

Terms and Conditions of Sale.

1. Definitions

The following definitions apply in these Conditions and the Contract:

Acuity	We Are Acuity Limited incorporated and registered in England & Wales with company number 6752739 whose registered office is at 39 The Metro Centre, Tolpits Lane, Watford, Hertfordshire, United Kingdom, WD18 9SB;
Acuity's Materials	all materials, systems, equipment, documents and other property of Acuity, including the materials as set out in a Statement of Work, provided by Acuity to the Customer and used directly or indirectly in the supply of the Services and in connection with the Contract;
Applicable Data Protection Laws	means to the extent that: <ul style="list-style-type: none"> a) UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data; b) EU GDPR applies, the law of the European Union or any member state of the European Union to which a party is subject, which relates to the protection of personal data;
Applicable Laws	all applicable laws, statutes and regulations from time to time in force;
Approval Items	drafts, proofs, and other items to which Acuity seeks the Customer's approval on an interim or final basis;
Background	all IPR, source project files, materials, software (including source codes), hardware or associated infrastructure that Acuity owns or uses under licence in providing the Services and creating the Deliverables;
Change Order	has the meaning given in clause 7.1;
Commencement Date	the date included in a Statement of Work;
Conditions	these terms and conditions of sale;
Confidential Information	information in whatever form which is not in the public domain, relating to, without limitation, the data, business, products, affairs and finances of Acuity and the Customer and all technical or commercial know-how, specifications, inventions, processes or initiatives that have been disclosed by Acuity or any of its officers, employees, agents, representatives or contractors to the Customer and all information concerning the Background provided to the Customer by Acuity;
Contract	a Statement of Work together with these Conditions and any Change Order;
Controller	has the meaning given to it in the UK GDPR;

Customer	the party whose details are set out in a Statement of Work;
Customer IPR	all IPR owned by or licensed to the Customer;
Customer Manager	the person whose details are set out in a Statement of Work;
Customer Materials	all documents, materials, data and information within the control of the Customer and relevant to Acuity's provision of the Services, including the items set out in a Statement of Work;
Deliverables	any output of the Services including all videos, photographs, drawings, illustrations, documents, reports, prints and other materials (including without limitation all audio, visual or physical materials and software), data or information created exclusively for the Customer by Acuity under the Contract and required to be delivered to the Customer;
Dispute	a dispute that arises out of or in connection with the Contract or the performance, validity or enforceability of the Contract;
Dispute Notice	written notice of the Dispute setting out the nature and full particulars of the Dispute;
EU GDPR	the General Data Protection Regulation ((EU) 2016/679), as it has effect in EU law;
Expenses	costs reasonably incurred by Acuity, or persons employed or engaged by Acuity in connection with the Services for accommodation, food, travel and other ancillary expenses, and the cost of any materials and the cost of services reasonably and properly procured by Acuity from third parties in the provision of the Services;
Force Majeure Event	any circumstance not within a party's reasonable control;
IPR	intellectual property rights including any and all image rights, trademarks, service marks, domain names, copyright, moral rights, rights in creation, design, know-how, Confidential Information and all or any other intellectual property rights in the Services whether or not capable of registration, whether registered or unregistered and including all applications (and rights to apply) for such rights and all similar or equivalent rights or forms of protection whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating thereto;
Mandatory Policies	the mandatory policy or policies set out in a Statement of Work or Change Order, if any;
Milestone	a date by which part of the Services is to be completed or other key performance indicator is achieved, as set out in a Statement of Work;
Order	the Customer's order for Services as set out in a Statement of Work;
Personal Data	has the meaning given to it in the UK GDPR and any personal data which Acuity processes in connection with the Contract, in the capacity of a Controller;

Preliminary Work	work produced by Acuity, at the Customer's request, whether experimentally or otherwise, that is produced ancillary to the main output of the Services in connection with the Contract;
Price	the price payable for the Services, Deliverables and any Preliminary Work as set out in the Contract;
Project	the details of which are set out in a Statement of Work;
Services	the services to be provided by Acuity as set out in the Contract, including services which are incidental or ancillary to such Services;
Statement of Work	Acuity's prescribed document for the time being in such form as Acuity may from time to time decide, addressed to the Customer, setting out the Services and the Deliverables and other principal terms of the Contract, as amended by any Change Order(s);
Timetable	the dates and/or timescales in the supply of the 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.

