

Conditions



1 Definitions and interpretation

1.1 In these Conditions the following definitions apply:

Business Day	means a day other than a Saturday, Sunday or bank or public holiday when banks generally are open for non-automated business in England;
Client	means the named party in the Contract which has agreed to purchase the Services from VIPA Digital and whose details are set out in the Confirmation;
Conditions	means VIPA Digital's terms and conditions of supply set out in this document;
Confidential Information	means any commercial, financial or technical information, information relating to the Services, plans, know-how or trade secrets which is obviously confidential in nature or has been identified as confidential, or which is developed by a party in performing its obligations under, or otherwise pursuant to the Contract;
Confirmation	means the confirmation for the Services from VIPA Digital which references these Conditions;
Contract	means the agreement between VIPA Digital and the Client for the supply and purchase of Services incorporating these Conditions, the Proposal and the Confirmation and including all their respective schedules, attachments, annexures and statements of work;
Data Protection Laws	means, as binding on either party: the General Data Protection Regulation, Regulation (EU) 2016/679 as retained under the European Union (Withdrawal) Act 2018 and amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019; the Data Protection Act 2018, any laws which implement any such laws; and any laws that replace, extend, re-enact, consolidate or amend any of the foregoing;
Force Majeure	means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations under the Contract including an act of God, fire, flood, lightning, earthquake or other natural disaster, war, riot or civil unrest, pandemic or epidemic, interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service, or material required for performance of the Contract, strike, lockout or boycott or other industrial action;
Intellectual Property Rights	means copyright, patents, know-how, trade secrets, trademarks, trade names, design rights, rights in get-up, rights in goodwill, rights in software, rights in Confidential Information, rights to invention, rights to sue for passing off, domain names and all other intellectual property rights and similar rights and, in each case: (a) whether registered or not; (b) including any applications to protect or register such rights; (c) including all renewals and extensions of such rights or applications; (d) whether vested, contingent or future; (e) to which the relevant party is or may be entitled, and (f) in whichever part of the world existing;
Fee	has the meaning set out in clause 3;
Materials	means all drawings, designs, diagrams, plans, specifications, models, calculations, technical data, reports and other documents and recorded information, in any format and of any nature, which have been or will be written, prepared and/or produced by or on behalf of VIPA Digital as part of the Services;
Proposal	means the proposal document for the Services produced by the Client and forming part of the Contract;
Restricted Person	means any person employed or engaged by either party at any time during the term of the Contract who has or had material contact or dealings with the other party;

Services	means the Services set out in the Proposal and to be performed by VIPA Digital for the Client in accordance with the Contract;
Supplier Personnel	means all employees, officers, staff, other workers, agents, consultants and sub-contractors of VIPA Digital who are engaged in the performance of the Services from time to time;
VAT	means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the sale of the Services; and
VIPA Digital	means VIPA Digital Limited, a company incorporated and registered in England and Wales with company number 11192992, whose registered address is at 20-22 Wenlock Road, London, England, N1 7GU.

1.2 In these Conditions, unless the context requires otherwise:

- 1.2.1 a reference to the Contract includes these Conditions, the Confirmation, and their respective schedules, appendices and annexes (if any);
- 1.2.2 any clause, schedule or other headings in these Conditions is included for convenience only and shall have no effect on the interpretation of the Conditions;
- 1.2.3 a reference to a 'party' includes that party's personal representatives, successors and permitted assigns; a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns; and a reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established;
- 1.2.4 a reference to a gender includes each other gender and words in the singular include the plural and vice versa;
- 1.2.5 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
- 1.2.6 subject to clause 16, a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form, including email;
- 1.2.7 without prejudice to the provisions of clause 10, a reference to legislation is a reference to that legislation as in force at the date of the Contract;
- 1.2.8 without prejudice to the provisions of clause 10, a reference to legislation includes all subordinate legislation made as at the date of the Contract under that legislation; and
- 1.2.9 a reference to any English action, remedy, method of judicial proceeding, court, official, legal document, legal status, legal doctrine, legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English equivalent in that jurisdiction.

2 Application of these Conditions

2.1 These Conditions apply to and form part of the Contract between VIPA Digital and the Client. They supersede any previously issued terms and conditions of purchase or supply.

2.2 In the event of any conflict between these Conditions and the Proposal, the Proposal shall prevail.

3 Fee

3.1 The fee for the Services shall be as set out in the Proposal or, where no such provision is set out, shall be calculated in accordance with VIPA Digital's scale of charges in force from time to time (the **Fee**).

