

CME Digital - General Terms and Conditions

Terms of Business

1. Interpretation

- 1.1. The following definitions and rules of interpretation in this clause apply in this Agreement:

“**Agreement**” means the Letter incorporating the Terms;

“**Client**” means the addressee (or addressees) of the Letter;

“**Deliverables**” means the deliverables to be supplied by JPARC Limited trading as CME Digital to the Client as set out in the Letter;

“**CME Digital**” means the business carried on by JPARC Limited trading as CME Digital;

“**Letter**” means the engagement letter between CME Digital and the Client setting out, amongst other things, the Services and the Charges;

“**Intellectual Property Rights**” means all intellectual property rights wherever in the world arising, registered or unregistered, including, but not limited to, copyright and related rights, rights in designs, trademarks, business and domain names, rights in computer software including source code, moral rights and rights in confidential information including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection;

“**Related Person**” means at any time during the period in which the provisions of this Agreement apply,

- (i). in respect of the Client, the Client’s professional advisers, employees, agents and other representatives; and
- (ii). in respect of CME Digital and CME Digital’s professional advisers, agents, partners and other representatives;

“**Services**” means the services, including any Deliverables, to be supplied by CME Digital to the Client as set out in the Letter;

“**Specification**” means the description or specification of the Services as set out in the Letter;

“**Terms**” means these General Business Terms and Conditions;

“**Third Party Products**” means those third-party software products or assets set out in the Specification.

- 1.2. Clause and paragraph headings shall not affect the interpretation of this Agreement. References to any recital or clause are to the recitals and clauses of this Agreement. Reference to a particular law includes references to any amendments, re-enactments thereof and any subordinate

legislation made under it as amended.

- 1.3. Unless the context otherwise requires, words in the singular shall include the plural and vice versa. References to “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and not limit the sense of the words proceeding those terms. Save in relation to any notices to be given under this Agreement, a reference to “writing or “written” includes e-mails.

- 1.4. Any obligations arising from or representations, warranties and undertakings, made or given under, the provisions of this Agreement which are incurred, made or given by two or more persons shall, unless expressly provided be joint and several.

- 1.5. Any variation to these Terms, if required, shall be set out in the Letter.

2. Contract

- 2.1. The Letter constitutes an offer by CME Digital to provide the Services to the Client in accordance with this Agreement. The Letter shall only be deemed to be accepted on the earlier of

2.1.1. the Client’s written acceptance of the Letter or

2.1.2. CME Digital receiving notification from the Client in writing or verbally to commence work in relation to the Services, at which point and on which date the Contract shall come into existence (“**Commencement Date**”).

- 2.2. Any proposal or quotation prepared by CME Digital, other than as set out in the Letter, shall not constitute an offer and along with any offer is only valid for a period of 30 days from the date of issue.

- 2.3. If following the Commencement Date the Client requires additional services or substantial revisions to the Specification, or it becomes apparent to CME Digital that the assumptions made by the Client or CME Digital when scoping the Services need to be revised, CME Digital shall issue a revised Specification and details of any additional fees, if applicable, which should be agreed by both parties before proceeding further.

- 2.4. The Terms apply to this Agreement to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3. Supply of Services
 - 3.1. CME Digital shall provide the Services to the Client using reasonable care and skill and in accordance with the Specification in all material respects.
 - 3.2. CME Digital shall use all reasonable endeavours to meet any timetable specified in the Letter, but any dates shall be estimates only.
 - 3.3. CME Digital shall have the right to make any changes to the Services which are necessary to comply with any applicable legal or regulatory requirements, or which do not materially affect the nature or quality of the Services. CME Digital shall notify the Client in any such event.
4. Client's obligations
 - 4.1. The Client shall
 - 4.1.1. ensure the Services, Specification and Deliverables are complete and accurate prior to entering into this Agreement;
 - 4.1.2. co-operate with CME Digital in all matters relating to the Services and provide CME Digital promptly with, and use of, such information, materials and assets ("**Materials**") as CME Digital may reasonably require to supply the Services.