2. Interpretation

2.1 In these Conditions:

- (a) the clause headings are for convenience only and do not affect its construction;
- (b) words denoting the singular include the plural and the other way round
- (c) documents to be '**signed**' may be physically or virtually by an electronic signature or digital signature; and
- (d) any words preceding or following the terms '**including**', '**include**', or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2.2 In these Conditions, unless otherwise specified or the context otherwise requires, a reference to:

- (a) a person is to be construed to include a reference to any individual, firm, partnership, company, corporation, association, organisation or trust (in each case whether or not having a separate legal personality);
- (b) a party is a reference to a party to the Contract;
- (c) a clause is a reference to a clause of these Conditions; and
- (d) writing shall include email delivered to the recipient and any method of reproducing words in a legible and permanent form.

3. Basis of Contract

- 3.1 A Statement of Work and these Conditions together form the Contract. The Contract governs the agreement between Acuity and the Customer and supersedes any prior agreements, representations, arrangements or undertakings in relation to such subject matter.
- 3.2 Subject to the Contract, in consideration of payment of the Price (including the settlement of any stage payment on the due date) Acuity shall provide the Services and the Customer shall provide Acuity with clear and unambiguous instructions.

- 3.3 The Contract shall exist once a Statement of Work is signed by both parties. Services shall commence on the Commencement Date and shall continue until the Final Deliverable is made available to the Customer, unless terminated earlier in accordance with clause 14 (termination).
- 3.4 Acuity will provide the Deliverables to the Customer in consideration of the payment of the Price. The rights of the Customer to the Deliverables are subject to the terms of the Contract.
- 3.5 The Customer will use its reasonable endeavours to provide clear and unambiguous instructions to Acuity by its Customer Manager (or substitute notified in a Change Order). Acuity may accept such instructions by anyone with ostensible authority to bind the Customer.
- 3.6 The responsibility of Acuity goes no further than to deliver the Services to the Customer.
- 3.7 All advertising, marketing catalogues, brochures, samples and other materials (including, without limitation, all photographs, drawings, illustrations and documents contained in them) ,from time to time published or supplied by Acuity are published or supplied for the sole purpose of giving an approximate idea of the Services described in them make no representation and shall not form part of the Contract or have any contractual force.
- 3.8 Any quotation given by Acuity shall not constitute an Offer, and is only valid for a period of 30 calendar days from its date of issue.
- 3.9 The Deliverables shall remain the property of Acuity until they are transferred, assigned or licensed to the Customer in accordance with the Contract.
- 3.10 Any proposal, pitch, original and preparatory development work produced or created by Acuity in connection with the Services but not forming part of the Deliverables shall remain the property of Acuity, unless otherwise specified in the Contract.

4. Supply of Services and co-operation

- 4.1 Acuity shall use reasonable endeavours to provide the Services and deliver the Deliverables:
 - (a) in accordance with the Contract;
 - (b) with reasonable skill and care,
 - (c) subject to the Customer's compliance with the Contract; and
 - (d) unless Acuity is prevented from doing so by a Force Majeure Event.
- 4.2 Acuity may perform any of its obligations or exercise any of its rights under the Contract, itself or through any other person.
- 4.3 Acuity and the Customer shall co-operate with one another in all matters relating to the performance of the Contract.
- 4.4 Acuity shall use reasonable endeavours to meet the Milestones and any Timetable but any Milestones or Timetable shall be estimates for performance by Acuity and time specified in a Statement of Work and shall not be of the essence.
- 4.5 The Customer agrees that Acuity's ability to meet the Milestones and/or Timetable is contingent upon the Customer's timely and effective performance of its responsibilities, decisions and approvals, and any failure by the Customer to comply with its obligations under the Contract may have a significant impact on costs and/or Price. Acuity may rely on all decisions and approvals of the Customer.
- 4.6 The Customer shall:
 - (a) ensure that the terms of a Statement of Work are complete and accurate;
 - (b) appoint a Customer Manager to be the liaison point for Acuity and decision maker for the Services;
 - (c) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the provision of the Services is to start and provide to Acuity in a timely manner all documents, information and items reasonably required by Acuity in order to provide the Services;

