

KISS COMPANIES: TERMS AND CONDITIONS OF SUPPLY

NOTE: Your attention is particularly drawn to the contents of clause 13.

1 INTERPRETATION

1.1 The following definitions are used in these Conditions:

Business Day	a day (except a Saturday or Sunday) when banks
Charges	the charges payable by KISS for the supply of the Services in accordance with clause 5;
Commencement Date	has the meaning set out in clause 2.2;
Conditions	these terms and conditions as amended from time to time in accordance with clause 15.7;
Contract	the contract between KISS and the Supplier for the supply of Services, which shall incorporate the Purchase Order and these Conditions;
Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures	as defined in the Data Protection Laws;
Data Protection Laws	means all applicable data protection and privacy legislation in force from time to time in the UK including without limitation the UK GDPR; the Data Protection Act 2018 (and regulations made thereunder) (DPA 2018); the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended; and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications);

Deliverables	all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications, mobile applications and reports (including drafts).
Force Majeure Event	an event beyond the reasonable control of the relevant party including industrial disputes, failure of a utility service or transport network, computer failure, failure of a communications network, war, riot, civil commotion, malicious damage, compliance with any law, regulation or, accident, breakdown of plant or machinery, act of God, fire, flood, or storm but excluding default of any suppliers or subcontractors or other persons for whom the relevant party is responsible and which does not otherwise fall within the terms above;
Intellectual Property Rights	all patents, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in goodwill or to sue for passing off, rights in designs, moral rights, rights in confidential information and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;
KISS	the entity to whom Services are supplied, being KISS Communications Limited, KISS PR Limited, KISS Digital Limited or any affiliated company as the case may be, as set out in the Purchase Order;
Kiss Materials	all materials, equipment, documents and other property which is supplied to the Supplier by KISS or its customer or KISS's other suppliers, including proposals, quotes, estimates, designs, artwork, reports, specifications, data, software (on any media) and training materials;
Purchase Order	the Purchase Order submitted by KISS to the Supplier relating to the Services;

Restricted Customer	any firm, company or person who, during the Contract or, if the Contract has been terminated, during the period of twelve months before termination, was a customer or prospective customer of or in the habit of dealing with KISS or any of its affiliated companies and with whom the Supplier had contact or about whom it became aware or informed in the course of the Contract;
Services	the services, including without limitation any Deliverables, to be supplied to KISS as set out in the Purchase Order;
Software	any Software which forms part of the Deliverables;
Supplier	the person or firm from whom KISS purchases Services;
UK GDPR	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

1.2 Reference in these Conditions to KISS's "affiliated companies" shall be deemed to include KISS Communications Limited, KISS PR Limited, KISS Digital Limited and all other subsidiaries or holding companies of any of them from time to time and any subsidiary of any such holding company from time to time ("subsidiary" and "holding company" being as defined in section 1159 of the Companies Act 2006).

1.3 In these Conditions, the following rules apply:

1.3.1 any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

1.3.2 a reference to **writing** or **written** includes faxes and e-mails.

2 BASIS OF CONTRACT

2.1 The Purchase Order constitutes an offer by KISS to purchase Services in accordance with these Conditions.

2.2 The Purchase Order shall be deemed to be accepted on the earlier of:

2.2.1 the Supplier issuing written acceptance of the Purchase Order; or

2.2.2 any act by the Supplier consistent with fulfilling the Purchase Order,

at which point and on which date the Contract shall come into existence ("Commencement Date").

- 2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3 SUPPLY OF SERVICES AND DELIVERABLES

- 3.1 The Supplier shall provide the Services to KISS in accordance with the terms of the Contract.

- 3.2 The Supplier shall meet any performance dates for the Services specified in the Purchase Order or notified to the Supplier by KISS.

