

## SUPPLY OF SERVICES

**THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF clause 10.**

### **1. INTERPRETATION**

#### **1.1 Definitions:**

**Bribery Laws:** means the Bribery Act 2010 and all Applicable Laws in connection with bribery or anti-corruption;

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Certification Badge:** the graphical device supplied by the Company to the Customer for use in the Customer's website, emails and other materials for the purposes of communication and publicity.

**Charges:** the charges payable by the Customer for the supply of the Services in accordance with clause 5.

**Commencement Date:** has the meaning set out in clause 2.2.

**Company:** Go Climate Positive Limited of 21 Naunton Lane, Cheltenham, GL53 7BJ (company number 11669055).

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 16.6.

**Contract:** the contract between The Company and the Customer for the supply of Services in accordance with these Conditions.

**Customer:** the person or firm who purchases Services from The Company.

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

**Deliverables:** the deliverables, set out in the Specification, produced by The Company for the Customer.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights in any jurisdiction.

**Membership:** the Customer's membership of the Go Climate Positive Program as set out in the Specification.

**Order:** the Customer's order for Services as set out in the Customer's submission of the electronic sign-up form on the Website.

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**Program:** means the program of work to be provided by the Company to the Customer in accordance with the Specification and as described on the "How does it work?" page of the Website.

**Services:** the services, including the Deliverables, supplied by The Company to the Customer as set out in the Specification.

**Specification:** the description or specification of the Services provided on the [Pricing](#) page of the Website at the time the Order is submitted.

**Website:** means [www.go-positive.co.uk](http://www.go-positive.co.uk)

### 1.2 **Interpretation:**

- (a) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (b) 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.
- (c) A reference to **writing** or **written** includes email.

## **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 The Company issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 No terms or conditions endorsed on, delivered with, or contained in the Customer's purchase conditions, order, confirmation of order, specification or other document shall form part of the Contract except to the extent that the Company otherwise agrees in writing.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by The Company, and any descriptions or illustrations contained in The Company'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.

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- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6 Any quotation given shall not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue.

### **3. SUPPLY OF SERVICES**

- 3.1 The Company shall supply the Services to the Customer in accordance with the Specification in all material respects.
- 3.2 The Company shall use all reasonable endeavours to meet any performance dates specified in the Specification, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 The Company shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and shall notify the Customer in any such event.
- 3.4 The Company 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 and any information it provides in the Specification are complete and accurate;
  - (b) co-operate with The Company in all matters relating to the Services;
  - (c) provide The Company with such information and materials as The Company may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
  - (d) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start; and
  - (e) comply with any additional obligations as set out in the Specification.

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- 4.2 If the Company'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) The Company shall without limiting its other rights or remedies 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 to the extent the Customer Default prevents or delays The Company's performance of any of its obligations;
  - (b) The Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from The Company's failure or delay to perform any of its obligations as set out in this clause 4.2; and
  - (c) the Customer shall reimburse The Company on written demand for any costs or losses sustained or incurred by The Company arising directly or indirectly from the Customer Default.

## **5. CHARGES AND PAYMENT**

- 5.1 The total price for the Services shall be the amount set out in the Specification. The prices are correct at time of printing. However, we reserve the right to adjust these prices in order to meet their true cost.
- 5.2 The total price shall be paid to The Company in instalments as set out in the Specification. All amounts due under this agreement shall be paid by the Customer to The Company in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 5.3 The Customer shall complete the Company's Direct Debit mandate prior to commencement of the Services. The Company shall take payment at each relevant stage, together with expenses and the costs of materials (and VAT, where appropriate), calculated as provided in condition 5.5.
- 5.4 Alternatively to condition 5.3, and only by prior written agreement, the Company shall invoice the Customer for the charges at each relevant stage, together with expenses and the costs of materials (and VAT, where appropriate), calculated as provided in condition 5.5.
- 5.5 The price contained in the Specification excludes:
- (a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by Company personnel in connection with the Services,

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and the cost of any materials or services reasonably and properly provided by third parties required by The Company for the supply of the Services. Such expenses, materials and third party services shall be invoiced by The Company at cost;

(b) VAT; and

(c) any consultancy services which will be provided under separate terms and conditions.

5.6 Without prejudice to any other right or remedy that The Company may have, if the Customer fails to pay on the due date The Company may:

(a) charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment; and

(b) suspend all Services and the Customer's Membership of the Program until payment has been made in full.