- (d) keep Acuity's Materials which may from time to time be present on the Customer's premises in safe custody at its own risk, maintain Acuity's Materials in good condition until returned to Acuity, return Acuity's Materials upon termination of the Contract and at any time upon demand by Acuity, and not dispose of or use Acuity's Materials other than in accordance with Acuity's written instructions or authorisation; and
 - (e) not, at any time from the Commencement Date to the expiry of 12 calendar months after termination of expiry of the Contract, solicit or entice away from Acuity or employ or attempt to employ any person who is, or has been, engaged as an employee of Acuity in the provision of the Services.
- 4.7 If Acuity's performance of any of its obligations under the Contract is prevented or delayed by any act or omission of the Customer or failure by the Customer to perform any of its obligations under the Contract (**Customer Default**):
- (a) Acuity shall (without limiting its other rights or remedies) have the right to suspend the provision 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 Acuity's performance of such obligation;
 - (b) Acuity shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Acuity's failure to perform any of its obligations under this clause 4.7; and
 - (c) the Customer shall upon demand reimburse any costs or losses sustained or incurred by Acuity arising directly or indirectly from the Customer Default.

5. Customer Materials

- 5.1 The Customer shall at its own expense provide Acuity with all Customer Materials reasonably requested by Acuity for the purpose of providing the Services in a timely manner and in sufficient quantity and quality to meet Acuity's requirements (plus an allowance for reasonable spoilage), and grant Acuity a sufficient licence to use all Customer Materials for that purpose.
- 5.2 The Customer shall supply or provide Acuity with access to all Customer Materials in accordance with Acuity's recommended specifications and formats, and ensure any such information provided is accurate in all material respects.
- 5.3 Acuity may reject any Customer Materials which Acuity reasonably considers to be unsuitable. Acuity may charge for any additional time and costs incurred if materials supplied by the Customer are found to be unsuitable or unfit for their purpose.
- 5.4 The Customer warrants on each day of the Contract's term that it owns or holds the necessary licences or consents in respect of the Customer Materials and any other materials provided by the Customer to Acuity in connection with the provision of the Services. If the Customer does not hold such licences or consents then it shall indemnify Acuity against all costs, claims, liabilities and losses in this regard.

6. Approvals

- 6.1 The Customer shall, whenever reasonably requested to do so, review Approval Items and respond promptly to Acuity.
- 6.2 The Customer's response shall be clear and unequivocal as to whether or not it approves any Approval Item and, where approval is declined, shall indicate what alterations are required. The Customer's response shall be in writing. Where, in the course of the provision of the Services, Acuity provides printing Services, the Customer's response (including any corrections by the Customer) shall be made on the Approval Items and marked either 'OK' or 'Not OK', or similar, and signed and dated on behalf of the Customer.
- 6.3 Notwithstanding clause 6.2, Acuity shall always be entitled to rely on oral or other modes of communicating a response in respect of an Approval.

- 6.4 Acuity may regard any person purporting to respond to it on the Customer's behalf as being duly authorised.
- 6.5 The Customer shall pay for all Approval Items. Only the price for the first Approval Items shall be included in any estimate or quotation unless otherwise expressly agreed.

