 if delivered by hand, at the time the notice is left at the proper address;
- 11.8.2.2 if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the third Business Day after posting; or
- 11.8.2.3 if sent by fax or email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this *clause* 11.8.2.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 11.8.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
- 11.9 **Third party rights.**
- 11.9.1 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.
- 11.9.2 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 11.10 **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.
- 11.11 **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.