5.7 Time for payment shall be of the essence of the Contract.

5.8 The Company may increase the Charges with immediate effect by written notice to the Customer where there is an increase in the direct cost to the Company of supplying the relevant Services which exceeds 10 percent and which is due to any factor beyond the control of the Company.

5.9 The Company may, without prejudice to any other rights it may have, set off any liability of the Customer to The Company against any liability of The Company to the Customer.

## **6. INTELLECTUAL PROPERTY RIGHTS**

6.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by The Company.

6.2 The Company grants the Customer the right to display the supplied Certification Badge for the purposes specified, for as long as the Customer's Membership remains valid and up to date.

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- 6.3 At all times the Intellectual Property Rights of the "Go Climate Positive" logo and the Certification Badges remain with the Company. They shall only be used by the Customer for the purposes set out in these Terms and Conditions. They must be used exactly as provided and may not be altered or distorted in any way.
- 6.4 The Company reserves the right to display and make reference to the Customer's carbon footprint and mitigation actions on the Website. The Company also reserves the right to include the Customer's trademarks and logos on the Website and other marketing activities.

### **7. MEMBERSHIP**

- 7.1 The Customer's Membership of the Program shall be for a fixed term as set out in the Specification.
- 7.2 Membership will not auto renew at the end of the fixed term. Subsequently, if the Customer wishes to remain a member of the Program, Membership must be renewed by the Customer by the completion of a new Order and the payment of the Charges. The new Order will be subject to the terms and conditions prevailing at that time and will constitute a new contract.
- 7.3 Termination of the Contract, as set out in clause 12, will also constitute termination of the Customer's Membership.

### **8. ACCESS TO THE MEMBERS AREA OF THE WEBSITE**

- 8.1 Upon completion of the sign-up form and the Company's acceptance of the Order, the Customer shall have access to the members area of the Website subject to the provisions of these Conditions.
- 8.2 The Company reserves the right in its sole discretion to review, improve, modify or discontinue, temporarily or permanently, the Website or any content or information on the Website with or without notice. The Company will not be liable to any party for any modification or discontinuance of the Website.
- 8.3 The Company shall use its reasonable endeavours to ensure that access to the Website is available without interruption. This undertaking is subject to the following exceptions:
- (a) The Customer fails to make payment in accordance with clause 5 and the Company have as a consequence suspended access to the Services in accordance with clause 11;

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- (b) Force Majeure; or
  - (c) The Contract has terminated in accordance with clause 12.
  
- 8.4 No Customer, nor anyone on their behalf may, in the absence of written consent from the Company:
  - (a) make changes of any kind to the Website; or
  - (b) attempt to correct any fault or perceived fault in the Website.
  
- 8.5 The Company exercise all reasonable skill and care to ensure that the Website is secure and free from viruses and other malware. The Company does not, however, guarantee that the Website is secure or free from viruses or other malware and accept no liability in respect of the same.
  
- 8.6 The Customer is responsible for protecting their hardware, software, data and other material from viruses, malware and other internet security risks.
  
- 8.7 In addition to the requirements of the [Acceptable Use Policy](#) and [Website Terms of Use](#), Customers may only use the Website in a manner that is lawful and that complies with the provisions of this clause 8. Specifically Customers:
  - (i) must ensure that they comply fully with any and all applicable laws;
  - (ii) must not use the Website in any way, or for any purpose, that is unlawful or fraudulent;
  - (iii) must not use the Website to knowingly send, upload, or in any other way transmit data that contains any form of virus or other malware, or any other code designed to adversely affect computer hardware, software or any data of any kind; andmust not use the Website in any way, or for any purpose, that is intended to harm any person or persons in any way.
  
- 8.8 Access to the Website is provided "as is" and on an "as available" basis. The Company may alter, suspend or discontinue the Website (or any part of it) at any time and without notice. We will not be liable to you in any way if the Website (or any part of it) is unavailable at any time and for any period.
  
- 9. ANTI BRIBERY**
  
- 9.1 For the purposes of this clause 9 the expressions '**adequate procedures**' and '**associated with**' shall be construed in accordance with the Bribery Act 2010 and legislation or guidance published under it.

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- 9.2 Each party shall comply with applicable Bribery Laws including ensuring that it has in place adequate procedures to prevent bribery and ensure that:
- (a) all of that party's personnel;
  - (b) all others associated with that party; and
  - (c) all of that party's sub-contractors;

involved in performing the Contract so comply.

- 9.3 Without limitation to clause 9.2, 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.
- 9.4 The Customer shall immediately notify the Company as soon as it becomes aware of a breach by the Customer of any of the requirements in this clause 9.