7. Change Control

- 7.1 Either party may at any time propose changes to the scope or execution of the Services but no proposed changes shall come into effect until a Change Order has been agreed in writing by both Acuity and the Customer and that Change Order shall amend the Contract. A Change Order shall be a document setting out all the agreed changes and effect that those changes will have on Services, Price, timescales, and any other relevant terms of the Contract.
- 7.2 If the Customer requests an alteration to the Services, it shall notify Acuity and provide as much detail as Acuity reasonably requires of the proposed changes and Acuity shall, as soon as reasonably practicable after receiving the request for an alteration from the Customer, provide a draft Change Order to the Customer for approval and signature.
- 7.3 If Acuity wishes to make a change to the Services, it shall provide a draft Change Order to the Customer.
- 7.4 Acuity may from time to time and without notice to the Customer, alter the Services in order to comply with any applicable legal or regulatory requirements from time to time, provided that such alterations do not materially affect the nature or scope of the Services or the Price.
- 7.5 Acuity may charge for the time it spends assessing a request for a Change Order from the Customer and the time it spends preparing and negotiating a Change Order on a time and materials basis in accordance with Acuity's daily rates specified in a Statement of Work. Where composition, layout, style and typeface are left to the judgement of Acuity, or any appropriate third party, the Customer shall pay an additional charge for any alterations made by the Customer either at Acuity's hourly rate or the expense of such third party.
- 7.6 Whenever the Customer requests a Change Order, it shall give Acuity the opportunity to have the altered Approval Items approved by the Customer. Acuity shall have no responsibility for alterations requested by telephone by the Customer or in any other situation where the Customer insists on Acuity proceeding without such specific approval or signed Change Order.

8. Corrections

- 8.1 If any correction is required (either due to a mistake by Acuity or otherwise), the Customer shall return the relevant Approval Items to Acuity for Acuity to make the necessary corrections. Where a correction is required due to a mistake by Acuity or any of its officers, employees, agents, representatives or contractors, Acuity shall be responsible for the costs of making the necessary correction. Where a correction is required due to an act or omission of the Customer or any of its officers, employees, agents, representatives or contractors, the Customer shall be responsible for the costs of making the necessary correction.
- 8.2 If the Customer undertakes corrections itself, it shall do so at its own risk and cost.

9. Third party services

- 9.1 Where, in the course of the Services, Acuity instructs a third party at the request or with the approval of the Customer to provide goods or services directly or indirectly for the Customer's benefit, it does so as agent for the Customer.
- 9.2 Acuity shall not be responsible for the goods or services provided by that third party (including the delivery, timing of delivery, quality or accuracy of them). The terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

10. Price and payment

- 10.1 In consideration of the provision of the Services, and any other services provided under a Statement of Work, the Customer shall pay the Price. Rates may be increased for work lasting more than 12 months, and Acuity may vary the rates by giving not less than 30 calendar days' notice in writing to the Customer. Unless stipulated as a formal quotation or otherwise specifically agreed in the Statement of Work or a Change Order, any Price given in the Statement of Work or a Change Order is merely a good faith estimate by Acuity.
- 10.2 Except where amounts or rates are specified in the Statement of Work or a Change Order, the charges for any Preliminary Work shall be calculated and paid by the Customer in accordance with Acuity's standard rates as amended from time to time by Acuity and notified to the Customer in a Acuity's quotation or upon the Customer's request of a rate card from Acuity.
- 10.3 All estimates and other price or cost indications are given on the basis of Acuity's charges and Expenses as at the date of the Statement of Work or Change Order and are subject to change. Estimates and cost indications, wherever given, are Acuity's good faith estimates, and are not a guarantee to provide the Services for any estimate unless otherwise expressly stated.
- 10.4 Even if Acuity agrees to a fixed price, it may charge additional sums in any circumstances described in clauses 4 to 8 (inclusive) if there is delay or any change in instructions on the part of the Customer or if third party Expenses are higher than anticipated.
- 10.5 The Price and any amounts stated in the Statement of Work or a Change Order are exclusive of Expenses and any applicable value added or sales tax, which shall be paid by the Customer in addition.
- 10.6 Unless otherwise stated in the Statement of Work, the Customer shall pay all amounts invoiced to it within 30 calendar days of the date of issue of the invoice.
- 10.7 If there is late payment of an invoice, Acuity may:
 - (a) charge interest on such sum from the due date for payment at the annual rate of 3% 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 the Customer shall pay the interest immediately on demand; and
 - (b) suspend the provision of the Services until payment has been made in full.
- 10.8 Time for payment shall be of the essence.
- 10.9 All sums payable to Acuity under a Statement of Work shall become due immediately on termination, despite any other provision. This clause 10.9 is without prejudice to any right to claim for interest under the law, or any such right under the Contract.

