

## Terms & Conditions B2B

These terms and conditions (“Terms”) and the order (together the “Agreement”) set out the basis upon which Simdure Limited (a company registered in England and Wales with number 13049146) whose registered office is at 178 Shoreham St, Sheffield City Centre, Sheffield, S1 4SQ (“we” or “us” or “our”) will provide the services and deliverables (if any) set out in the [Order] (“Services”) to the client who is purchasing the Services from us as identified in the [order] (“you”).

YOUR ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 8 (LIMITATION OF LIABILITY)

### 1. INTERPRETATION

- 1.1. 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.
- 1.2. Unless expressly provided otherwise in the Agreement, a reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time.
- 1.3. [A reference to writing or written includes email.]

### .BASIS OF CONTRACT

- 1.1. Your order for Services as set out in [your purchase order form **OR** your written acceptance of our proposal] constitutes an offer by you to purchase Services in accordance with these Terms. Any quotation or proposal given by us shall not constitute an offer, and is only valid for a period of [20] calendar days from its date of issue.
- 1.2. The [Order] shall only be deemed to be accepted by us when we issue [written acceptance of the Order] at which point and on which date the Agreement shall come into existence (“Commencement Date”).
- 1.3. Any samples, drawings, descriptive matter or advertising issued by us, and any descriptions or illustrations contained in our website content or social media posts, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Agreement or have any contractual force.
- 1.4. These Terms apply to the Agreement to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

### 2. PROVISION OF SERVICES

- 2.1. We will provide the Services as set out in Appendix A in all material respects.

- 2.2 We will endeavour to deliver the Services to you within 28 days of the Order or at the frequency outlined in Appendix A (provided any advance invoice has been settled if that has been agreed), but any such dates shall be estimates only and time shall not be of the essence for performance of the Services. We will not be held responsible for any delay caused by anything outside our control.
- 2.3. We reserve the right to amend the Services 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 we will notify you in any such event.
- 2.4. If the performance of any of our obligations under the Agreement is prevented or delayed by any act or omission by you or your failure to perform any relevant obligation ("Client Default"):
- 2.4.1. without limiting or affecting any other right or remedy available to us, we shall have the right to suspend performance of the Services until you remedy the Client Default, and to rely on the Client Default to relieve us from the performance of any of our obligations in each case to the extent the Client Default prevents or delays our performance of any of our obligations;
- 2.4.2. We will not be liable for any costs or losses sustained or incurred by you arising directly or indirectly from our failure or delay to perform any of our obligations as set out in this Clause 2.4; and
- 2.4.3. You will reimburse us on written demand for any costs or losses sustained or incurred by us arising directly or indirectly from the Client Default.
- 2.5. If you cancel the Order, our fees will still be payable because of our production costs, unless we agree otherwise in writing and production has not commenced. Cancellation must be received in writing to 178 Shoreham St, Sheffield City Centre, Sheffield, S1 4SQ not less than 21 days before the despatch of the next monthly module.

### **3. YOUR OBLIGATIONS AND RESPONSIBILITIES**

- 3.1. You will:
- 3.1.1. ensure that the terms of the [Order] are complete and accurate;
- 3.1.2. co-operate with us in all matters relating to the Services;
- 3.1.3. provide us, our employees, agents, consultants and subcontractors, with (or procure for us, our employees, agents, consultants and subcontractors) access to your premises, office accommodation and any other facilities at which the Services are to be provided, as reasonably required by us;

- 3.1.4. provide us with such information and materials as we may reasonably require in order to provide the Services, and ensure that such information and materials are complete and accurate in all material respects;
    - 3.1.5. 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; and
    - 3.1.6. comply with any additional obligations as set out in the [Order].
  - 3.2. You are responsible for reviewing the Services and notifying us immediately if any Services have not met your expectations. You are deemed to have accepted the Services once they are being used by you or if you have not notified us of any failings, errors, or omissions within 5 working days of receipt.
  - 3.3. In the event that any Services do not meet your expectations and you notify us within the timescales set out above, we will endeavour to rectify these issues at no extra cost.
  - 3.4. The Services are intended for marketing and business development purposes only. They are not designed as bespoke advice or training or for your own decision-making purposes. The Services should be regarded as secondary to your business's policies and to any legislation. It is your responsibility to ensure that the Services are appropriate and adequate for your intended use and that they meet any legal or regulatory requirements applicable to you and your business.
  - 3.5. Occasionally video related Services will have been recorded live at events or seminars. For this reason, the sound or picture quality may not always be as good as for a pre-recorded video and you acknowledge and accept these quality limitations.
  - 3.6. Multimedia material will be checked with up-to-date anti-virus software where appropriate. However, Services can never be guaranteed to be 100% free of viral and other agents. You are strongly advised to virus check any multimedia material before running them.
  - 3.7. You are responsible for ensuring that your hardware and equipment is adequate for using the Services and no refund will be made if this is not the case.

