

1. Interpretation

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

Definitions:

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 6.

Conditions: these terms and conditions as amended from time to time in accordance with clause 14.5.

Contract: the contract between Newground 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 Newground.

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

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR and the Data Protection Act 2018 and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

Deliverables: the deliverables set out in the Proposal produced by Newground for the Customer.

Delivery Date: the date specified within the confirmation email provided by Newground to the Customer following the acceptance of the Proposal and agreed Delivery Date.

Force Majeure Event: events, circumstances or causes beyond its reasonable control including but not limited to, Acts of God, flood, drought, earthquake or other natural disaster, terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo or breaking off of diplomatic relations, nuclear, chemical, biological contamination or sonic boom, epidemic or pandemic, any law or any action taken by a Government or a public authority including without limitation imposing an export or import restriction, quota or prohibition, and the collapse of buildings, fire, explosion or accident and in the case of Newground a failure of its suppliers or subcontractors.

Issue Date: means the date that the Proposal is issued.

Intellectual Property Rights: patents, rights to inventions, copyright and [neighbouring and] related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), 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: means the Customer's written acceptance of the Proposal.

Services: the services, including the Deliverables, supplied by Newground to the Customer as set out in the Proposal.

Additional Services: any other services supplied by Newground to the Customer.

Proposal: the description or Proposal of the Services provided by Newground to the Customer in the form annexed to these Conditions.

Loss: actions, awards, charges, claims, compensation, costs, damages, demands, expenses, fees, fines, interest, liabilities, losses, penalties, proceedings and settlements, and Losses shall be construed accordingly.

Newground: means Newground CIC *trading as The Compliance People* (Company Number 02584952) whose registered office is at Prospect House, Wharf Street, Blackburn, BB1 1JD.

Newground Materials: has the meaning set out in clause 4.1(g).

Personal Data: shall have the meaning given to it in the Data Protection Act 2018.

VAT: means value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax.

1.1 Interpretation:

- (a) Unless expressly provided otherwise in this Contract, 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 email but not fax.
- (d) In the event of a conflict between these Conditions and the Proposal, the Proposal shall have precedent.

2. Basis of contract

2.1 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 trade, custom, practice or course of dealing.

2.2 Provided always that Newground may withdraw or otherwise amend the Proposal at its absolute discretion, the Proposal shall remain valid for a period of 14 days from the date specified on it (the **Order Period**). The parties acknowledge that the Proposal is an invitation to treat by Newground. If the

Customer accepts the position set out in the Proposal, it shall be required to raise an Order and confirm via email within the Order Period. If the Customer fails to accept the Proposal by the end of the Order Period, the Proposal shall expire.

- 2.3 The Order constitutes an offer by the Customer to purchase the Services in accordance with these Conditions. The Customer is responsible for ensuring and warrants that the Proposal and the Order are complete and accurate.
- 2.4 Newground may reject the Order at its absolute discretion and for any reason whatsoever and the Order shall only be deemed to be accepted when Newground issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 2.5 Once an Order has been accepted pursuant to clause 2.4 the Contract may only be terminated pursuant to clause 12.

3. Supply of Services

- 3.1 Newground shall supply the Services to the Customer in accordance with the Proposal in all material respects.
- 3.2 Newground warrants to the Customer that the Services will be provided using reasonable care and skill.
- 3.3 Newground shall use all reasonable endeavours to meet any performance dates specified in the Proposal, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

4. Customer's obligations

- 4.1 The Customer shall:
 - (a) Ensure that the terms of the Proposal and any information it provides in the Proposal are complete and accurate.
 - (b) Cooperate with Newground in all matters relating to the Services.
 - (c) Provide Newground, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by Newground.
 - (d) Provide Newground with such information and materials as Newground may reasonably require in Proposal to supply the Services, and ensure that such information is complete and accurate in all material respects.
 - (e) Where appropriate, prepare the Customer's premises for the supply of the Services.
 - (f) 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.