11. IPR

- 11.1 Nothing in the Contract affects either party's rights in pre-existing IPR (including pre-existing IPR of either party contained in or relating to Confidential Information) (**Pre-Existing IPR**).
- 11.2 Subject to the rights of third parties, and save in respect of any open source material used by Acuity, the copyright and/or design and/or moral right and/or Background and/or other IPR recognised anywhere in the world, belongs exclusively to Acuity and is hereby asserted.
- 11.3 Acuity shall have exclusive possession of the Deliverables for so long as it requires them in order to provide the Services and so long thereafter as any amount remains unpaid under a Statement of Work.
- 11.4 No licence is given in relation to the Background except as may be necessary for the Customer to obtain the intended benefit of the Services and such licence is contingent on payment on all sums owed to Acuity by the Customer, in full. Any such licence shall be non-exclusive and subject to clause 11.8.
- 11.5 Subject to and conditional upon the Customer having complied with its obligations under the Contract in respect of each Deliverable (including the payment of all amounts due and payable), Acuity shall upon

delivery license the Customer to exploit the Deliverable strictly to the extent and for the purpose and scope of use contemplated by the Contract, and for no other purpose. For the avoidance of doubt, the Customer may only exploit videos and photographs created by Acuity strictly for the purpose of the Project and not for any other purpose whatever. Any such licence shall be non-exclusive and subject to the Contract.

- 11.6 The Deliverables, ideas and design concepts put forward by Acuity as part of the Service but rejected by the Customer shall be Acuity's confidential know-how and the Customer shall not seek to use such ideas for any purpose, shall keep such confidential know-how secret and shall not disclose it to any third party until it shall come into the public domain other than by reason of a breach of a duty of confidentiality owed to Acuity or, if longer, for a period of six years.
- 11.7 All drafts and other unused material, including unused video footage and photographs, created by Acuity but for whatever reason not comprising a Deliverable belong absolutely to Acuity, and Acuity shall have no obligation to at any time deliver any such material to the Customer or grant to the Customer any licence to exploit the same.
- 11.8 No IPR created by Acuity prior to the commencement of the Contract with the Customer, and which are then used in the Deliverables or the Service will pass to the Customer.
- 11.9 If any payment due to Acuity is not received in full by the due date then the licences referred to in clause 11.4 shall be suspended until all outstanding payments have been made by the Customer.
- 11.10 Acuity will, at the cost of the Customer, execute such documents and do such things as are reasonably necessary to give effect to this clause 11.
- 11.11 The Customer shall give reasonable attribution to Acuity as the author of the Deliverables wherever appropriate, and agrees that elements of the Deliverables may be showcased by Acuity.
- 11.12 The Customer shall:
 - (a) bear sole responsibility for all content broadcast, published (either in hard copy form or online) or distributed in any form whatsoever using the Background in relation to the Services;
 - (b) notify Acuity in writing at least 30 calendar days prior to any proposed change to production or publishing schedules;
 - (c) satisfy itself concerning the nature and extent of any licence granted to use any third party materials supplied in connection with Deliverables;
 - (d) obtain all necessary and appropriate permissions from any contributors or other third parties to broadcast or publish the content; and
 - (e) ensure that nothing in the Customer's Materials infringes the copyright or any other IPR of any third party.
- 11.13 The Customer acknowledges that, in respect of any third party IPR, the Customer's use of such IPR is conditional on Acuity obtaining a written licence from the relevant licensor on such terms as will entitle Acuity to license such rights to the Customer.