#### **4. RIGHTS IN THE SERVICE/GOODS**

- 4.1. "Rights" in this Agreement means all intellectual property rights including copyright, rights as author, rights as publisher, rights to royalties, rights in get-up, rights in computer software, database rights, design rights, registered designs, trade marks, patents, rights to use, and protect the confidentiality of confidential information (including know-how and trade secrets) and ideas and moral rights and all other rights of a similar nature in any part of the world which subsist or will subsist now or in the future whether those rights are registered or not.
- 4.2. All Rights in or related to or arising out of or in connection with the Services (other than Rights in any materials provided by you) belong and shall belong to Simdure Ltd.

- 4.3. Subject to receiving payment from you of all fees due, we grant to you, or shall procure the direct grant to you of, a royalty free, non-exclusive, perpetual and irrevocable licence to use the Services and view the contents/materials of any deliverables comprised in the Services for use in your business.
- 4.4. You grant us a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by you to us for the term of the Agreement for the purpose of providing the Services to you. You shall indemnify us against all damages, losses and expenses arising as a result of any action or claim that any materials provided by you infringe the rights of a third party or arising as a result of any action or claim that any materials provided by you constitute inappropriate content. For these purposes, inappropriate content includes infringement of applicable laws, regulations or third party Rights (including material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred or acts of terrorism, menacing, blasphemous or in breach of any third party Rights).
- 4.5. You cannot sub-license, assign or otherwise transfer the rights granted in Clause 4.3.
- 4.6. Any resale, broadcast, transmission, public performance, reproduction, copying, editing, hiring or lending of the Services by you is prohibited unless expressly authorised by us in writing (and any authority granted at our discretion may be subject to conditions and/or payment of additional fees to us).

## **5. FEES AND DELIVERY**

- 5.1. The fees for the Services are as set out in Appendix A. The fees will also (unless stated otherwise) include any additional delivery and production costs.
- 5.2. In the event that you receive funding or a discount from any funding body or organisation to assist you to pay our fees, you still remain liable for the full amount of the fees. In the event that we do not receive the full amount due from the organisation for any reason within 30 days at the latest from the date of our invoice, we will refund to you any part of this balance paid to us at a later date by the funding body or organisation if you have already paid us for it.
- 5.3. We reserve the right to increase the fees on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index in the preceding 12-month period.
- 5.4. All sums payable under this Agreement:
- 5.4.1. are exclusive of VAT, which where applicable (which will usually be the case) will be payable by you in addition and at the same time as payment is due for the Services; and
- 5.4.2. must be paid in full (without any set-off, counterclaim, deduction or withholding other than any deduction or withholding of tax as required by law) and in cleared funds to the bank account nominated in writing by us.

## 6. PAYMENT FOR SERVICE/GOODS

- 6.1. You must pay the fees for Services in advance of the date for commencement of the Services as set out in Appendix A ("Services Start Date") unless we agree otherwise in writing. We will send to you a receipt or invoice for your records with the Service or within a reasonable timescale (with a valid VAT invoice where applicable).
- 6.2. Where we agree to payment otherwise than in advance, we will invoice [on completion of the Services **OR** [weekly/monthly] in arrear] and you must pay each invoice within [30] days of the date of the invoice.
- 6.3. Time for payment shall be of the essence of the Agreement.
- 6.4. If any amount owed to us is not paid when due, then, without limiting any of our other rights or remedies:
  - 6.4.1. we have the right to refrain from providing or continuing to provide any Services until you have paid all amounts due; and
  - 6.4.2. You 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 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%.

