

TERMS AND CONDITIONS OF CONTRACT

- 1.1 In these Terms and Conditions "PSCA" means PSCA International Ltd and "the Client" (which expression shall include any principal on whose behalf the Client Order Form attached ("the Order") is signed) means the person, firm or company placing the order. Persons signing the Order shall be deemed to have authority so to do from the person, firm or company on whose behalf they are acting or purporting to act.
- 1.2 Orders placed with the Company shall constitute a contract when the Client either signs the Order or confirms acceptance by email.
- 1.3 PSCA and the Client acknowledge that these Terms and Conditions have been given due consideration and that they are considered reasonable and fair to both parties.
- 1.4 PSCA reserves the right to revise these Terms and Conditions from time to time.
- 1.5 This agreement shall be completed on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Client purports to apply under any purchase order, confirmation of order, specification or other document).
2. INTERPRETATION
- 2.1 The definitions and rules of interpretation in this clause apply in this agreement.
- Data: the data identified in Part 2 of the Order which is protected by the Password and which may consist of any of the following data being 'personal data', 'special categories of data/sensitive data', 'process/processing', 'controller', 'processor', 'data subject', and 'supervisory authority/authority' all of which shall have the same meaning as in Directive 95/46/EC of 24 October 1995.
- Data Subject: has the same meaning as defined in the DPA.
- DPA: the Data Protection Act 1998.
- Fee: the sum detailed in the "Total" box in Part 4 of the Order.
- Information Commissioner: the independent supervisory authority responsible for overseeing and enforcing the DPA and other related statutes.
- Password: the password provided by PSCA which enables the Client to access the Data.
- Period of Use: the period of use detailed in section A of Part 2 of the Order.
- Purpose: the purpose described in Part E of the Order.
- Regulations: the Privacy and Electronic Communications (EC Directive) 2003, the E-Commerce (EC Directive) Regulations 2002 and the Telecommunications (Data Protection and Privacy Regulations) 1999 (as amended), and the Direct Marketing Association Code of Practice and Best Practice Guideline(s).
- Sector: the sector or sectors detailed in section D of Part 2 of the Order.
- Seeding: the insertion by PSCA of fictional or false entries (including deliberate errors) in the Data.
- Territory: the European Economic Area.
- Type of Use: the type of use in respect of the Sector and detailed in section D of Part 2 of the Order.
- 2.2 A person includes a corporate or unincorporated body.
- 2.3 A reference to a particular law is a reference to it as it is in force for the time being, taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 2.4 Writing or written includes faxes but not e-mail.
3. GRANT
- 3.1 PSCA grants to the Client a non-exclusive licence to use the Data for the Purpose in the Territory.
- 3.2 Unless otherwise agreed in writing the Client shall have no right to grant sub-licences under this agreement.
- 3.3 No further right or licence is granted by PSCA to the Client by this agreement, except as expressly set out in this clause 3.
- 3.4 The Client undertakes, during the term of this agreement, not itself to exploit the Data in the Territory other than for the Purpose.
4. CLIENT'S OBLIGATIONS
- 4.1 The Client shall:
- (a) process the Data in accordance with the DPA;
- (b) comply with all reasonable directions given by PSCA or its duly authorised representatives in relation to the Data;
- (c) deal promptly and properly with all reasonable enquiries from PSCA or the Data Subject relating to his processing of the Data and co-operate with the Information Commissioner in the course of all his inquiries and abide by the advice of the Information Commissioner with regard to the processing of the data transferred;
- (d) not disclose or transfer the Data to any third party; and
- (e) comply with Regulations when contacting recipients.
- 4.2 The Client shall at all times indemnify, and keep indemnified, PSCA against all or any costs, claims, damages or expenses incurred by PSCA or for which PSCA may become liable with respect to any claim by a Data Subject relating to a failure of the Client to comply with the DPA.