The Client acknowledges and confirms that it is responsible for all Intellectual Property Rights in relation to such Materials;
 - 4.1.3. undertake to obtain and maintain all necessary licences, permissions, authorisations and consents which may be required, necessary or desirable for the Deliverables including the use or ownership of any copy, assets, materials or Third Party Products therein and any Intellectual Property Rights thereof, before the date on which the Deliverables are to be delivered by CME Digital;
 - 4.1.4. if required, provide CME Digital and its Related Persons, if applicable, with access to the Client's premises or other facilities including its server and any login or password details, as reasonably required by CME Digital to provide the Services;
 - 4.1.5. ensure and undertake the accuracy of the Materials, copy, assets and any other content set out in the Deliverables (including drafts) and take full sole responsibility for any errors or omissions thereof;
 - 4.1.6. when requested by CME Digital, review, approve and sign off (including final sign off in writing) in a timely manner any aspect of the Services including final proofs prior to printing or delivery of the Deliverables and take full sole responsibility for any errors or omissions thereof; and
 - 4.1.7. undertake not to use or reproduce any assets or content provided by CME Digital except as permitted by any licence, permission, authorisation, consent or agreement in relation thereto and where the title of such assets or content remains the legal property of CME Digital, the Client shall indemnify CME Digital in full against any use or reproduction of such assets or content in breach of any such licence, permission, authorisation, consent or agreement.
 - 4.2. If CME Digital's performance of any of its obligations under this Agreement is prevented or delayed by any act, omission or failure by the Client to perform any relevant obligation ("**Client Default**"), CME Digital shall
 - 4.2.1. without limiting its other rights or remedies, have the right to suspend performance of the Services until the Client remedies the Client Default and rely on the Client Default to relieve it from the performance of its obligations to the extent it prevents or delays its performance of its obligations under this Agreement;
 - 4.2.2. not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from the Client Default and
 - 4.2.3. the Client shall reimburse CME Digital in a timely manner on written demand for any reasonable costs or losses sustained or incurred by CME Digital arising directly or indirectly from the Client Default.
 - 4.3. CME Digital shall take all reasonable precautions to safeguard any Materials provided by the Client however, CME Digital is not responsible for any loss, destruction, damage or unauthorised use of such Materials including by any of its Related Parties.
 - 4.4. If the Client selects third party providers other than those recommended by CME

Digital, CME Digital shall not in any way be held liable or responsible for such providers prices, quality, performance or delivery of any services. CME Digital shall not be held liable or responsible in any way for the failure of any services provided by a third party to the Client or in relation to a Third-Party Product.

5. Charges

- 5.1. The charges for the Services, including any fees for Third Party Products and costs of any materials or software specific and unique to the Client, shall be set out in the Letter ("**Charges**").
- 5.2. With the prior agreement of the Client, CME Digital shall be entitled to charge disbursements and expenses reasonably incurred in the performance of the Services including, but not limited to, photography, printing, illustrations, travelling expenses and any associated expenses. The Charges are exclusive of all delivery costs and if applicable, any delivery costs and charges shall be paid by the Client, save as otherwise provided for in the Letter, as a disbursement on the final invoice.
- 5.3. In respect of the Services, CME Digital shall invoice the Client in accordance with the payment schedule set out in the Letter, save as set out in clauses 5.8 and 5.9. Details of any special payment terms shall be set out in the Letter.
- 5.4. The Client shall pay each invoice within 14 days of the date of the invoice, unless otherwise specified, in full and cleared funds to a bank account nominated in writing by CME Digital.
- 5.5. All amounts payable under this Agreement are exclusive of value added tax ("**VAT**") which is charged at the prevailing rate.
- 5.6. If the Client fails to pay CME Digital by the due date for payment of an issued invoice ("**Due Date**"), without limiting any other right or remedy, CME Digital
 - 5.6.1. reserves the right to withhold delivery of the Deliverables until such payment is received and
 - 5.6.2. shall have the right to charge interest on the overdue amount at a rate of 8% per annum above the base rate for the time being of Barclays Bank plc accruing daily from the Due Date until the date of actual payment of such amount, whether before or after judgment, compounding monthly. CME Digital reserves the right to claim interest

under the Late Payment of Commercial Debts (Interest) Act 1998.

- 5.7. The Client shall pay all amounts due under the Agreement in full without any deduction or withholding except as required by law and shall not be entitled to assert any credit, set-off or counterclaim against CME Digital to justify withholding payment of any amount in whole or in part.
- 5.8. If this Agreement is terminated or suspended, CME Digital shall be entitled to payment of fees for work carried out to that date and any disbursements incurred, plus VAT (where appropriate). CME Digital's fees in such circumstances shall be calculated by reference to CME Digital's hourly rates at the time of performance of such work.
- 5.9. If the Client does not carry out its obligations under this Agreement within the agreed timetable and CME Digital cannot perform the Services, the Client agrees that CME Digital shall be entitled to immediately invoice the Client in accordance with this clause 5.

6. Ownership

- 6.1. The Client shall acquire ownership of the Deliverables upon receipt by CME Digital of full payment of the Charges and any associated costs as further described in clause 5.

