

Psephos Limited

Terms of Business

1. These Conditions apply to all Services provided by Psephos to the Client.

Interpretation

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

1.1 Definitions:

Agreement: the contract between Psephos and the Client including the Services Agreement and these Conditions.

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.

Client: the person or firm who purchases Services from Psephos.

Client Default: has the meaning set out in clause 4.2.

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.

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

Deliverables: the deliverables set out in the Services Agreement provided by Psephos for 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 and trade dress, 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 Agreement: the document which includes the specification of services, including the Deliverables, and commercial terms including Charges as agreed by Psephos and the Client.

Services: the services to be provided as identified in the Services Agreement.

Psephos: the Supplier of Services as identified in the Services Agreement.

1.2 Interpretation:

- (a) A reference to legislation or a legislative provision:
 - (i) is a reference to it as amended, extended or re-enacted from time to time and
 - (ii) shall include all subordinate legislation made from time to time under that legislation or legislative 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.
- (c) A reference to **writing** or **written** includes fax and email.

2. Basis of contract

- 2.1 The Services Agreement constitutes an offer by the Client to purchase Services in accordance with these Conditions.
- 2.2 The offer shall only be deemed to be accepted when Psephos issues written acceptance of the Services Agreement by signing the Services Agreement and the Agreement shall come into existence at the point at which both parties have signed the Services Agreement (**Commencement Date**).
- 2.3 Any samples, drawings, descriptive matter or advertising issued by Psephos, and any descriptions or illustrations contained in Psephos' 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 Agreement or have any contractual force.
- 2.4 These Conditions apply to the Agreement to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.5 Any quotation given by Psephos shall not constitute an offer, and is only valid for a period of 14 Business Days from its date of issue.

3. Supply of Services

- 3.1 Psephos shall supply the Services to the Client in accordance with the Services Agreement in all material respects.
- 3.2 Psephos shall use all reasonable endeavours to meet any performance dates specified in the Services Agreement but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 Psephos reserves the right to amend the specification of Services as contained in the Services Agreement 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 Psephos shall notify the Client in any such event.
- 3.4 Psephos warrants to the Client that the Services will be provided using reasonable care and skill.

4. Client's obligations

- 4.1 The Client shall:
 - (a) ensure that the terms of the Services Agreement and any information it provides including under the 'Client Requirements' or 'Further Detail' headings are complete and accurate;
 - (b) co-operate with Psephos in all matters relating to the Services;
 - (c) provide Psephos, its employees, agents, consultants and subcontractors, with access to the Client's premises, office accommodation and other facilities as reasonably required by Psephos in order to deliver the Services;
 - (d) provide Psephos with such information and materials as Psephos may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
 - (e) obtain and maintain all necessary licences, permissions and consents including all regulatory requirements, which may be required for the Services before the date on which the Services are to start;
- 4.2 If Psephos' performance of any of its obligations under the Agreement 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, Psephos 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 Psephos' performance of any of its obligations;

- (b) Psephos shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from Psephos' failure or delay to perform any of its obligations as set out in this clause 4.2; and
- (c) the Client shall reimburse Psephos on written demand for any costs or losses sustained or incurred by Psephos arising directly or indirectly from the Client Default.

4.3 In order to protect the legitimate business interests of Psephos, the Client agrees that it shall not (except with the prior written consent of Psephos):

- (a) attempt to solicit or entice away; or
- (b) solicit or entice away

the services of any employee of Psephos, other than by means of a national advertising campaign open to all-comers and not specifically targeted at such staff of Psephos.

4.4 The Client shall be bound by the non-solicitation restriction set out in clause 4.3 for as long as the Agreement is in effect, and for a period of 12 months after the termination or expiry of the Agreement.

5. Charges and payment

5.1 The Charges for the Services shall be as set out in the Services Agreement.

5.2 Psephos 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 Psephos shall invoice the Client either on completion of the Services monthly in arrears for work undertaken or on any other basis as agreed. Psephos and the Client will agree prior to commencement of the Services as to when invoicing shall occur.

5.4 The Client shall pay each invoice submitted by Psephos:

- (a) within 14 days of the date of the invoice; and
- (b) in full and in cleared funds to a bank account nominated in writing by Psephos, and

time for payment shall be of the essence of the Agreement.

5.5 All amounts payable by the Client under the Agreement 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 Agreement by Psephos to the Client, the Client shall, on receipt of a valid VAT invoice from Psephos, pay to Psephos 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 Client fails to make a payment due to Psephos under the Agreement by the due date, then, without limiting Psephos' remedies under clause 9, the Client 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 Agreement 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 Client) shall be owned by Psephos.