- (g) Keep all materials, equipment, documents and other property of Newground (**Newground Materials**) at the Customer's premises in safe custody at its own risk, maintain Newground Materials in good condition until returned to Newground, and not dispose of or use Newground Materials other than in accordance with Newground's written instructions or authorisation.
- (h) Prior to commencing any Services, the Customer shall inform Newground of any dangers or hazards (whether hidden or not), which Newground is likely to encounter during the performance of the Services.
- (i) Do nothing which might bring Newground into disrepute in anyway or is prejudicial to Newground's interests.

4.2 If Newground'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**):

- (a) Without limiting or affecting any other right or remedy available to it, Newground 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 Newground's performance of any of its obligations.
- (b) Newground shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Newground's failure or delay to perform any of its obligations as set out in this clause 4.2.
- (c) The Customer shall reimburse Newground on written demand for any costs or losses sustained or incurred by Newground arising directly or indirectly from the Customer Default.

5. The Price

5.1 The Price of the Services shall be the quoted price stated in the Proposal (the **Provisional Price**). The Provisional Price shall be exclusive of VAT.

5.2 The Provisional Price is subject to adjustment to take account of:

- (a) Any variation in Newground's costs including but not limited to variations in wages, the costs of materials, exchange rate fluctuations, alterations of duties and other costs since the date of the Proposal including but not limited to:
 - (i) the cancelation or rearrangement of site visits and /or meetings under clause 7; or
 - (ii) amendments to the Proposal under clause 8.
- (b) Any fees or charges incurred for specialist professional advice (with the prior written authority of the Customer).
- (c) Any additional expenses incurred by Newground which were not listed in the Proposal but are directly attributable to the delivery of the Services.
- (d) Any suspension of work as a result of the Customer's instructions or lack of instructions.

- 5.3 Newground accordingly reserves the right to adjust the invoice price (the **Final Price**) by the amount of any increase in such costs after the Provisional Price is quoted. The invoice so adjusted shall be payable as if the price set out therein were the original contract price.

6. Charges and payment

- 6.1 Subject to the provisions of the Proposal, unless otherwise stated by Newground in writing:

- (a) All payments due under the Contract shall be non-refundable and made in full (without any set off or deduction) within 30 days of the date of Newground's invoice.
- (b) Payment shall be made in:
 - (i) electronic fund transfer; or
 - (ii) cleared cheque in pound sterling;
 - (iii) any other method agreed in writing by Newground.

- 6.2 All amounts payable by the Customer under the Contract are exclusive of **VAT**, which will be charged at the applicable rate and itemised separately on the invoice.

- 6.3 If the Customer fails to pay any money due to Newground on time, Newground may immediately cease to deliver or suspend any further Services or any Additional Services supplied to the Customer.

- 6.4 If the Customer in good faith disputes any portion of an invoice, the Customer shall promptly pay all undisputed charges, and shall notify Newground in writing of any such disputed amounts within fifteen (15) days of receipt of the invoice, identifying in reasonable detail its reasons for the dispute and the nature and amount of the dispute. Newground shall in good faith review the amounts in dispute within ten (10) business days after its receipt of such notice.

- 6.5 If Newground determines that:

- (a) Customer was billed in error, where the Customer has:
 - (i) paid the invoice in its entirety, a credit for the amount billed incorrectly will be made to the next invoice; or
 - (ii) not paid the invoice an amended invoice shall be provided.
- (b) the Customer was billed correctly, the disputed sum shall become payable immediately.

- 6.6 Where the Customer disputes this determination, the provision in clause 14.10 (Multi-tier dispute resolution) shall apply.

- 6.7 Without prejudice to any other rights it may have, Newground is entitled to charge interest on the overdue sum at the higher of 4% above the base rate from time to time of NatWest Bank or the rate of interest from time to time prescribed under the Late Payment of Commercial Debts (Interest) Act 1998.