## 7. DATA PROTECTION

You and we shall each comply with our respective data protection obligations.

**LIMITATION OF LIABILITY:** YOUR ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

- 7.1. References to liability in this clause 8 include every kind of liability arising under or in connection with the Agreement including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 7.2. Nothing in this Clause 8 shall limit your payment obligations under the Agreement.
- 7.3. Nothing in the Agreement limits any liability which cannot legally be limited, including liability for:
  - 7.3.1. death or personal injury caused by negligence;
  - 7.3.2. fraud or fraudulent misrepresentation; and

7.3.3. 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 clause 8.3 (Liabilities which cannot legally be limited), our total liability to you for all loss or damage shall not exceed the total charges paid by you to us in the contract year in which the breaches occurred. For these purposes, a contract year means a 12-month period commencing with the date of this Agreement or any anniversary of it.

7.5. Subject clause 8.2 (No limitation of your payment obligations) and Clause 8.3 (Liabilities which cannot legally be limited), we shall not be liable to you for any loss of use or corruption of software, data or information, loss of profit, anticipated profits, revenues, loss of sales or business, anticipated savings, goodwill or business opportunity, or for any indirect or consequential loss or damage.

7.6. This Agreement sets out the full extent of our obligations and liabilities in respect of the supply of the Services. All conditions, warranties or other terms concerning the Services which might otherwise be implied into this Agreement or any collateral contract (whether by statute or otherwise) are hereby expressly excluded.

7.7. This Clause 8 shall survive termination of the Agreement.

## **8. TERMINATION**

8.1. Without affecting any other available right or remedy, either we or you may terminate the Agreement with immediate effect by giving written notice to the other if:

8.1.1. the other party commits a material breach of any term of the Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so;

8.1.2. 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;

8.1.3. 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

8.1.4. the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Agreement has been placed in jeopardy.

8.2. Without affecting any other available right or remedy available, we may suspend the supply of Services under the Agreement or any other contract between you and us if:

8.2.1. you fail to pay any amount due under the Agreement on the due date for payment;

8.2.2. you become subject to any of the events listed in clause 9.1.2, 9.1.3 or 9.1.4, or we reasonably believe that you are about to become subject to any of them.

8.3. On termination or expiry of the Agreement:

8.3.1. You will immediately pay to us all of our outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, we shall submit an invoice, which shall be payable by you immediately on receipt;

8.3.2. You will return all of our materials and any deliverables which have not been fully paid for. If you fail to do so, then we may enter your premises and take possession of them. Until they have been returned, you will be solely responsible for their safe keeping and will not use them for any purpose not connected with the Agreement.

8.3.3. Termination or expiry of the Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

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

## **9. MISCELLANEOUS**

9.1. Confidentiality:

9.1.1. You and we each undertake to not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 10.1.2.

9.1.2. Each party may disclose the other party's confidential information:

- 9.1.2.1. to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 10.1; and
    - 9.1.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
  - 9.1.3. Neither you or we shall use the other party's confidential information for any purpose other than to perform its obligations under the Agreement.
- 9.2. Unless otherwise expressly stated nobody other than we and you have any rights to enforce any term of this Agreement under the Contracts (rights of Third Parties) Act 1999 or otherwise.
- 9.3. We may, by written notice to you, assign or transfer this Agreement and our obligations under this Agreement to any firm or any legal entity that may be the successor in the title to our business, provided that the Services continue to be performed in accordance with this Agreement.
- 9.4. Neither you or we shall be in breach of the Agreement nor liable for delay in performing, or failure to perform, any of our obligations under the Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- 9.5. This Agreement sets out the entire agreement between us in relation to the Services and supersedes any previous agreements between us. All warranties, representations, collateral contracts or assurances not contained in this Agreement are excluded to the fullest extent permissible by law except that nothing shall limit or exclude liability for fraud.
- 9.6. No variation of this Agreement or to the scope of the Services shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 9.7. A waiver of any right or remedy under the Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 9.8. If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement. If any provision or part-provision of this Agreement deleted under this clause, 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.



9.9. This Agreement, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with English Law and shall be subject to the exclusive jurisdiction of the English Courts.