- 3.3 In providing the Services, the Supplier shall:

3.3.1 co-operate with KISS in all matters relating to the Services, and comply with all instructions of KISS;

3.3.2 perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;

3.3.3 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract;

3.3.4 ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Purchase Order, and that the Deliverables are of satisfactory quality and fit for any purpose expressly or impliedly made known to the Supplier by KISS;

3.3.5 at its own expense provide all equipment, materials and other items as are required to provide the Services;

3.3.6 use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to KISS or its customer, will be free from defects in workmanship, installation and design;

3.3.7 check and verify work is accurate and useable before its release to KISS and its customers;

3.3.8 without prejudice to clause 3.3.7 above, submit the Deliverables to pre-installation or acceptance testing as required by KISS;

- 3.3.9 ensure that any source code which forms part of the Deliverables is fully annotated and delivered in such media as KISS requests;
 - 3.3.10 ensure that Software is compatible with such other items as are specified in the Purchase Order;
 - 3.3.11 obtain and maintain all necessary licences, permissions and consents;
 - 3.3.12 comply with all applicable laws and regulatory requirements and applicable codes of practice;
 - 3.3.13 ensure that the Deliverables are complete and accurate, does not infringe any law, regulatory requirement or code of practice or the rights of any third party, and are not threatening, blasphemous, obscene, pornographic, seditious, offensive, or liable to incite racial hatred or acts of terrorism;
 - 3.3.14 at its own cost ensure that all Deliverables are adequately packed and protected (and so that KISS shall not be responsible for the return of any packaging);
 - 3.3.15 observe all health and safety rules and regulations and any other security requirements that apply at any of KISS's or its customer's premises; and
 - 3.3.16 keep and maintain all KISS Materials in safe custody at its own risk, maintain KISS Materials in good condition until returned to KISS, and not dispose of or use KISS Materials other than in accordance with KISS's written instructions or authorisation.
- 3.4 Any material changes to the Services which are agreed between KISS and the Supplier shall be recorded in a new Purchase Order, to which clause 2 will apply, and shall not otherwise be valid. KISS will not be obliged to agree to any changes.
- 3.5 All advice or delivery notes submitted by the Supplier must bear the Purchase Order number and date of issue, and must be sent directly with the items concerned to the KISS address as specified for delivery in the Purchase Order or such other address as KISS shall direct in writing. The Supplier shall give such particulars of delivery as are requested by KISS and the Supplier shall notify KISS as soon as practicable if delivery is likely to be delayed.
- 3.6 The Supplier warrants that it has full clear and unencumbered title to all goods that are transferred to KISS under this Contract, including the Deliverables, and that at the date of delivery of such items to KISS, it will have full and unrestricted rights to transfer all such items to KISS.
- 3.7 Without prejudice to the provisions of clause 6 in relation to the Intellectual Property Rights in the Deliverables, physical ownership of all Deliverables shall pass to KISS on creation of the relevant items. The Supplier shall be responsible for the safe delivery of all Deliverables to KISS or the recipient nominated by KISS and the Supplier shall bear all risk of loss or damage until delivery has been completed.

4 KISS'S REMEDIES

- 4.1 If the Supplier fails to perform the Services or provide Deliverables by the applicable dates, or if any Deliverables are missing, damaged, defective or do not accord with the requirements set out in clause 3.3, KISS shall, without limiting its other rights or remedies, have one or more of the following rights:
- 4.1.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - 4.1.2 to refuse to accept any Deliverables (in which case KISS shall be under no liability for storage or return and shall charge to the Supplier any cost it may incur in doing so);
 - 4.1.3 to refuse to accept any subsequent performance or delivery of the Services or Deliverables which the Supplier attempts to make;
 - 4.1.4 to require the Supplier at its own cost to supply repeat Services and/or replacement Deliverables within the time reasonable specified by KISS (and so that KISS shall not be obliged to make payment for any part of the Services or Deliverables until so supplied);
 - 4.1.5 to recover from the Supplier any costs incurred by KISS in obtaining substitute services or deliverables from a third party;
 - 4.1.6 where KISS has paid in advance for Services or Deliverables that have not been provided by the Supplier, to have such sums refunded by the Supplier; or
 - 4.1.7 to claim damages for any additional costs, loss or expenses incurred by KISS which are in any way attributable to the Supplier's failure to meet such dates or properly provide the Deliverables in compliance with these Conditions.
- 4.2 These Conditions shall extend to any substituted or remedial services provided by the Supplier.
- 4.3 KISS retains the right to determine whether any pre-installation tests or acceptance tests have been satisfactorily passed. In the event that any Deliverables fail to pass one or more of such tests or repeat tests then KISS will have the right to:
- 4.3.1 require defects in the Deliverables to be corrected and the Deliverables submitted or re-submitted to such further tests as it requires;
 - 4.3.2 exercise its rights in clause 4.1 above; and/or
 - 4.3.3 accept any or all of the Deliverables
- without in each case affecting its rights to compensation for delayed and/or unsatisfactory delivery under these Conditions.