### **10. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

- 10.1 Nothing in the Contract shall limit or exclude The Company's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
  - (b) fraud or fraudulent misrepresentation; or
  - (c) any other liability which cannot be limited or excluded by applicable law.
- 10.2 Subject to clause 10.1, The Company shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
- (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 damage to goodwill; and
  - (g) any indirect or consequential loss.



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- 10.3 Subject to clause 10.1, The Company's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to the total Charges paid under the Contract.
- 10.4 This clause 10 shall survive termination of the Contract.

### **11. SUSPENSION OF SERVICES**

- 11.1 If, the Customer is in breach of any of its obligations under these Conditions or if the Company is prevented or delayed in performing the Services for any reason attributable to the Customer, then the Company (without prejudice to its other rights):
- (a) may suspend performance of the Services including access to the Website until such time as the Customer fully remedies its breach or default;
  - (b) shall not be liable for any losses, damages, costs and expenses incurred by the Customer as a result of such suspension; and
  - (c) shall recover from the Customer all losses, damages, costs and expenses incurred by us arising from the Customer's breach of default.

### **12. TERMINATION**

- 12.1 Without limiting its other rights or remedies, either party may terminate the Contract by giving the other party 1 months' written notice.
- 12.2 Without limiting its other rights or remedies, 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), 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;

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- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

12.3 Without limiting its other rights or remedies, The Company 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 and remains in default not less than 14 days after being notified to make such payment.

### **13. CONSEQUENCES OF TERMINATION**

On termination of the Contract for any reason:

- (a) the Customer shall immediately cease use of the Certification Badge and remove this from all of its marketing materials including but not limited to the Customer's website and emails;
- (b) the Customer shall immediately pay to The Company all of its outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, The Company shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (c) the Customer shall return all of any Deliverables which have not been fully paid for.
- (d) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, 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
- (e) clauses which expressly or by implication survive termination shall continue in full force and effect.

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### **15. DISPUTE RESOLUTION**

- 15.1 Any dispute arising between the parties out of or in connection with the Contract shall be dealt with in accordance with the provisions of this clause 15.
- 15.2 The dispute resolution process may be initiated at any time by either party serving a notice in writing on the other party that a dispute has arisen. The notice shall include reasonable information as to the nature of the dispute.
- 15.3 The parties shall use all reasonable endeavours to reach a negotiated resolution through the following procedure:
- (a) Within five business days of service of the notice, the [*contract managers*] of each of the parties shall meet to discuss the dispute and attempt to resolve it.
  - (b) If the dispute has not been resolved within five business days of the first meeting of the [*contract managers*], then the matter shall be referred to the managing directors (or persons of equivalent seniority) of each of the parties. The managing directors (or equivalent) shall meet within five business days to discuss the dispute and attempt to resolve it.
- 15.4 Until the parties have completed the steps referred to in clause 15.3, and have failed to resolve the dispute, neither party shall commence formal legal proceedings except that either party may at any time seek urgent interim relief from the courts.

### **16. GENERAL**

- 16.1 **Force majeure.** Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- 16.2 **Assignment and other dealings.**
- (a) The Company may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
  - (b) The Customer shall not, without the prior written consent of The Company, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal

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in any other manner with any or all of its rights or obligations under the Contract.

### 16.3 **Data Protection**

- (a) All personal information that the Company may use will be collected, processed, and held in accordance with the provisions of EU Regulation 2016/679 General Data Protection Regulation ("GDPR") and the Customer's rights under the GDPR.
- (b) For complete details of the Company's collection, processing, storage, and retention of personal data including, but not limited to, the purpose(s) for which personal data is used, the legal basis or bases for using it, details of the Customer's rights and how to exercise them, and personal data sharing (where applicable), please refer to the Company's Privacy Notice available from the Website.

### 16.4 **Confidentiality.**

- (a) Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 16.3 (b).
- (b) Each party may disclose the other party's confidential information:
  - (i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 16.3; and
  - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

16.5 **Entire agreement.** This agreement 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.

16.6 **Variation.** The Company may revise these terms and conditions at any time and shall notify the Customer in any such event.

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- 16.7 **Waiver.** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- 16.8 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable.
- 16.9 **Notices.**
- (a) Any notice given to a party under or in connection with this contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office; or sent by fax to its main fax number.
  - (b) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, "writing" shall not include email.
- 16.10 **Third parties.** No one other than a party to the Contract shall have any right to enforce any of its terms.
- 16.11 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.
- 16.12 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.