



Terms and Conditions of Business

Please read these Terms and Conditions carefully. All contracts that We may enter into from time to time, for the provision of Our Services, shall be governed by these Terms and Conditions.

1. Definitions & Interpretation

Definitions

- 1.1. **Additional Services** means services supplied by VIVA Support to the Client not included in the Booking Form but requested to be carried out by the Client.
- 1.2. **Basic Hourly Rate** means an hourly rate charged by VIVA Support to the Client as set out in the Booking Form. The Basic Hourly Rate is charged on a time spent basis in units of 15 minutes, with a minimum charge of one hours' work.
- 1.3. **Business Day** means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
- 1.4. **Booking Form** means the form provided by VIVA Support to the Client detailing the supply of Services that the Client wishes to purchase from VIVA Support.
- 1.5. **Charges** means the charges payable by the Client for Services as set out in the Booking Form
- 1.6. **Client** means the person, firm or company who purchases or agrees to purchase the Services from VIVA Support.
- 1.7. **Commencement Date** has the meaning given in clause 2.3.
- 1.8. **Contract** means the contract between VIVA Support and the Client for the supply of Services in accordance with these Terms & Conditions.
- 1.9. **Force Majeure Event** has the meaning given to it in clause 13.1.
- 1.10. **Intellectual Property Rights** means patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks 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.



- 1.11. Normal Working Hours** means the usual hours worked by VIVA Support as set out in the Booking Form.
- 1.12. Order** means the Client's order for the supply of Services, as set out in the Booking Form.
- 1.13. Out of Hours' Work Rate** means an hourly charge made by VIVA Support to the Client, as set out in the Booking Form, for Services or Additional Services instructed by the Client to be carried out by VIVA Support outside Normal Working Hours.
- 1.14. Requests** means requests and/or instructions made by the Client to VIVA Support from time to time for VIVA Support to perform the Services and/or Additional services and "Request" shall mean any one of them.
- 1.15. Services** means the services supplied by VIVA Support to the Client as set out in the Booking Form.
- 1.16. Subscription Period** means the period of time during which VIVA Support provides the Services to the Client as set out in the Booking Form.
- 1.17. Terms** means the terms and conditions as set out in this document amended from time to time in accordance with clause 13.12.
- 1.18. Urgent Hourly Work Rate** means an hourly charge made by VIVA Support to the Client, as set out in the Booking Form, for Additional Services carried out by VIVA Support where they are instructed by the Client with less than 24 hours' notice.
- 1.19. VIVA Support** means Emily Laflin trading as VIVA Support of 15 Silverwood Rise, Romsey, SO51 7AD

Interpretation

- 1.20.** A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.21.** A reference to a party includes its personal representatives, successors and permitted assigns.
- 1.22.** 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.
- 1.23.** 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.
- 1.24.** A reference to writing or written includes fax and email.



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2. Basis of Contract

- 2.1. These Terms shall form the basis of the contract between VIVA Support and the Client in relation to the supply of Services, to the exclusion of all other terms and conditions including the Client's standard conditions of purchase or any other conditions which the Client may purport to apply under any purchase order or confirmation of order or any other document.
- 2.2. All orders for supply of Services shall be deemed to be an offer by the Client to purchase Services from VIVA Support pursuant to these Terms.
- 2.3. The offer, as set out in clause 2.2 above, shall only be deemed to be accepted when the Client confirms acceptance of the Booking Form, at which date the Contract shall come into existence (Commencement Date).
- 2.4. Commencement of the Services shall be deemed to be conclusive evidence of the Client's acceptance of these Terms.

3. Supply of Services

- 3.1. VIVA Support shall supply Services to the Client in accordance with the Contract in all material respects.
- 3.2. Throughout the Term and subject to these Terms, the Client shall be entitled to make Requests and VIVA Support shall perform the Services and/or Additional Services in response to such Requests.
- 3.3. Notwithstanding the foregoing, VIVA Support reserves the right to decline to comply (without explanation) with any Request made by the Client to VIVA Support in circumstances where (in VIVA Support's sole discretion and acting reasonably):
 - 3.3.1. compliance with such Request would place unreasonably high demands on VIVA Support having regard to the number of personnel available to VIVA Support at the time such Request is made and/or the interests of other clients of VIVA Support;
 - 3.3.2. compliance with such Request might place VIVA Support personnel at risk of physical harm;
 - 3.3.3. compliance with such Request would be detrimental to the public image and/or reputation of VIVA Support or any individual or organisation related to VIVA Support;
 - 3.3.4. compliance with such Request would be contrary to any rule of law, order of a court of competent jurisdiction or rules of any relevant regulatory authority;
 - 3.3.5. VIVA Support has advised the Client that he/she/they will require to supply VIVA Support with sufficient funds to enable VIVA Support to pay certain costs and expenses which VIVA Support anticipates incurring in the course of performing the Services which are the subject of such Request and the Client is yet to provide VIVA Support with such funds



or for any other reason as VIVA Support shall (in its sole discretion and acting reasonably) determine.