12. Licence to use Customer IPR

- 12.1 The Customer grants to Acuity a non-exclusive, non-transferable, royalty-free, worldwide licence to use the Customer IPR in connection with the provision of the Services and delivery of the Deliverables.
- 12.2 Acuity recognises and acknowledges that use of Customer IPR shall not confer upon Acuity any proprietary rights in or to the Customer IPR nor shall Acuity claim any right, title or interest in any Customer IPR, except the right to use the Customer IPR pursuant to the Contract. Acuity shall not register or attempt to register any Customer IPR or any trade names, trademarks or service marks similar to them.
- 12.3 The Customer warrants that use of the Customer Materials by Acuity does not infringe any third party's IPR and the Customer shall indemnify Acuity fully and effectively from and against all claims of infringement of any third parties' IPR in connection with the use of the Customer Materials in the provision of the Services and any other services provided under the Contract.

- 12.4 Acuity may disclose in its marketing materials (including on its website) and to the media (including in the form of press releases) that it provides the Services to the Customer, and in connection therewith, may display the Customer's logo, but shall not disclose any of the terms of the Contract.

13. Delivery

- 13.1 Time shall not be of the essence for the provision of the Services, or delivery of the Deliverables.
- 13.2 Any expedited delivery of the Deliverables or expedited performance of the Services is be agreed in accordance with clause 7.
- 13.3 Delivery of the Deliverables shall be accepted when tendered to the Customer or on notification in writing that the work has been completed. Acuity may make delivery contingent on the Customer having complied with its obligations under the Contract, including the payment of the Price and any payments due to Acuity.

14. Termination

- 14.1 Either party may terminate the Contract if the other:
- (a) goes into liquidation, becomes insolvent or has an administrator, receiver, administrative receiver or similar officer appointed in respect of all or part of its undertaking (or is the subject of a filing with any court for the appointment of any such officer); or
 - (b) commits a material breach of the Contract which is not remedied within 30 calendar days of receipt of a notice from the other party specifying the breach and putting the defaulting party on notice of the non-defaulting party's intention to terminate the Contract if such breach is not remedied.
- 14.2 Acuity shall have the right to suspend the provision of the Services if the Customer breaches any of its obligations under the Contract, including a failure to make any payment in accordance with clause 10, and shall have a lien on all Customer Materials until such time as all breaches have been remedied and payments discharged in full. Acuity shall be entitled on the expiration of ten calendar days' notice to dispose of such Customer Materials and Deliverables (including any archiving) as it sees fit and to apply any proceeds towards such debts.
- 14.3 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 14.4 Either party may terminate the Contract by giving the other not less than 30 calendar days' notice in writing to that effect.
- 14.5 On termination or expiry of the Contract:
- (a) the Customer shall immediately pay to Acuity all of Acuity's outstanding unpaid invoices and interest and, in respect of the Services supplied but for which no invoice has been submitted, Acuity may submit an invoice, which shall be payable immediately on receipt; and
 - (b) the Customer shall return all of Acuity's Materials. If the Customer fails to do so, then Acuity may enter the Customer's premises and take possession of Acuity's Materials. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping.
- 14.6 If the Customer terminates the Contract in accordance with clause 14.4 and before the practical completion of the Services, it shall pay to Acuity an amount equal to the net profits Acuity would have generated under the Contract after the date of termination had the Contract not been terminated and continued until practical completion, less a discount of 25%. The parties hereby acknowledge and accept that such an amount is a genuine attempt to establish Acuity's actual loss suffered as a result of the early termination of the Contract.
- 14.7 On termination of the Contract, the Customer shall not be entitled to any IPR of Acuity or any Deliverable or know-how presented to the Customer by Acuity in connection with the Contract.