5. ACKNOWLEDGEMENTS
- 5.1 The Client acknowledges that:
- (a) its rights under this Agreement are non-exclusive;
- (b) it shall not acquire any rights (including intellectual property rights) except as expressly set out in this agreement;
- (c) (except in the case of death or personal injury) PSCA's liability under this Agreement is limited to the amount of the Fee. In addition PSCA is not liable for any indirect or consequential loss, any economic loss, or damage to goodwill suffered by the Client and arising out of any breach by PSCA of any term of this Agreement, any negligence or otherwise;
- (d) the Sector has a high turnover of staff and as a result of this PSCA cannot guarantee the accuracy of the Data;
- (e) PSCA has made no representation or warranty of any kind with respect to the Data and that PSCA disclaim all such representations and warranties;
- (f) whilst PSCA uses its reasonable endeavours to update and to monitor the accuracy of the Data, PSCA has made no representation or warranty about the accuracy, completeness, or suitability for the Purpose or any other purpose of the Data;
- (g) the Data may contain technical inaccuracies or typographical errors and that all liability of PSCA howsoever arising for any such inaccuracies or errors is expressly excluded to the fullest extent permitted by law;
- (h) PSCA may use Seeding as a method of confirming the Client's compliance with the Period of Use and Type of Use under this Agreement and the Order; and
- (i) PSCA shall send the Data to the Client once the contract has been entered into in accordance with clause 1.2 above and that PSCA shall only divulge the Password to the Client once it has received payment in accordance with clause 7.
6. CONFIDENTIALITY
- 6.1 The Client shall keep, and shall procure that its directors and employees keep secret and confidential the Data.
- 6.2 The provisions of clause 6.1 shall not apply to such Data as the Client can prove to have been in its possession at the date of receipt, or which becomes public knowledge otherwise than through a breach of an obligation of confidentiality owed (whether directly or indirectly) to PSCA.
7. PAYMENT
- 7.1 In consideration of the rights granted under clause 2, the Client shall pay to PSCA the Fee.
- 7.2 Any amounts payable under this agreement are exclusive of any value added tax (VAT) which may be payable on them and shall be paid in sterling (which PSCA must receive in cleared funds) within 14 days of the date of PSCA's invoice.
- 7.3 In the event of any delay in effecting payments due under this agreement by the due date, the Client shall pay to PSCA interest calculated on a daily basis on the overdue payment, from the date such payment was due to the date of actual payment, at a rate of 3% over the base lending rate of The Royal Bank of Scotland Plc from time to time.
- 7.4 PSCA shall only divulge the Password to the client when all sums due to PSCA under this clause 7 have been paid.
- 7.5 PSCA reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 7.6 The provisions of this clause 7 shall remain in effect, notwithstanding termination or expiry of this agreement, until the settlement of all subsisting claims by PSCA.
8. PROTECTION OF THE DATA
- 8.1 In the event that any unlicensed activities are carried on by any third party which could constitute unauthorised disclosure or the misuse of any of the Data, the party becoming aware of such a matter shall forthwith notify the other of it, and the Client shall join PSCA in taking all steps (if any) as, in the total discretion of PSCA, shall be desirable for the protection of PSCA's rights under the Data. The expenses incurred in taking such steps, and any profits or damages which may be obtained, shall be (in the absence of agreement to the contrary) for the account of PSCA.
- 8.2 Nothing in this agreement shall constitute any representation that the Data or the use of the Data does not fall within the scope of any third party intellectual property rights.
9. DURATION AND TERMINATION
- 9.1 Where PSCA provides the Client with a quotation, any quotation is valid for a period of 30 days only from its date, provided that PSCA has not previously withdrawn it.
- 9.2 This agreement shall, unless determined in accordance with clause 9.3, remain in force until the Period of Use or Type of Use expires (whichever is the sooner).