- 4.4 KISS's rights under this Contract are in addition to its rights and remedies implied by statute and common law.

5 CHARGES AND PAYMENT

- 5.1 The Charges for the Services and any payment instalments shall be set out in the Purchase Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by KISS, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 5.2 Except as otherwise stated in the Purchase Order, the Supplier shall invoice KISS on completion of the Services. Each invoice shall include such supporting information required by KISS to verify the accuracy of the invoice, including but not limited to the relevant Purchase Order number.
- 5.3 KISS shall pay the Charges within 60 days of receipt of the Supplier's proper invoice.
- 5.4 All amounts payable by KISS are subject to the addition of applicable VAT.
- 5.5 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and shall allow KISS to inspect such records at all reasonable times on request.
- 5.6 KISS may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to KISS against any liability of KISS to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract.
- 5.7 KISS's liability to the Supplier shall be limited to the value of the invoice(s) relating to the Services. KISS shall not be liable to the Supplier in contract or tort (including negligence) or otherwise for any loss, damage, cost or expense of an indirect or consequential nature including economic loss and loss of turnover, profits, business or goodwill.

6 INTELLECTUAL PROPERTY RIGHTS

- 6.1 The Supplier hereby assigns to KISS, with full title guarantee and free from all third party rights, all existing and future Intellectual Property Rights in the products of the Services, including the Deliverables. Insofar as they do not vest automatically by operation of law or under this agreement, the Supplier holds legal title in those rights and inventions on trust for KISS.
- 6.2 The Supplier warrants that:
- 6.2.1 it has not given and will not give permission to any third party to use, and it is unaware of any use by any third party of, any of the products of the Services, including the Deliverables, or any of the Intellectual Property Rights therein;

- 6.2.2 the use of the products of the Services, including the Deliverables, or any of the Intellectual Property Rights therein, by KISS or its customers will not infringe the rights of any third party.
- 6.3 The Supplier shall obtain waivers of all moral rights in the products of the Services, including the Deliverables, to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.
- 6.4 The Supplier shall promptly at KISS's request do (or procure to be done) all such further acts and things and the execution of all such other documents as KISS may from time to time require for the purpose of securing for KISS the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to KISS in accordance with clause 6.1 and otherwise to protect and maintain those Intellectual Property Rights.
- 6.5 All KISS Materials are the exclusive property of KISS (or its customer or other supplier as the case may be).
- 6.6 To the extent the Purchase Order contains website design and/or development services, KISS may be named on the website as the designer and/or host of the website notwithstanding the Services supplied by the Supplier.
- 6.7 For the avoidance of doubt, unless otherwise specified in the Purchase Order KISS and its customers shall be entitled to use the Software in both source code and machine readable form and shall be entitled to copy, develop, modify, adapt, correct, reverse engineer and/or decompile the Software.

7 INDEMNITY

- 7.1 The Supplier shall keep KISS indemnified against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs calculated on a full indemnity basis and all other professional costs and expenses) suffered or incurred by KISS as a result of or in connection with:
- 7.1.1 any claim brought against KISS for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the receipt, use or supply of the Services; and
- 7.1.2 any claim made against KISS by a third party arising out of, or in connection with, the supply of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors.
- 7.2 This clause 7 shall survive termination of the Contract.

8 INSURANCE

For the duration of the Contract and for a period of 7 years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract and shall, on KISS's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

9 CONFIDENTIALITY

- 9.1 The parties shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the relevant party ("Receiving Party") by the other party ("Disclosing Party"), its, customers, employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services or those of its customers which the Receiving Party may obtain.
- 9.2 The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party.
- 9.3 The Receiving Party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.
- 9.4 This clause is without prejudice to the Supplier's obligations under any existing nondisclosure agreement, which shall remain in full force and effect.
- 9.5 This clause 9 shall survive termination of the Contract.