3.2 The Fees are exclusive of:

- 3.2.1 international travel outside the UK, which shall be charged in addition at cost,

- 3.2.2 any item not stated as included within the Proposal, and
- 3.2.3 VAT (or equivalent sales tax).

- 3.3 The Client shall pay any applicable VAT to VIPA Digital on receipt of a valid VAT invoice.
- 3.4 If the Client requires or requests VIPA Digital to undertake additional or amended services to those set out in the Proposal, the Fee shall be increased by the amount agreed between the parties in respect of those additional or amended services (or, in the absence of such agreement, the increase shall be calculated in accordance with VIPA Digital's scale of charges in force from time to time).

4 Payment

- 4.1 VIPA Digital shall invoice the Client for the Services in accordance with the instalments set out in the Proposal.
- 4.2 The Client shall pay all invoices in full without deduction or set-off, in cleared funds within 30 days of the date of each invoice to the bank account nominated by VIPA Digital.
- 4.3 Time of payment is of the essence. Where sums due under these Conditions are not paid in full by the due date VIPA Digital may, without limiting its other rights, suspend provision of the Services, and charge interest on such sums at 6% a year above the base rate of National Westminster Bank plc from time to time in force, and interest shall accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment.

5 Performance

- 5.1 VIPA Digital shall perform the Services in accordance with the Proposal using the standard of skill and care reasonably to be expected of a qualified and competent consultant experienced in carrying out services of similar scope and scale as the Services.
- 5.2 VIPA Digital shall use its reasonable endeavours to meet estimated dates for performance, but any such dates are indicative only. Without limitation, VIPA Digital shall not be liable for any delay in or failure of performance caused by the Client or other person for whom the Client is responsible or by Force Majeure.
- 5.3 VIPA Digital shall appoint the people named in the Proposal to direct and control the overall performance of the Services. Providing such people remain employed or under contract with VIPA Digital and are not absent from work through illness or sickness, VIPA Digital shall use those people in connection with the performance of the Services.
- 5.4 As the Client's sole and exclusive remedy, VIPA Digital shall, at its option, remedy, re-perform or refund the Services that do not comply with clause 5, provided that:
 - 5.4.1 the Client serves a written notice on VIPA Digital not later than five Business Days from performance in the case of defects discoverable by a physical inspection, or within a reasonable period of time from performance in the case of latent defects; and
 - 5.4.2 such notice specifies that some or all of the Services do not comply with clause 5 and identifies in sufficient detail the nature and extent of the defects; and
 - 5.4.3 the Client gives VIPA Digital a reasonable opportunity to examine the claim of the defective Services.
- 5.5 Except as set out in this clause VIPA Digital gives no warranties and makes no representations in relation to the Services.

6 Insurance

- 6.1 VIPA Digital shall have in place the following contracts of insurance with reputable insurers incorporated in the United Kingdom:
 - 6.1.1 professional indemnity insurance with a limit of indemnity of not less than £1,000,000 for each and every claim;
 - 6.1.2 public liability insurance with a limit of indemnity of not less than £1,000,000 for each and every claim
- and VIPA Digital shall maintain such insurances for until completion of the Services (or earlier termination of the Contract) and for a further period of 3 year so long as such insurances are available to VIPA Digital on commercially reasonable terms and at commercially reasonable rates.

6.2 On request, VIPA Digital shall supply, so far as is reasonable, evidence of the maintenance of the insurance and all of its terms from time to time applicable.

7 Limitation of liability

7.1 The extent of the parties' liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 7.

7.2 Subject to clause 7.4, VIPA Digital's total liability shall not exceed the Fee payable by the Client in respect of the Services.

7.3 Subject to clause 7.4, VIPA Digital shall not be liable for consequential, indirect or special losses nor (i) loss of profit (ii) loss or corruption of data (iii) loss of use (iv) loss of production (v) loss of contract (vi) loss of opportunity (vii) loss of savings, discount or rebate (whether actual or anticipated) (viii) harm to reputation or loss of goodwill.

7.4 Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following (i) death or personal injury caused by negligence (ii) fraud or fraudulent misrepresentation (iii) any other losses which cannot be excluded or limited by law.

8 Confidentiality and announcements

8.1 The parties shall each keep confidential all Confidential Information of the other and shall only use the same as required to perform the Contract. The provisions of this clause shall not apply to:

8.1.1 any information which was in the public domain at the date of the Contract;

8.1.2 any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;

8.1.3 any information which is independently developed by one party without using information supplied by the other; or

8.1.4 any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.