- 9.3 PSCA shall have the right to terminate this agreement forthwith by notice in writing to the Client in the event that:
- (a) the Client fails to perform or observe any of the obligations on its part to be performed or observed under this agreement, provided that in a case where PSCA considers the breach to be remediable, such notice from PSCA shall also require the Client to remedy such breach and if the Client so remedies within 30 days of such notice being served, such notice to terminate this agreement shall be void and of no effect; or
- (b) an interim order is applied for or made, or a voluntary arrangement approved, or a petition for a bankruptcy order is presented or a bankruptcy order is made against the Client, or a receiver or trustee in bankruptcy is appointed of the Client's estate or a voluntary arrangement is proposed or approved or an administration order is made, or a receiver or administrative receiver is appointed of any of the Client's assets or undertaking, or a winding-up resolution or petition is passed or presented (otherwise than for the purposes of reconstruction or amalgamation), or any circumstances arise which entitle the court, a creditor, the company or its directors to appoint a receiver, administrative receiver or administrator or to present a winding-up petition or make a winding-up order or other similar or equivalent action is taken against or by the Client by reason of its insolvency or in consequence of debt; or
- (c) the Client contests the validity of PSCA's rights in the Data.
- 9.4 In the event of expiry or termination of this agreement howsoever arising, and subject to any express provisions set out elsewhere in this agreement:
- (a) all outstanding sums payable by the Client to PSCA shall immediately become due and payable;
- (b) all rights and licences shall cease;
- (c) the Client shall cease all and any exploitation of the Data, except insofar as the Data ceases or has ceased to be confidential, unless this is or was as a consequence of the default of the Client; and
- (d) the Client shall return promptly to PSCA the Data and all copies of such material to the extent that such material remains confidential.
- 9.5 The expiry or termination of this agreement howsoever arising shall be without prejudice to the provisions of this clause 9 and to any rights of either party which may have accrued by, at or up to the date of such termination.
10. ASSIGNMENT
- The Client shall not assign, transfer, charge, encumber or otherwise deal with the whole or any part of this agreement or its obligations under it.
11. SEVERANCE
- In the event that any clause or any part of any clause in this agreement is declared invalid or unenforceable by the judgment, decree by consent or otherwise of a court of competent jurisdiction from whose decision no appeal is or can be taken, all other clauses or parts of clauses contained in this agreement shall remain in full force and effect and shall not be affected by such finding for the term of this agreement.
12. NO WAIVER
- No relaxation, forbearance, delay or indulgence by either party in enforcing any of the terms and conditions of this agreement or the granting of time by either party to the other shall prejudice, affect or restrict the rights and powers of the said party nor shall any waiver by either party of any breach of this agreement operate as a waiver of or in relation to any subsequent or any continuing breach of it.
13. VARIATION
- This agreement may only be amended by a document in writing signed by a duly authorised officer of each party.
14. FURTHER ASSURANCE
- The parties shall execute all further documents as may be necessary or desirable to give full effect to the terms of this agreement and to protect the rights of the parties under it.
15. ENTIRE AGREEMENT
- 15.1 This agreement, and the documents referred to in it, constitutes the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to the subject matter of this agreement.
- 15.2 Each of the parties acknowledges and agrees that in entering into this agreement, and the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this agreement or not) other than as expressly set out in this agreement as a warranty or representation. The only remedy available to it for breach of such warranties or representations shall be for breach of contract under the terms of this agreement. Nothing in this clause shall, however, operate to limit or exclude any liability for fraud.
16. NOTICE
- Any notice or other document to be given under this agreement shall be given by sending the same in a pre-paid first class letter or by fax to the address of the relevant party as set out in this agreement, or to such other address as such party may have notified to the other for such purposes. Any notice sent by post shall be deemed (in the absence of evidence of earlier receipt) to have been delivered 14 days after despatch and in proving the fact of despatch it shall be sufficient to show that the envelope containing such notice was properly addressed, stamped and posted. Any notice sent by fax shall be deemed to have been delivered on the day following its despatch.
17. RIGHTS OF THIRD PARTIES
- No term of this agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party, but this does not affect any right or remedy of a third party which exists or is available apart from under that Act.
18. GOVERNING LAW AND JURISDICTION
- 18.1 This agreement and any disputes of claims arising out of or in connection with its subject matter are governed by and construed in accordance with the law of England.
- 18.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement.
19. The Client gives consent to The Company to carry out a credit search on the partners and directors of the organisation now or at a future date. The credit search will be recorded by the agency and may be disclosed to subsequent enquirers.