15. Liability

- 15.1 This clause 15 sets out Acuity's entire aggregate financial liability for loss and damage suffered by the Customer resulting from breach of the Contract. References to liability in this clause 15 include every kind of liability arising under or in connection with the Contract including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 15.2 Nothing in this clause 15 shall limit the Customer's liability or the Customer's payment under the Contract.
- 15.3 In respect of printing and/or non-printing Services, the total amount payable by Acuity in respect of loss or damage suffered by the Customer as a result of any breach of the Contract or any other legal wrong (including negligence) by Acuity connected with the provision of such Services or the delivery of relevant Deliverables in any period of 12 months commencing on the Commencement Date or any anniversary of it shall be the total amount of the Price payable for such Services and Deliverables during that 12 month period.
- 15.4 Acuity shall in any event have no liability for indirect or consequential loss or damage, loss of income or revenue, loss of business, loss of profits or contracts, depletion of reputation or goodwill, or waste of management or office time however arising, and even if Acuity could have foreseen the loss or the possibility of it was brought to Acuity's attention.
- 15.5 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract, except where repeated as an express term in the Contract.
- 15.6 Nothing in this clause 15 or otherwise by the Contract shall limit a party's liability for death or personal injury resulting from negligence, for any damage or liability incurred by the other as a result of fraud or fraudulent misrepresentation or for any liability incurred by the other party as a result of any breach of the condition as to title or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Services Act 1982.
- 15.7 The Customer shall indemnify Acuity against all liability, loss, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by Acuity as a result of or in connection with any claim for libel, trade libel or similar wrong, infringement of any copyright, trade mark right or other IPRs or breach of any relevant press, public relations, marketing, sales promotion, market research, advertising or other applicable code or law anywhere in the world arising from or relating to any Customer Materials or its content or any other material which the Customer requests Acuity to use or commission for the purposes of the Contract.

16. Compliance with laws and policies

- 16.1 In performing its obligations under the Contract, Acuity shall comply with:
 - (a) the Applicable Laws; and
 - (b) the Mandatory Policies in a Statement of Work or Change Order (if any), provided that the Customer shall give Acuity not less than two calendar months' notice of any change to such policies.
- 16.2 Changes to the Services or Deliverables required as a result of changes to the Applicable Laws or the Mandatory Policies shall be agreed in a Change Order.

17. Data Protection and Confidentiality

- 17.1 Both parties will comply with all applicable requirements of the Applicable Data Protection Laws. This clause 17 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Laws.
- 17.2 Each party shall keep in strict confidence the Confidential Information of the other and use it only for the purposes of exercising its rights and fulfilling its obligations under or in connection with the Contract. This

shall not include information that is in or enters the public domain, unless it enters the public domain through the act or default of the Customer.

- 17.3 The Customer provides its prior authorisation for Acuity to process Personal Data. Acuity will only use the Customer's Personal Data for a permitted purpose and for a reasonable time, subject to any legal or regulatory requirements. If so required by Applicable Data Protection Laws the parties shall enter into any additional contract concerning the processing of Personal Data consequent upon providing the Services.
- 17.4 The Customer will ensure it has all necessary appropriate consents to enable the lawful transfer of the Personal Data to Acuity.
- 17.5 Each party will use its best endeavours not to, at any time during the Contract, and for a period of seven years after termination or expiry of the Contract, disclose to any person any Confidential Information concerning the business, affairs, customers, clients or suppliers of the other party contract to Applicable Laws.
- 17.6 Either party may disclose the other party's Confidential Information:
 - (a) to its officers, employees, agents, representatives or contractors who need to know such information for the purposes of carrying out its obligations under or in connection with the Contract; and
 - (b) as may be required by law, court order or any governmental or regulatory authority.
- 17.7 Each party shall ensure that each of its officers, employees, agents, representatives and contractors to whom it discloses such information comply with this clause 17.