6.2 Psephos 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 irrevocable licence to copy and modify the 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.

6.4 The Client grants Psephos a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Client to Psephos for the term of the Agreement for the purpose of providing the Services to the Client.

7. Data protection

The parties shall comply with their data protection obligations as set out in UK legislation.

8. Limitation of liability

8.1 Psephos 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 Psephos has been able to arrange and the Client 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 Agreement including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 8.3 Nothing in this clause 8 shall limit the Client's payment obligations under the Agreement.
- 8.4 Nothing in the Agreement limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation; and
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 8.5 Subject to clause 8.3 (No limitation in respect of deliberate default), and clause 8.4 (Liabilities which cannot legally be limited), Psephos' total liability to the Client for all other loss or damage shall not exceed the Charges paid by the Client in the year prior to any claim.
- 8.6 Subject to clause 8.3 (No limitation in respect of deliberate default), clause 8.3 (No limitation of client's payment obligations) and clause 8.4 (Liabilities which cannot legally be limited), this clause 8.6 sets out the types of loss that are wholly excluded:
- (a) loss of profits.
 - (b) loss of sales or business.
 - (c) loss of agreements or contracts.
 - (d) loss of anticipated savings.
 - (e) loss of use or corruption of software, data or information.
 - (f) loss of or damage to goodwill; and
 - (g) indirect or consequential loss.
- 8.7 Psephos 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, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Agreement.
- 8.8 Unless the Client notifies Psephos that it intends to make a claim in respect of an event within the notice period, Psephos shall have no liability for that event. The notice period for an event shall start on the day on which the Client became, or ought reasonably to have become, aware of the event having occurred and shall expire 3 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

8.9 This clause 8 shall survive termination of the Agreement.

9. Termination

9.1 Without affecting any other right or remedy available to it, either party may terminate the Agreement by giving the other party 3 months' written notice.

9.2 Without affecting any other right or remedy available to it, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Agreement 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;
- (b) 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;
- (c) 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
- (d) 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 Agreement has been placed in jeopardy.

9.3 Without affecting any other right or remedy available to it, Psephos may terminate the Agreement with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under the Agreement on the due date for payment.

9.4 Without affecting any other right or remedy available to it, Psephos may suspend the supply of Services under the Agreement or any other contract between Client and Psephos if:

- (a) The Client fails to pay any amount due under the Agreement on the due date for payment;
- (b) The Client becomes subject to any of the events listed in clause 9.2(c) or clause 9.2(d), or Psephos reasonably believes that the Client is about to become subject to any of them; and
- (c) Psephos reasonably believes that Client is about to become subject to any of the events listed in clause 9.2(b).

10. Consequences of termination

10.1 On termination or expiry of the Agreement:

- (a) the Client shall immediately pay to Psephos all of Psephos' outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Psephos shall submit an invoice, which shall be payable by the Client immediately on receipt;
- (b) the Client shall return all of Psephos materials and any Deliverables which have not been fully paid for. If the Client fails to do so, then Psephos may enter the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Agreement.

10.2 Termination or expiry of the Agreement 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 Agreement which existed at or before the date of termination or expiry.

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

11. General

11.1 Force majeure. Neither party shall be in breach of the Agreement nor liable for delay in performing, or failure to perform, any of its obligations under the Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control.

11.2 Assignment and other dealings.

- (a) Psephos 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 Agreement.
- (b) Client 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 Agreement without the prior written consent of Psephos.

11.3 Confidentiality.

- (a) Each party undertakes that it shall not at any time and for a period of two years after termination or expiry of the Agreement, disclose to any person any confidential information concerning the business, affairs, clients, clients or suppliers of the other party, except as permitted by clause 11.3(b).
- (b) Each party may disclose the other party's confidential information:
 - (i) 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 Agreement. 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
 - (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 Agreement.

11.4 Entire agreement.

- (a) The Agreement 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.
- (b) Each party acknowledges that in entering into the Agreement 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 Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Agreement.

11.5 Variation. Except as set out in these Conditions, no variation of the Agreement 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 Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Agreement 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 Agreement 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 Agreement 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 Agreement 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.

- (a) Any notice or other communication given to a party under or in connection with the Agreement 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; or sent by email to the address specified in the Services Agreement.
- (b) Any notice shall be deemed to have been received:
 - (i) if delivered by hand, at the time the notice is left at the proper address;
 - (ii) 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
 - (iii) if sent by 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(b)(iii), 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.
- (c) This clause 11.8 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. Unless it expressly states otherwise, the Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.

11.10 Governing law. The Agreement, 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 Agreement or its subject matter or formation.