- 3.4.** VIVA Support shall use reasonable endeavours to meet any performance dates for the Services, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 3.5.** Any quotation for the supply of Services issued by VIVA Support as set out in the Booking Form is valid for a maximum period of 30 days from the date provided to the Client, unless withdrawn by VIVA Support earlier.
- 3.6.** The Services will be provided within our Normal Working Hours, unless otherwise agreed in writing. Any Services or Additional Services provided outside of our Normal Working Hours will carry additional charges as set out in clauses 6.3-6.5. VIVA Support does not provide any services on a day that is not a Business Day unless expressly agreed in writing
- 3.7.** There may be times when, due to circumstances beyond VIVA Support's control, VIVA Support shall not be able to perform the Services during the Normal Working Hours. In such circumstances VIVA Support shall use all reasonable endeavours to restore the provision of the Services, provided always that VIVA Support shall not, except as otherwise provided in Clause 7 below, be liable for any loss or damage of whatsoever nature suffered by the Client as a result of such loss of provision of the Services.
- 3.8.** Subject to these Terms and unless otherwise agreed between the parties, the Services shall be provided at VIVA Support's premises. Subject to any contrary prior agreement of the parties from time to time, the Client and VIVA Support shall liaise by telephone, fax and email but shall not meet in person at VIVA Support's offices or otherwise.
- 3.9.** The Client may request that VIVA Support provide any of the Services at a location other than VIVA Support's premises but VIVA Support shall have sole discretion as to whether it will honour such a request. In the event that VIVA Support agrees to provide any of the Services at a location other than VIVA Support's own premises VIVA Support shall be entitled to charge the Client Additional Charges at a level to be advised by VIVA Support to the Client in advance of providing the relevant Services and the Client shall be additionally liable for all reasonable costs and expenses incurred or suffered by VIVA Support pursuant to this clause 3.9.
- 3.10.** VIVA Support reserves the right to sub-contract the fulfilment of the Services or any part thereof.
- 3.11.** VIVA Support shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and VIVA Support shall notify the Client in any such event.
- 3.12.** If, due to circumstances beyond VIVA Support's control, including those set out in clause 13.1, VIVA Support has to make any change in the provision of the Contract, VIVA Support



will notify the Client immediately. VIVA Support will use reasonable endeavours to keep any such changes to a minimum.

- 3.13.** VIVA Support reserves the right to refuse to accept delivery of any correspondence, parcel, package or object delivered to VIVA Support either by or on behalf of the Client or for the attention of the Client.

4. Client's Obligations

4.1. The Client shall: -

- 4.1.1.** co-operate with VIVA Support in all matters relating to the Contract;
- 4.1.2.** provide VIVA Support with such information and materials as VIVA Support may reasonably require in order to perform its obligations under the Contract and ensure that such information is accurate in all material respects; and
- 4.1.3.** obtain and maintain all necessary licences, permissions and consents as VIVA Support may reasonably require in order to perform its obligations under the Contract before the Commencement Date and during the Contract.

4.2. If VIVA Support'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 as set out in clause 4.1 (Client Default):

- 4.2.1.** without limiting or affecting any other right or remedy available to it, VIVA Support 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 to the extent the Client Default prevents or delays VIVA Support's performance of any of its obligations;
- 4.2.2.** VIVA Support shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from VIVA Support's failure or delay to perform any of its obligations as set out in clause 4.1; and
- 4.2.3.** the Client shall reimburse VIVA Support on written demand for any costs or losses sustained or incurred by VIVA Support arising directly or indirectly from the Client Default.

5. Intellectual Property

5.1. The ownership of, and all Intellectual Property Rights in, all documents, reports, files, data, information and materials produced by VIVA Support and/or VIVA Support personnel in the course of providing the Services shall belong to the Client.

5.2. In respect of any documents, materials, computer files, data, reports, information and computer programs provided by the Client to VIVA Support in contemplation of the Contract (Client Provided Materials), the Client hereby grants to VIVA Support (and/or will procure that VIVA Support is granted) a non-exclusive, royalty-free, transferable, sub-licensable, irrevocable licence to use, copy, modify, distribute and do all such other acts and things as



VIVA Support may (acting reasonably) consider necessary with such Client Provided Materials to enable it to perform the Services.