18. Notices

- 18.1 Any notice or other communication given by either party to the other under the Contract shall be in writing and delivered by email, hand or pre-paid first class post or other next working day delivery service at its registered office (if a company) or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving notice.
- 18.2 Any notice or communication will be deemed to be received:
 - (a) if delivered by hand, at the time the notice is left at the property address;
 - (b) if by letter sent by pre-paid first-class post or other next working day delivery service, at 12:00pm on the fifth calendar day after posting or collection by the courier service (or, in the case of airmail, ten calendar days after such letter was posted). In proving service, it shall be sufficient to prove the letter was properly stamped first class (or airmail), addressed and delivered to the postal authorities or courier service; and
 - (c) if by email, at the time of transmission, or if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 18.218.2(c) business hours means 9:00am to 5:00pm, on a day, other than a Saturday, Sunday or an official bank holiday in London, in place of receipt. In proving service, it shall be sufficient to produce a computer printout indicating that the message was sent to the recipient's email address.
- 18.3 This clause 18 does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

19. Force Majeure

- 19.1 If a party is prevented, hindered or delayed in or from performing any of its obligations under the Contract by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of the Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 19.2 The corresponding obligations of the other party will be suspended and the time for performance of such obligations extended, to the same extent as those of the Affected Party.

19.3 The Affected Party shall:

- (a) as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Contract; and
- (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

19.4 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 30 calendar days, the party not affected by the Force Majeure Event may initiate discussions between a director of Acuity and a director of the Customer who shall in good faith attempt to seek to agree terms of a Change Order to overcome the effect of the Force Majeure Event.

19.5 If the directors cannot agree terms of a Change Order within ten calendar days of the Force Majeure Event being referred to them, either party may issue notice to terminate the Contract in accordance with clause 14, but substituting in clause 14.2 seven calendar days' written notice to the Affected Party.

20. General

20.1 Nothing in the Contract shall constitute or create or be deemed to constitute or create a partnership or employer and employee relationship between the Customer and Acuity.

20.2 In the event that any provision (including any distinct sub-condition) of a Statement of Work, Change Order or these Conditions is held to be illegal, invalid, void or unenforceable, it shall be severed from the remaining provisions of a Statement of Work, Change Order or these Conditions (as the case may be) and the Contract shall continue in full force and effect.

20.3 Failure or neglect by either party to enforce any provision of the Contract shall not be construed as or deemed to be a waiver of that party's rights under the Contract and shall not prejudice that party's rights to take subsequent action.

20.4 Subject to clause 7, no variation of these Conditions, Change Order or a Statement of Work shall be effective unless made in writing and signed by an authorised signatory on behalf of each party.

20.5 Acuity may at any time assign, transfer, 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 of its obligations under the Contract to any third party or agent.

20.6 The Customer shall not, without the prior written consent of Acuity, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

21. Dispute Resolution Procedure

21.1 If a Dispute arises, then, except as expressly provided in the Contract, the parties shall follow the procedure set out in this clause:

- (a) either party shall give to the other a Dispute Notice, together with relevant supporting documents. On service of the Dispute Notice, Acuity and the Customer shall attempt in good faith to resolve the Dispute;
- (b) if Acuity and the Customer are for any reason unable to resolve the Dispute within three calendar days of service of the Dispute Notice, the Dispute shall be referred to a director of Acuity and a director of the Customer who shall attempt in good faith to resolve it; and
- (c) if the Dispute is not resolved within ten calendar days of it being referred to the directors, either party may issue notice of termination in accordance with clause 14.

21.2 No party may commence any proceedings in relation to the whole or part of a Dispute unless the Dispute is mediated and until 30 calendar days after a final mediation agreement has been signed or ceased, provided that the right to issue proceedings is not prejudiced by a delay. Mediation shall, be by a single

mediator appointed by agreement of both parties in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure.

- 21.3 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.
- 21.4 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.