10 DATA PROTECTION

- 10.1 Each party shall comply with all applicable requirements of the Data Protection Laws. This clause 10.1 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Laws.
- 10.2 The parties acknowledge that for the purposes of the Data Protection Laws, KISS is the Controller and the Supplier is the Processor. The Purchase Order sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 10.3 The Supplier warrants, represents and undertakes, that it has all necessary appropriate consents and notices in place to enable the lawful transfer of Personal Data to the Supplier and lawful collection of Personal Data by the Supplier on behalf of KISS for the duration and purposes of this Contract.

- 10.4 Without prejudice to the generality of clause 10.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance of its obligations under this Contract:
- 10.4.1 process the Personal Data only on and in accordance with KISS's documented instructions (the "Processing Instructions"), unless the Supplier is required pursuant to Data Protection Laws to otherwise process that Personal Data. Where this is the case, the Supplier shall promptly notify KISS of this before performing the processing required by Data Protection Laws, unless the Data Protection Laws prohibit the Supplier from so notifying KISS;
 - 10.4.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by KISS, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - 10.4.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
 - 10.4.4 not transfer any Personal Data outside of the UK unless the prior written consent of KISS has been obtained and the following conditions are fulfilled:
 - (a) KISS (or the Supplier, where the Personal Data is being transferred to a Sub-Processor) has provided appropriate safeguards in relation to the transfer;
 - (b) the Data Subject has enforceable rights and effective legal remedies;
 - (c) the Supplier complies with its obligations under the Data Protection Laws by providing an adequate level of protection to any Personal Data that is transferred; and
 - (d) the Supplier complies with reasonable instructions notified to it in advance by KISS with respect to the processing of the Personal Data;
 - 10.4.5 notify KISS without undue delay on becoming aware of a Personal Data Breach and provide KISS with details of the Personal Data Breach;
 - 10.4.6 assist KISS in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

- 10.4.7 at the written direction of KISS, delete or return Personal Data and copies thereof to KISS on termination of the Contract unless required by Data Protection Laws to store the Personal Data (in which case the Supplier shall notify KISS of any such requirement); and
- 10.4.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 10 and allow for and contribute to audits, including inspections, by KISS (or another auditor mandated by KISS).
- 10.5 The Supplier shall promptly inform KISS if the Supplier becomes aware of a Processing Instruction that, in the Supplier 's opinion, infringes Data Protection Laws, provided that this does not relieve the Supplier of its responsibilities under clause 10.4.
- 10.6 The Supplier shall not engage any person to carry out sub-processing of the personal data (a "Sub-Processor") without KISS's written authorisation of that specific Sub-Processor. KISS authorises the appointment of the Sub-Processors identified in the Purchase Order. KISS's authorisation of a Sub-Processor shall not relieve the Supplier of any of its obligations under the Contract.
- 10.7 The Supplier shall:
 - 10.7.1 prior to the relevant Sub-Processor carrying out any processing activities in respect of the personal data, appoint the Sub-Processor under a written contract containing materially the same obligations as this clause 10; and
 - 10.7.2 remain fully liable for all the acts and omissions of each Sub-Processor as if they were its own.
- 10.8 This clause 10 shall survive termination of the Contract.

11 TERMINATION

- 11.1 Without limiting its other rights or remedies, KISS may terminate the Contract by giving the Supplier one month's written notice.
- 11.2 Without limiting its other rights or remedies, in relation to any ongoing services of indefinite duration, the Supplier may terminate the Contract by giving KISS one month's written notice. Any such termination shall not affect the Supplier's obligation to provide one-off Services or specific Deliverables as set out in the Purchase Order.
- 11.3 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party:
 - 11.3.1 if the other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach;

- 11.3.2 if the other party enters into any compromise or arrangement with its creditors, a resolution is passed or an order is made for or in connection with the winding up or bankruptcy of that other party (being a company), an administrator, receiver or administrative receiver is appointed in respect of the other party or its assets;
- 11.3.3 if any event occurs with respect to the other party in any jurisdiction that has an effect equivalent or similar to any of the events mentioned in clause 11.3.2;
- 11.3.4 if the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.
- 11.3.5 as set out in clauses 4.1.1 and 13.3.