7. Intellectual Property Rights

- 7.1. Save as set out in clause 7.3, CME Digital assigns to the Client all legal Intellectual Property Rights arising in the Deliverables on full payment of the Charges and any associated costs as further described in clause 5. CME Digital shall promptly, at the Client's reasonable request, execute all documents and do all acts as may be necessary, to give effect to this clause 7.1.
- 7.2. CME Digital shall retain and asserts all moral rights in the Deliverables to which it is now or at any time in the future may be entitled to under the Copyright Designs and Patents Act 1988 and/or any similar rights in any other jurisdiction.
- 7.3. If the Deliverables includes any Third Party Products or assets, copy or materials including photographs ("**Property**") to which CME Digital does not own the legal title and Intellectual Property Rights thereof, the Client undertakes that it will comply with clause 4.1.3 and confirms that any Intellectual Property Rights or legal rights in such the Property shall not be assigned or transferred by CME Digital pursuant to this Agreement.

CME Digital does not provide any guarantees in relation to the title of any assets, copy or materials including but not limited to photographs, in the Deliverables.

- 7.4. Any Third-Party Product used in relation to the Services shall be supplied in accordance with the relevant licensor's standard terms.

8. Confidentiality

- 8.1. A party ("**Receiving Party**") shall keep in strict confidence all technical or commercial know-how, specifications, drawings, designs, processes or software code in any form, which are of a confidential nature or ought reasonably be considered confidential given the nature of the information and have been disclosed to the Receiving Party by the other party ("**Disclosing Party**") or its Related Persons except where required by law, regulation, by any governmental, administrative or regulatory authority or by a court or other authority of competent authority. The Receiving Party shall protect such confidential information against unauthorised disclosure by using the same degree of care it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care. This clause 8 shall not apply where confidential information properly enters the public domain or the Receiving Party authorises the Disclosing Party to disclose such information.

- 8.2. The Receiving Party shall restrict disclosure of confidential information referred to in clause 8.1 to such of its Related Persons as need to know it for the purpose of discharging its obligations under the Agreement and shall ensure that prior to disclosure of such confidential information such Related Persons are subject to obligations of confidentiality corresponding to those which bind the Receiving Party.

- 8.3. For the purposes of marketing or publicising CME Digital's services, CME Digital may wish to disclose that it has performed work, including the Services, for the Client and CME Digital reserves the right to identify the Client by its name and indicate the nature of such work or of the Services.

- 8.4. This clause 8 shall terminate two years after the termination or expiry of this Agreement and shall survive termination of this Agreement.

9. Limitation of Liability

- 9.1. Nothing in these Terms shall limit or exclude CME Digital's liability for fraud or fraudulent

misrepresentation subject to which CME Digital

- 9.1.1. shall not be liable to the Client, in contract, tort (including negligence), breach of statutory duty or otherwise, for any loss of profit, anticipated profits, damage to software, damage to or loss of data, goodwill or for any indirect or consequential loss arising under or in connection with this Agreement and
- 9.1.2. its total liability to the Client in respect of all other losses arising under or in connection with this Agreement, in contract, tort (including negligence) or otherwise, shall not exceed eighty (80) per cent of the Charges.

- 9.2. Where there is more than one addressee to the Letter ("**Beneficiary**") CME Digital's limitation on liability agreed under clause 9.1 shall be apportioned by such Beneficiaries amongst them. No Beneficiary shall dispute or challenge the validity, enforceability or operation of this clause 9 on the grounds that no such apportionment has been agreed or that any amount so apportioned is unreasonably low.

- 9.3. Except as set out in this Agreement, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Agreement. This clause shall survive termination of the Agreement.

10. Termination

- 10.1. Without limiting its other rights or remedies, each party may terminate this Agreement immediately by written notice to the other party if

- 10.1.1. the other party commits a material breach of its obligations under this Agreement which (if remediable) is not remedied within 14 days after service of written notice of the breach and requiring it to be remedied; or

- 10.1.2. the other party

- 10.1.2.1. ceases or threatens to cease to carry on, all or substantially the whole of its business;

- 10.1.2.2. becomes insolvent or unable to pay its debts within the meaning of the insolvency legislation applicable to that party or suspends payment of its debts;

- 10.1.2.3. commences negotiations with all or any class of its creditors to reschedule any of its debts or make a proposal or enter into any compromise or arrangement with its creditors;