- 5.3.** The Client shall save, indemnify and keep indemnified, defend and hold harmless VIVA Support from and against all claims, losses, damages, costs (including legal costs), expenses and liabilities which VIVA Support may suffer or incur in respect of any action brought by a third party for infringement of any patent, copyright or other Intellectual Property Rights however arising as a result of the use of, copying of, modification of, distribution of or any other acts or omissions in respect of the Client Provided Materials by VIVA Support pursuant to the Contract provided that VIVA Support has notified the Client promptly in writing of the action, has permitted the Client to control the defence of such action and agrees (with prior notice from the Client) to any reasonable settlement thereof, in each case at the Client's cost.

6. Charges and Payment

- 6.1.** The Charges shall be the price set out in the Booking Form.
- 6.2.** In addition to the Charges, VIVA Support reserves the right, by giving notice to the Client at any time, to charge the Client reasonable travel expenses if applicable.
- 6.3.** If VIVA Support carries out Additional Services for the Client, the Additional Services will be charged at the Basic Hourly Rate.
- 6.4.** If VIVA Support carries out the Services and/or Additional Services requested outside of the Normal Working Hours then an Out of Hours' Work Rate may be applied to charges made. The Client will be notified of this in.
- 6.5.** If the Client instructs VIVA Support to carry out Additional Services with less than 24 hours notice, then an Urgent Hourly Work Rate may be applied to charges made. The Client will be notified of this in writing.
- 6.6.** For Clients on a one-off monthly or retainer package, VIVA Support has the sole discretion to agree to a maximum of 10% of unused hours being carried forward. Any hours carried forward must be used in the following month or they will expire. VIVA Support will only agree to carry forward any hours if the Client has paid all invoices produced promptly and in full and in accordance with these Terms. For one-off monthly clients VIVA Support will only agree to carry forward any hours if the Client is purchasing at least a further one months' worth of hours.
- 6.7.** VIVA Support reserves the right, by giving notice to the Client at any time, to increase the Charges at any time during the Term due to any event or factor beyond its control including but not limited to:
- 6.7.1.** Any variation of duties or increase in the costs of materials, labour or printing;
 - 6.7.2.** Any foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs;
 - 6.7.3.** Any price increase levied upon VIVA Support by a third-party supplier;



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6.7.4. Any change in the Order requested by the Client; or

6.7.5. Any delay caused by the Client.

6.8. All payments must be made in British Pounds unless otherwise agreed in writing.

6.9. All charges are quoted exclusive of Value Added Tax. Value Added Tax will be charged at the appropriate rate on all Charges and Additional Charges, which the Client shall be liable to pay.

6.10. VIVA Support shall invoice the Client on the dates and sums as set out in the Booking Form.

6.11. The Client shall pay each invoice submitted by VIVA Support within the time specified in the Booking Form and/or invoice, in full and in cleared funds and time for payment shall be of the essence of the Contract. If no time is specified in the Booking Form or invoice the Client shall pay each invoice within seven (7) day of the date of the invoice.

6.12. If the Client fails to make a payment due to VIVA Support under the Contract by the due date, then, without limiting VIVA Support's remedies under clause 9 (Termination), 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 6.12 will accrue at a rate of 5% per annum above the base lending rate of the Bank of England from time to time on the amount outstanding until payment is received in full. Such interest shall accrue after as well as before any judgment.

6.13. VIVA Support also reserves the right to recover any debt collection costs, including legal and court fees.

6.14. 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).

7. Limitation of Liability - THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

7.1. The restrictions on liability in this clause 7 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

7.2. Nothing in these Terms shall limit or exclude VIVA Support's liability for:

7.2.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

7.2.2. fraud or fraudulent misrepresentation;

7.2.3. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);

7.2.4. breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or

7.2.5. defective products under the Consumer Protection Act 1987.

7.3. Subject to clause 7.2:



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7.3.1. VIVA Support shall under no circumstances whatever be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for:

- 7.3.1.1.** loss of profits;
- 7.3.1.2.** loss of sales or business;
- 7.3.1.3.** loss of agreements or contracts;
- 7.3.1.4.** loss of anticipated savings;
- 7.3.1.5.** loss of use or corruption of software, data or information;
- 7.3.1.6.** loss of or damage to reputation or goodwill; and
- 7.3.1.7.** indirect or consequential loss.

arising under or in connection with the Contract.

7.4. VIVA Support's total liability to the Client in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the total of the Charges and any Additional Charges payable by the Client to VIVA Support under the Contract.

7.5. 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.

7.6. This clause 7 shall survive termination of the Contract.

8. Term of the contract

8.1. For one off projects and ad-hoc work the Contract continues as long as it takes VIVA Support to provide the Services in accordance with the Contract.