12 CONSEQUENCES OF TERMINATION

12.1 On termination of the Contract for any reason:

- 12.1.1 the Supplier shall immediately deliver to KISS all Deliverables whether or not then complete, and return all KISS Materials. If the Supplier fails to do so, then KISS may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- 12.1.2 the Supplier shall immediately refund any advance payments including any payments for Services not properly supplied and delivered in finished form satisfactory to KISS;
- 12.1.3 subject to clauses 4 and 5.7 and to compliance by the Supplier with clause 12.1.1, the Supplier shall submit an invoice in respect of Services properly supplied and delivered in finished form satisfactory to KISS but for which no invoice has been submitted;
- 12.1.4 the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, 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; and
- 12.1.5 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

13 FORCE MAJ EU RE

- 13.1 Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such delay or failure result from a Force Majeure Event.
- 13.2 The Supplier shall use all reasonable endeavours to mitigate the effect of a Force Majeure Event on the performance of its obligations.

- 13.3 If a Force Majeure Event prevents, hinders or delays the Supplier's performance of its obligations for a continuous period of more than 4 weeks, KISS may terminate this Contract immediately by giving written notice to the Supplier.

14 SUPPLIER RESTRICTIONS

- 14.1 The Supplier undertakes with KISS (for itself and as trustee and agent for each of KISS's affiliated companies) that they shall not, during the Contract or during the period of twelve months after termination of the Contract for any reason:

14.1.1 solicit or endeavour to entice away from KISS or any of its affiliated companies the business or custom of a Restricted Customer with a view to providing goods or services to that Restricted Customer in competition with KISS or any of its affiliated companies; or

14.1.2 be involved with the provision of goods or services to, or otherwise have any business dealings with, any Restricted Customer in the course of any business concern which is in competition with KISS or any of its affiliated companies; or

14.1.3 solicit or entice away from KISS or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of KISS.

- 14.2 The undertakings by the Supplier in this clause 14 apply to it acting:

14.2.1 directly or indirectly; and

14.2.2 on its own behalf or on behalf of, or in conjunction with, any firm, company or person.

- 14.3 If the Supplier receives an offer to be involved in a business concern with any Restricted Customer at any time before the undertakings in this clause 14 have expired, the Supplier shall give the person making the offer a copy of this clause 14 and shall make the offer and the identity of the person making it known to KISS as soon as possible.

- 14.4 Without prejudice to KISS's other rights, in the event that the Supplier, or any firm, company or person on whose behalf the Supplier is acting, employs any of KISS's employees in breach of clause 14.1.3, the Supplier shall on demand pay to KISS liquidated damages equal to 12 months' gross salary of the employee in question. The parties confirm that the sum stated above is a genuine pre-estimate of KISS's loss.

- 14.5 This clause 14 shall survive termination of the Contract.

15 GENERAL

- 15.1 KISS may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract. The Supplier may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of KISS.

- 15.2 Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by email (which, in the case of KISS, shall only be validly sent if sent to simon@kisscom.co.uk and copied to kissadmin@kisscom.co.uk). Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by email, on the next Business Day after transmission. This clause 15.2 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall include e-mails.
- 15.3 A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy. Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 15.4 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 15.5 If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 15.6 Except to the extent expressly stated in these Conditions a person who is not a party to the Contract shall not have any rights under or in connection with it.
- 15.7 Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when it is agreed in writing and signed by KISS. Any variation to the Purchase Order shall be effected by the issuing of an amended Purchase Order.
- 15.8 This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

ADDENDUM

Effective Date: 11 June 2025

Supplement to: KISS Companies: Terms and Conditions of Supply

This Addendum is supplemental to the Terms and Conditions of Supply between KISS Communications Ltd ("KISS") and the Supplier ("Supplier"). This Addendum forms part of the Contract and applies to all services and deliverables provided by the Supplier to KISS. Capitalised terms not defined herein shall bear the meanings given in the Terms.

1. Use of Artificial Intelligence (AI) Tools

1.1 KISS may employ proprietary and/or third-party artificial intelligence ("AI") tools in the delivery of its services.

1.2 The Supplier shall not use any AI tool in connection with the processing, generation or transformation of any content, data or material (including without limitation any KISS Materials or Client Materials) without KISS's prior written consent.