- 10.1.2.4. is subject to a winding up order or an application or order to appoint an administrator (being a company) or (being an individual) is subject to a bankruptcy petition or order; or
- 10.1.2.5. (being an individual) dies or, by reason of illness or incapacity, is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 10.2. Without limiting its other rights or remedies
- 10.2.1. CME Digital may terminate the Agreement
- 10.2.1.1. by giving the Client one months' written notice or
- 10.2.1.2. with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under this Agreement on the Due Date; and
- 10.2.2. the Client may terminate the Agreement by giving CME Digital not less than one months' written notice, unless otherwise specified in the Letter.
- 10.3. Without limiting its other rights or remedies, CME Digital shall have the right to suspend the supply of Services under the Agreement if
- 10.3.1. the Client fails to pay any amount due under this Agreement on the Due Date or
- 10.3.2. the Client becomes subject to any of the events listed in clause 10.1.2 or CME Digital reasonably believes that the Client is about to become subject to any of them.
- 10.4. On termination of the Agreement
- 10.4.1. the Client shall immediately pay all outstanding unpaid invoices and interest and in respect of Services supplied but not invoiced, CME Digital shall submit an invoice payable immediately by the Client on receipt;
- 10.4.2. the parties shall return all of the other's materials, assets and copy;
- 10.4.3. the accrued rights and remedies of the parties at termination shall not be affected including the right to claim damages in respect of any breach of the Agreement existing at or before the date of termination or expiry; and
- 10.4.4. clauses which expressly or by implication have effect after termination shall continue in full force and effect.
11. General
- 11.1.1. An event arising which is beyond the reasonable control of the affected party including, any industrial dispute
- affecting any it, governmental regulations, fire, flood, disaster, civil riot, war or terrorism ("**Force Majeure Event**").
- 11.1.2. A party who becomes aware of a Force Majeure Event which gives rise or is likely to give rise to, any failure or delay in performing its obligations under this Agreement, such affected party shall forthwith notify the other and such party shall not be liable or responsible for any kind for any loss or damage incurred or suffered by the other or any of its Related Persons as a result thereof. The affected party shall take all reasonable steps to mitigate the effect of the Force Majeure Event.
- 11.1.3. If the Force Majeure Event prevents CME Digital from providing any of the Services for more than ninety (90) days, CME Digital shall, without limiting its other rights or remedies, have the right to terminate this Agreement immediately by giving written notice to the Client.
- 11.2.
- 11.2.1. Neither party may assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the other party.
- 11.2.2. A waiver of any right under this Agreement is only effective if it is in writing and applies only to the party to whom the waiver is addressed and the circumstances for which it is given. Any waiver shall not be deemed to be a waiver of any subsequent breach or default.
- 11.2.3. This Agreement may not be amended, modified or varied except in writing and signed by or on behalf of both parties to this Agreement.
- 11.2.4. Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.
- 11.3. The Client shall not directly or indirectly solicit the employment or engagement of any of CME Digital's Related Persons involved in performing the Services for a period of 12 months after completion of the Services or delivery of the Deliverables whichever is the latter, without prior written consent.
- 11.4.
- 11.4.1. Any notice or communication given

under this Agreement shall be in writing and be delivered to the other party personally, by recorded delivery or commercial courier, to its principal place of business or such address as either may notify the other by the same means. A notice or communication required under this Agreement shall be validly given if sent by e-mail to the specified address within the Letter, except in the case of a notice of termination.

- 11.4.2. Any notice or communication shall be deemed to have been duly received if delivered personally, when left at the address, if delivered by commercial courier, on the date and at the time of signature of the courier's delivery receipt or if sent by recorded delivery, at 10.00 am four business days from the date of posting.
- 11.5. If any court, competent authority or administrative body finds any provision of this Agreement (or part of a provision) invalid, illegal or unenforceable, that provision shall be deleted and the validity and enforceability of the other provisions shall continue in full force and effect and if necessary, be amended as necessary to give effect to the spirit or commercial intention of this Agreement so far as possible.
- 11.6. Nothing in this Agreement is intended to or shall be deemed to constitute a partnership or joint venture of any kind between the parties. No party shall have authority to act as agent for, or to bind the other party in any way.
- 11.7. Each party warrants to the other that it has full power and authority and has obtained all necessary authorisations, consents and approvals to validly and lawfully enter into and perform this Agreement.
- 11.8. CME Digital shall have the Client's authority to process information on its behalf and when processing such data, CME Digital will comply with the relevant provisions of the

Data Protection Act 1998 ("Act") and act only on the Client's instructions. In this clause, information has the meaning given to it in the Act.

- 11.9. Time is of the essence only with regard to all payments to be made by the Client to CME Digital and (ii) all notices to be served by any party to this Agreement.
- 11.10.
- 11.10.1. This Agreement constitutes the entire agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter. The Client acknowledges that, in entering into this Agreement, it has not relied on and has no right or remedy in respect of any statement, promise, representation, undertaking or warranty (whether made negligently or innocently) made or given by or on behalf of CME Digital other than as expressly set out in this Agreement. Nothing in this clause shall limit or exclude any liability for fraud or for fraudulent misrepresentation.
- 11.10.2. In the event of any conflict between the terms of the Letter and the Terms, the former shall prevail.
- 11.10.3. A person who is not a party to this Agreement shall not have any rights under or in connection with it.
- 11.11.
- 11.11.1. This Agreement is governed by and shall be construed in accordance with the exclusive laws of England and Wales.
- 11.11.2. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim including any suit, action or proceeding that arises out of or in connection with this Agreement or its subject matter.