- 6.8 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. Site Visits and Meetings

- 7.1 Any site visit(s) and meeting(s) included in the Proposal shall be carried out at a time agreed between Newground and the Customer in advance.
- 7.2 The Customer shall provide Newground with no less than 30 (thirty) days' notice of the requirement to cancel or rearrange an agreed site visit or meeting. If the Customer fails to provide the required notice, or if Newground is unable to gain access to a premises at which a site visit or meeting has been agreed, then Newground reserves the right to invoice for the full amount as stated in the Proposal.

8. Amendments to the Proposal

- 8.1 Newground reserves the right to amend the Proposal 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 Newground shall notify the Customer in any such event.
- 8.2 The Customer may submit a written request to amend the Proposal to the other party, but no amendment to the Proposal will come into effect until it has been authorised by representatives of both parties in accordance with this clause 8. Newground reserve the right to reject a request to amend the Proposal if Newground reasonably believes that the proposed amendment to the Proposal would:
- (a) materially or adversely affect the risks to the health and safety of any person; or
 - (b) require the Contract to be delivered in a way that infringes any law.
- 8.3 Where Newground rejects a request from the Customer to amend the Proposal it shall inform the Customer within 10 Business Days of receipt of the request. Where a request to amend is rejected by Newground the existing Contract shall apply without amendment.
- 8.4 Where Newground accepts the request to amend the Proposal it will within 10 Business Days produce a revised Proposal (the **Revised Proposal**) for the Customer. During this period:
- (a) Newground reserves the right to suspend work until a Revised Proposal has been accepted (or declined) by the Customer and all estimated completion and/ or Delivery Dates (where applicable) may be altered as a result; or
 - (b) the existing Contract shall apply without amendment
- 8.5 The Customer shall signify its acceptance of the Revised Proposal by email to Newground and the Revised Proposal shall become the Proposal provided that Newground shall be entitled to invoice the Customer for the Services already commenced or completed under the original Proposal.
- 8.6 For the avoidance of doubt, if the Customer does not sign and return the Revised Proposal within 7 Business Days of the date of the Revised Proposal, the Contract shall continue un-amended in accordance with the original Proposal.

9. Intellectual property rights

- 9.1 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 Newground.
- 9.2 Newground grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract 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.
- 9.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 9.2.
- 9.4 The Customer grants Newground a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to Newground for the term of the Contract for the purpose of providing the Services to the Customer.

10. Data protection

- 10.1** Each party shall comply in all respects with the requirements of the Data Protection Legislation insofar as they relate to this Contract and / or any Personal Data in connection with this Contract.

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

- 11.1 Nothing in the Contract shall limit or exclude Newground's liability for:
- (a) Death or personal injury caused by its negligence, or the negligence of its employees, agents, or subcontractors (as applicable);
 - (b) Fraud or misrepresentation; or
 - (c) Any matter in respect of which it would be unlawful for Newground to exclude or restrict liability.
- 11.2 Subject to clause 11.1, Newground shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any:
- (a) Loss of profit;
 - (b) Loss of goodwill;
 - (c) Loss of business;
 - (d) Loss of business opportunity;
 - (e) Loss of anticipated saving;
 - (f) Loss or corruption of data or information; or
 - (g) Any indirect, special or consequential Loss, that arises under or in connection with the Contract; and

- 11.3 Newground's total liability to the Customer 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 Provisional Price.
- 11.4 The Customer shall indemnify Newground, keep Newground indemnified and hold Newground harmless for and against any and all Losses Newground suffers in contract, tort (including negligence), breach of statutory duty or otherwise arising out of or in connection with this Contract and the supply of the Services and any action or omission of the Customer, whether of a direct, indirect, special or consequential nature and in respect of any loss of profits, business, chance, contract, goodwill, reputation and data.
- 11.5 This clause 11 shall survive termination of the Contract.