8.2 This clause shall remain in force for a period of three years from the date of the Contract.

9 Intellectual Property

9.1 VIPA Digital grants and agrees to grant to the Client an irrevocable, royalty-free and non-exclusive licence in all applicable Intellectual Property Rights to copy and use the Materials, to reproduce the contents of them and to reproduce the designs, works and inventions contained in them for all purposes relating to or connected with the Services.

9.2 VIPA Digital will not be liable for any use of the Materials for any purpose other than that for which they were produced.

9.3 The copyright in the Materials will remain vested in VIPA Digital. Insofar as ownership of the copyright and/or any other Intellectual Property Right in any Materials prepared or provided by VIPA Digital in connection with the Services is vested in any person other than the VIPA Digital (including, without limitation, any sub-consultant), VIPA Digital will procure for the Client the benefit of such a licence as is referred to in clause 9.1 for the purposes referred to in that clause.

10 Processing of personal data

10.1 The parties agree that they shall comply with their respective obligations pursuant to the Data Protection Laws.

10.2 The Client shall notify VIPA Digital if the Services will require VIPA Digital to undertake the role of a 'data processor' or shall otherwise involve 'personal data' (as such terms are defined in the Data Protection Laws) on behalf of the Client, and the parties shall thereafter enter into a separate data processing agreement and shall act reasonably in respect of agreeing its terms.

11 Anti-bribery

- 11.1 For the purposes of this clause 11 the expressions 'adequate procedures' and 'associated with' shall be construed in accordance with the Bribery Act 2010 and legislation or guidance published under it.
- 11.2 Each party shall comply with the Bribery Act 2010 and all applicable laws in connection with bribery or anti-corruption including ensuring that it has in place adequate procedures to prevent bribery and use all reasonable endeavours to ensure that:
- 11.2.1 all of that party's personnel;
 - 11.2.2 all others associated with that party; and
 - 11.2.3 all of that party's sub-contractors;
- involved in performing the Contract so comply.
- 11.3 Without limitation to clause 11.2, neither party shall make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment, or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere, and shall implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.
- 11.4 Each party shall immediately notify the other as soon as it becomes aware of a breach or possible breach by it of any of the requirements in this clause 11. Any breach of this clause 11 by either party shall be deemed a material breach of the Contract by it that is not remediable and shall entitle the other party to immediately terminate the Contract by notice under clause 15.1.1.

12 Anti-slavery

- 12.1 Each party undertakes, warrants and represents to the other that:
- 12.1.1 neither it nor any of its officers, employees, agents or subcontractors has:
 - (a) committed an offence under the Modern Slavery Act 2015; or
 - (b) been notified that it is subject to an investigation relating to such an alleged offence or prosecution under the Modern Slavery Act 2015; or
 - (c) is aware of any circumstances within its supply chain that could give rise to an investigation relating to such an alleged offence or prosecution under the Modern Slavery Act 2015;
 - 12.1.2 it shall comply with the Modern Slavery Act 2015; and
 - 12.1.3 it has implemented due diligence procedures to ensure compliance with the Modern Slavery Act 2015 in its business and supply chain, and those of its officers, employees, agents or subcontractors, which will be made available to the other party on request at any time throughout the Contract.
- 12.2 Each party shall notify the other immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have breached or potentially breached any of the obligations under clause 12.1. Such notice to set out full details of the circumstances concerning the breach or potential breach of its obligations. Any breach of this clause 12 by either party shall be deemed a material breach of the Contract by it that is not remediable and shall entitle the other party to immediately terminate the Contract by notice under clause 15.1.1.

13 Non-solicitation

- 13.1 In order to protect the legitimate business interests of each party, during the term of this Contract and for a period of twelve months after its completion or earlier termination, neither party shall, either directly or indirectly, by or through itself, its affiliate, its agent or otherwise, or in conjunction with its affiliate, its agent or otherwise, whether for its own benefit or for the benefit of any other person:
- 13.1.1 solicit, entice or induce, or endeavour to solicit, entice or induce, any Restricted Person of the other party with a view to employing or engaging the Restricted Person, or
 - 13.1.2 employ or engage, or offer to employ or engage a Restricted Person of the other party
- without the prior written consent of the other party and the payment of any charge agreed as a condition of such consent.