8.2. For retainer clients the Contract expires at the end of the Subscription Period.

9. Termination

9.1. 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 the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing to do so.

9.2. Without affecting any other right or remedy available to it, VIVA Support may terminate the Contract with immediate effect by giving written notice to the Client if:

- 9.2.1.** the Client 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), 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;

- 9.2.2. the Client fails to pay or threatens not to pay any amount due under the Contract on the due date for payment;
- 9.2.3. the Client suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business;
- 9.2.4. there is a change of control of the Client; or
- 9.2.5. the Client's financial position deteriorates to such an extent that in VIVA Support's opinion the Client's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

10. Consequences of Termination

- 10.1. On termination of the Contract the Client shall immediately pay to VIVA Support all of VIVA Support's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, VIVA Support 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 and 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 or expiry.
- 10.3. Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.

11. Data Protection

- 11.1. All information VIVA Support may hold for the Client will be held and processed in accordance with the General Data Protection Regulation (GDPR) (EU) 2016/679 and any related legislation in force in the UK.
- 11.2. The Client is referred to VIVA Support's Privacy Notice which can be found at <https://www.vivasupport.co.uk/PRIVACY-NOTICE.pdf>

12. Confidentiality

- 12.1. Except as provided by clauses 12.2 and 12.3, VIVA Support shall at all times during the continuance of the Contract and after its termination:
 - 12.1.1. keep all Confidential Information confidential and accordingly not disclose any such information to any other person; and
 - 12.1.2. not use any Confidential Information for any purpose other than the performance of its obligations under the Contract or the conduct of VIVA Support's business in the normal course.



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12.2. Confidential Information may be disclosed by VIVA Support to: -

- 12.2.1.** such persons as VIVA Support (in its sole discretion and acting reasonably) considers necessary to enable VIVA Support to comply with its obligations under the Contract and/or perform the Services (including, without limitation, third party suppliers and VIVA Support's personnel) provided that in each case VIVA Support shall inform all such persons of the confidential nature of the Confidential Information prior to disclosure; and
- 12.2.2.** any governmental or other authority or regulatory body or to any other person as required by law.

12.3. VIVA Support shall be deemed not to have been in breach of its obligations under this Clause 12 as a result of Confidential Information being disclosed in the following circumstances: -

- 12.3.1.** where the Client had given its prior written consent to such disclosure;
- 12.3.2.** where such Confidential Information was in the public domain at or prior to the time of such disclosure (unless such Confidential Information entered into the public domain as a result of a breach by VIVA Support of its obligations under this Clause 12); or
- 12.3.3.** where VIVA Support can demonstrate to the Client's satisfaction (acting reasonably) that such Confidential Information was known to VIVA Support prior to such Confidential Information being disclosed by the Client to VIVA Support.

13. General Terms

Force Majeure

- 13.1.** 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 (a Force Majeure Event). These include: (a) natural disasters or "acts of God," such as lightening, tornadoes, hurricanes, tsunamis, floods and earthquakes; (b) manmade disasters, such as plant fires or floods; (c) war and civil issues, such as riots, civil unrest, acts of terrorism; (d) labour disputes or strikes; (e) government embargoes or other government actions affecting the supply chain; (f) power outages or transportation issues; (g) epidemic, pandemic or quarantine; and (h) third party supply chain difficulties.
- 13.2.** If the Force Majeure Event prevents VIVA Support from providing any of the Services for more than 4 weeks, VIVA Support shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Client.
- 13.3.** Clause 13.1 above shall not apply in respect of any failure or delay by the Client to make any payment to VIVA Support that falls due under the Contract.

Entire Agreement

- 13.4.** These terms, together with those set out in the Contract, constitute 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.

13.5. 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.

Third Party Rights

13.6. No third party, other than VIVA Support's agent or subcontractor, shall be entitled to enforce the provisions of this Agreement pursuant to the Contract (Rights of Third Parties) Act 1999.

Notices

13.7. Any notice given to a party under or in connection with the Contract shall be in writing and shall be:

13.7.1. 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

13.7.2. sent by email to the address specified by each party at the time.

13.8. Any notice shall be deemed to have been received:

13.8.1. if delivered by hand, on signature of a delivery; and

13.8.2. if sent by next working day delivery service, at 9.00 am on the second Business Day after posting; and

13.8.3. 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 13.8.3, business hours mean 9.00am to 5.00pm on a Business Day.

13.9. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

Severance

13.10. 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 the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 13.10 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.

Waiver

13.11. 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 remedy. A failure or



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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.

Variation

13.12. Except as set out in these Terms, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by VIVA Support.

No Partnership or Agency

13.13. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

Governing Law

13.14. 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.

Jurisdiction

13.15. 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.