

Soba: Private Label - Terms and Conditions

1. Definitions:

- 1 **Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
- 2 **Business Hours:** the period from 9.00 am to 5.00 pm on any Business Day.
- 3 **Charges:** the charges payable by the Customer for the supply of the Services in accordance with 5.
- 4 **Commencement Date:** has the meaning given in 2.2.
- 5 **Conditions:** these terms and conditions as amended from time to time in accordance with 10.4.
- 6 **Contract:** the contract between Soba: Private Label and the Customer for the supply of Services in accordance with these Conditions.
- 7 **Customer:** the person or firm who purchases Services from Soba: Private Label.
- 8 **Customer Default:** has the meaning set out in 4.2.
- 9 **Deliverables:** the deliverables set out in the Order produced by Soba: Private Label for the Customer.
- 10 **Intellectual Property Rights:** 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.

- 11 **Minimum Period:** the minimum period of this Contract as set out in the Order.
- 12 **Order:** the Customer's order for Services as set out in Soba: Private Label's letter of engagement.
- 13 **Services:** the services, including the Deliverables, supplied by Soba: Private Label to the Customer as set out in the Order.
- 14 **Soba: Private Label:** Soba: Private Label registered in England and Wales with company number 14881359.

2. Basis of contract

- 2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when Soba: Private Label issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 Any samples, drawings, descriptive matter or advertising issued by Soba: Private Label, and any descriptions or illustrations contained in Soba: Private Label's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2.5 Any quotation given by Soba: Private Label shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

3. Supply of Services

3.1 Soba: Private Label shall supply the Services to the Customer in accordance with the Order in all material respects.

3.2 Soba: Private Label warrants to the Customer that the Services will be provided using reasonable care and skill.

4. Customer's obligations

4.1 The Customer shall:

- (a) ensure that the terms of the Order are complete and accurate;
- (b) co-operate with Soba: Private Label in all matters relating to the Services;
- (c) provide Soba: Private Label with such information and materials as Soba: Private Label may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects; and
- (d) 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;

4.2 If Soba: Private Label'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, Soba: Private Label 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 Soba: Private Label's performance of any of its obligations;

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

5. Charges and payment

5.1 The Charges for the Services are set out in the Order.

5.2 Soba: Private Label shall invoice the Customer as follows:

- (a) 50% of the Charges on the date of the Order; and
- (b) 50% of the Charges on completion of the Services.

5.3 The Customer shall pay each invoice submitted by Soba: Private Label:

- (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 Soba: Private Label, and
- time for payment shall be of the essence of the Contract.
- 5.4 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by Soba: Private Label to the Customer, the Customer shall, on receipt of a valid VAT invoice from Soba: Private Label, pay to Soba: Private Label 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.
- 5.5 If the Customer fails to make a payment due to Soba: Private Label under the Contract by the due date, then, without limiting Soba: Private Label's remedies under 8, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this 5.5 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%.
- 5.6 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 6. Intellectual property rights**
- 6.1 Soba: Private Label shall assign to the Customer ownership of the Intellectual Property Rights in the Deliverables. All rights not expressly granted to the Customer under this Contract are reserved to Soba: Private Label.
- 6.2 The Customer grants Soba: Private Label a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to Soba: Private Label for the term of the Contract for the purpose of providing the Services to the Customer.
- 7. Limitation of liability**
- 7.1 References to liability in this 7 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 7.2 Nothing in this 7 shall limit the Customer's payment obligations under the Contract.
- 7.3 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to 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).
- 7.4 Subject to 7.3 (Liabilities which cannot legally be limited), Soba: Private Label's total liability to the Customer shall not exceed the sum of the monies received under the Order.
- 7.5 Subject to 7.2 (No limitation of customer's payment obligations) and 7.3 (Liabilities which cannot legally be limited), this 7.5 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.
- 7.6 Soba: Private Label has given commitments as to compliance of the Services with relevant specifications in 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 Contract.
- 7.7 Unless the Customer notifies Soba: Private Label that it intends to make a claim in respect of an event within the notice period, Soba: Private Label shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire 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.
- 7.8 This 7 shall survive termination of the Contract.
- 8. Termination**
- 8.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party two months' written notice provided such notice shall not expire prior the end of the Minimum Period.
- 8.2 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 14 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 Contract has been placed in jeopardy.
- 8.3 Without affecting any other right or remedy available to it, Soba: Private Label may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

- 8.4 Without affecting any other right or remedy available to it, Soba: Private Label may suspend the supply of Services under the Contract or any other contract between the Customer and Soba: Private Label if:
- (a) the Customer fails to pay any amount due under the Contract on the due date for payment;
 - (b) the Customer becomes subject to any of the events listed in 8.2(c) or 8.2(d), or Soba: Private Label reasonably believes that the Customer is about to become subject to any of them; and
 - (c) Soba: Private Label reasonably believes that the Customer is about to become subject to any of the events listed in 8.2(b).

9. Consequences of termination

- 9.1 On termination of the Contract the Customer shall immediately pay to Soba: Private Label all of Soba: Private Label's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Soba: Private Label shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 9.2 Termination of the Contract shall not affect any rights, remedies, obligations or 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.
- 9.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

10. Miscellaneous

- 10.1 Soba: Private Label 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.
- 10.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Soba: Private Label.
- ### **10.3 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.
- 10.4 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).
- 10.5 A waiver of any right or remedy is only effective if given in writing and shall not

be deemed a waiver of any subsequent right or remedy

- 10.6 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.
- 10.7 Any notice shall be deemed to have been received:
- (a) if delivered by hand, at the time the notice is left at the proper address;
 - (b) 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
 - (c) 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
- 10.8 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.
- 10.9** 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.
- 10.10** Each party irrevocably agrees that the courts of England 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.