13.2 In the event of a breach of clause 13.1, where no consent in writing has been given, the party in breach shall pay to the other party by way of liquidated damages an amount equivalent to twice the annual remuneration (including all bonuses, allowances, commissions and benefits in kind) of the relevant Restricted Person. The provisions in this clause 13.2 shall be without prejudice to a party's ability to seek damages or claim injunctive relief.

14 Force majeure

Neither party shall have any liability under or be deemed to be in breach of the Contract for any delays or failures in performance of the Contract which result from Force Majeure. The party subject to the Force Majeure event shall promptly notify the other party in writing when such the event causes a delay or failure in performance and when it ceases to do so. If the Force Majeure event continues to affect that party's performance for a continuous period of more than 90 days, either party may terminate the Contract by written notice to the other party.

15 Termination

15.1 Either party may terminate the Contract at any time by giving notice in writing to the Client if:

- 15.1.1 the other party commits a material breach of Contract and such breach is not remediable;
- 15.1.2 the other party commits a material breach of the Contract which is capable of being remedied and such breach is not remedied within 30 days of receiving written notice of such breach; or
- 15.1.3 the other party has failed to pay any amount due under the Contract on the due date and such amount remains unpaid within 14 days after the terminating party has given notification that the payment is overdue.

15.2 Either party may terminate the Contract at any time by giving notice in writing to the other party if that other party (i) stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so (ii) is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the terminating party reasonably believes that to be the case (iii) becomes the subject of a company voluntary arrangement under the Insolvency Act 1986 (iv) becomes subject to a moratorium under Part A1 of the Insolvency Act 1986 (v) becomes subject to a restructuring plan under Part 26A of the Companies Act 2006 (vi) becomes subject to a scheme of arrangement under Part 26 of the Companies Act 2006 (vii) has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income (viii) has a resolution passed for its winding up (ix) has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it (x) suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business (xi) is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within seven days of that procedure being commenced (xii) has a freezing order made against it; or is subject to any events or circumstances analogous to those specified in this clause in any jurisdiction.

15.3 Termination or expiry of the Contract shall not affect any accrued rights and liabilities of either party at any time up to the date of termination.

16 Notices

16.1 Any notice given by a party under these Conditions shall be in writing and in English, be signed by, or on behalf of, the party giving it (except for notices sent by email), and be sent to the relevant party at the address set out in the Contract.

16.2 Notices may be given, and are deemed received:

- 16.2.1 by hand: on receipt of a signature at the time of delivery;
- 16.2.2 by Royal Mail Recorded Signed For post: at 9.00 am on the second Business Day after posting;
- 16.2.3 by Royal Mail International Tracked & Signed OR Royal Mail International Signed post: at 9.00 am on the fourth Business Day after posting;
- 16.2.4 by fax: on receipt of a transmission report from the correct number confirming uninterrupted and error-free transmission; and
- 16.2.5 by email provided confirmation is sent by first class post: on receipt of a delivery OR read receipt email from the correct address.

16.3 Any change to the contact details of a party as set out in the Contract shall be notified to the other party in accordance with clause 16.1 and shall be effective:

- 16.3.1 on the date specified in the notice as being the date of such change; or

16.3.2 if no date is so specified, 5 Business Days after the notice is deemed to be received.

16.4 All references to time are to the local time at the place of deemed receipt.

16.5 This clause does not apply to notices given in legal proceedings or arbitration.

17 Miscellaneous

17.1 The parties agree that the Contract constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.

17.2 Each party acknowledges that it has not entered into the Contract in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract.

17.3 No terms or conditions endorsed on, delivered with, or contained in the Client's purchase conditions, order, confirmation of order, specification or other document shall form part of the Contract.

17.4 No variation of these Conditions or to the Contract shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of each of VIPA Digital and the Client respectively.

17.5 Save for the Proposal itself, marketing and other promotional material relating to the Services are illustrative only and do not form part of the Contract.

17.6 Nothing in these Conditions purports to limit or exclude any liability for fraud.

17.7 No variation of the Contract shall be valid or effective unless it is in writing, refers to the Contract and these Conditions and is duly signed or executed by, or on behalf of, each party.

17.8 The parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.

17.9 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.

17.10 A person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.

17.11 Neither party shall commence any legal action against the other under this agreement after 6 years from the date of completion of the Services (or earlier termination of the Contract).

18 Governing law and jurisdiction

18.1 The Contract and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.

18.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Contract, its subject matter or formation (including non-contractual disputes or claims). Notwithstanding the foregoing, either party may enforce a judgment, order, award, injunction or similar in any jurisdiction.