1.3 The Supplier shall disclose to KISS in advance the use of any AI tools in the provision of the Services, including without limitation any AI-generated content, source code, or design assets.

1.4 Any AI tool utilised by the Supplier shall not ingest, store, train upon or otherwise process KISS data or Client data unless anonymised and expressly approved in writing by KISS.

2. Intellectual Property and Licensing

2.1 All deliverables produced by the Supplier, including any generated in whole or in part using AI tools, shall be governed by Clause 6 of the Terms and Conditions of Supply, and shall be the property of KISS, free of all encumbrances.

2.2 The Supplier shall ensure that any third-party AI tools or services utilised do not assert or retain any rights in respect of deliverables supplied to KISS.

2.3 Where the Supplier proposes to incorporate open-source or third-party licensed content generated via AI, the Supplier must notify KISS in advance, and confirm that the appropriate usage and transfer rights are secured.

3. Licensed Content and Third-Party Materials

3.1 The Supplier shall obtain, maintain and on request evidence all necessary rights and licences for any third-party fonts, stock imagery, video, audio or similar materials used in the provision of the Services.

3.2 The Supplier shall clearly identify the licensee (KISS or the Supplier) for any third-party materials used, and confirm the permitted scope of use, including in respect of editable files.

3.3 Editable files containing restricted or subscription-based licensed content (e.g. Adobe Fonts, iStock) shall not be delivered unless the appropriate rights of transfer or sublicensing are in place.

4. Data Protection and Confidentiality

4.1 The Supplier shall not input any KISS or Client Personal Data, Confidential Information or Materials into any AI tool, platform or system accessible to third parties or hosted outside the United Kingdom, save where explicitly agreed by KISS in writing.

4.2 The Supplier shall comply at all times with applicable Data Protection Laws, including the Data Protection Act 2018 and UK GDPR, and shall adhere to the confidentiality obligations set out in Clause 9 of the Terms.

4.3 Any AI or automation involving Personal Data must be designed and executed in accordance with KISS's ISO 27001-aligned security policies.

5. Code, Access Credentials and Platform Maintenance

5.1 Where the Supplier is providing development or technical services, it shall:

- (a) ensure that code is version-controlled, documented, and free from known vulnerabilities;
- (b) keep all third-party libraries and plug-ins up to date;
- (c) notify KISS of any end-of-life or unsupported platform elements.

5.2 Passwords associated with access to any system, platform or service under the Supplier's control must:

- (a) be no fewer than twelve (12) characters in length;
- (b) include a combination of upper and lower-case letters, numerals and symbols;
- (c) ensure that two factor authentication is enabled and in use where available

5.3 KISS shall bear no responsibility for any breach arising from the use of weak, shared or compromised credentials by the Supplier.

6. Hosting, Cloud Services and Integration Dependencies

6.1 Where the Supplier is engaged in any hosting, configuration or DevOps-related services, it shall disclose the use of any third-party cloud or CDN provider, including without limitation Cloudflare, AWS, or similar.

6.2 Where Cloudflare or similar services are utilised, the Supplier shall:

- (a) confirm that such services are properly licensed and operated in compliance with their terms;
- (b) not activate or configure functionality that may compromise performance, security or IP rights without the prior approval of KISS.

6.3 The Supplier shall remain responsible for all obligations arising from its use of such third-party services and for ensuring that systems remain stable, secure and fit for purpose.

7. Effect of Addendum and Acceptance

7.1 This Addendum shall be effective from 11 June 2025.

7.2 Continued performance of services to KISS on or after the Effective Date shall constitute acceptance by the Supplier.

7.3 Questions regarding this Addendum should be directed to info@kisscom.co.uk or the Supplier's usual point of contact at KISS.

8. Precedence and Construction

8.1 This Addendum shall form part of the Contract and shall be construed in accordance with the Terms.

8.2 To the extent of any conflict between this Addendum and the Terms, the provisions of this Addendum shall prevail in respect of the matters expressly addressed herein.

8.3 All other provisions of the Terms remain in full force and effect.