12. Termination

- 12.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party 30 Business Days written notice.
- 12.2 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:
- (a) 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 7 Business 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 Proposal 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 Contract has been placed in jeopardy.
- 12.3 Without affecting any other right or remedy available to it, Newground may terminate the Contract with immediate effect by giving written notice to the Customer if:
- (a) the Customer fails to pay any amount due under this Contract or any other contract between the parties on the due date for payment; or
 - (b) the Customer makes changes to the Proposal for Services which makes it impractical for Newground to perform; or
 - (c) there is a change of control of the Customer.

- (d) the Customer exhibits behaviours deemed to be inappropriate, and / or unprofessional, as perceived by Newground.
- 12.4 Without affecting any other right or remedy available to it, Newground may suspend the supply of Services under the Contract or any other contract between the Customer and Newground if:
 - (a) the Customer fails to pay any amount due under this Contract or any other contract between the parties on the due date for payment;
 - (b) the Customer becomes subject to any of the events listed in clause 12.2(c) or clause 12.2(d), or Newground reasonably believes that the Customer is about to become subject to any of them; and
 - (c) Newground reasonably believes that the Customer is about to become subject to any of the events listed in clause 12.2(b).

13. Consequences of termination

- 13.1 On termination or expiry of the Contract:
 - (a) the Customer shall immediately pay to Newground all of Newground's outstanding unpaid invoices and interest and, in respect of Services supplied (or where the Client provides notice to terminate this Contract Services Newground might reasonably have been expected to have supplied during any notice period) but for which no invoice has been submitted, Newground shall submit an invoice, which shall be payable by the Customer immediately on receipt; and
 - (b) the Customer shall return all of Newground Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then Newground 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.
- 13.2 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.
- 13.3 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.

14. General

- 14.1 **Force majeure.**
 - (a) Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event.

- (b) Newground shall use all reasonable endeavours to mitigate the effect of a Force Majeure Event on the performance of its obligations.
- (c) If a Force Majeure Event prevents, hinders or delays Newground's performance of its obligations for a continuous period of more than thirty days, the Customer may terminate the Contract immediately by giving written notice to Newground and source the Services from a third party supplier.

14.2 Assignment and other dealings.

- (a) Newground 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.
- (b) 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 Newground.

14.3 Confidentiality.

- (a) Each party undertakes that it shall not disclose to any person any confidential information concerning the business, affairs, customers, clients or Newgrounds of the other party, except as permitted by clause 14.3(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 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 14.3; 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 Contract.

14.4 Entire agreement.

- (a) 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.
- (b) 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 based on any statement in the Contract.

14.5 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).

14.6 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 remedy. 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.

14.7 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 Contract. If any provision or part-provision of this Contract deleted under this clause 14.7 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.

14.8 Notices.

- (a) 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 email to the address specified in the Proposal.
- (b) Any notice or communication 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 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 14.8(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 14.8 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.

14.9 Third party rights.

- (a) 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.

14.10 Multi-Tiered Dispute Resolution Procedure

- (a) If a dispute arises out of or in connection with this Contract or the performance, validity or enforceability of it (**Dispute**) then, except as expressly provided in the Contract, the parties may at their discretion follow the procedure set out in this clause:
 - (i) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, employees at management level (or the nearest equivalent) of the parties shall attempt in good faith to resolve the Dispute; and

- (ii) if the management level employees are for any reason unable to resolve the Dispute within 20 days of service of the Dispute Notice, the Dispute shall be referred to the directors of the parties who shall attempt in good faith to resolve it; and
 - (iii) if the directors of the parties are for any reason unable to resolve the Dispute within 20 days of it being referred to them, the parties will attempt to settle it by mediation.
- (b) The parties shall have recourse to mediation in accordance with the International Chamber of Commerce (ICC) Mediation Rules (Rules), which are deemed to be incorporated by reference into this clause.
- (c) If the parties are for any reason unable to resolve the Dispute by mediation within 30 days the parties may commence court proceedings under clause 14.11 & 14.12 in relation to the whole or part of the Dispute.

14.11 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.

14.12 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.