

Ecliptic Dynamics Limited

Terms and Conditions of Sale

These are the Terms and Conditions of Sale of Ecliptic Dynamics Limited (company number: 11749532) ("**Ecliptic Dynamics**"). The Contract (as defined below) will be upon these Terms and Conditions to the exclusion of all others, including any terms and conditions which a customer purports to apply or incorporate (whether under any purchase order, confirmation of order or similar document) or otherwise (whether implied by law, trade, custom, practice or course of dealing) and whether or not such document is referred to in the Contract.

1 Definitions

In these Terms and Conditions the following definitions apply: "**Confidential Information**" means all confidential information (however recorded or preserved) disclosed by a party or its Representatives to the other party and that party's Representatives whether before or after the date of this Contract in connection with the Contract, including but not limited to:

- 1.1.1. the existence of the Contract;
- 1.1.2. any information that would be regarded as confidential by a reasonable business person relating to:
- 1.1.2.1. the business, affairs, customers, clients, suppliers, or plans, intentions, or market opportunities of the disclosing party; and
- 1.1.2.2. the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party; and
- 1.1.3. any information developed by the parties in the course of carrying out this Contract;

"**Contract**" means the Quotation and these Terms and Conditions. "**Customer**" means the purchaser of the Services. "**Delivery**" means the date that the Services are completed. "**Insolvent**" and "**Insolvency**" have the meanings as set out in Clause 2.2

"**Quotation**" means the quotation document produced by Ecliptic Dynamics setting out the proposed costs and Services. "**Representatives**" means, in relation to a party, its employees, officers, representatives, contractors, subcontractors and advisers.

2 Interpretation

2.1 Headings

Headings to Clauses in this Contract are inserted for convenience only and should not be construed as forming part of this Contract.

2.2 Insolvency

A Customer shall be deemed to be Insolvent if:

- (i) The Customer (being an individual) has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any legislation for the time being in force for the relief of Insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed over its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of the Customer or for the granting of an administration order in respect of the Customer or, any proceedings are commenced relating to the insolvency or possible insolvency of the Customer;
 - (ii) The Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between Ecliptic Dynamics and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade.
- 2.3 If the Customer is Insolvent then Ecliptic Dynamics may terminate any contract with the Customer without prejudice to any existing claim Ecliptic Dynamics may have against it.

3 The Contract

- 3.1 The Contract consists of the Quotation and these Terms and Conditions ("**Contract**").
- 3.2 Each order for the Services made by the Customer or the Customer's written acceptance of a quotation for Services ("**Order**") will be deemed to be an offer by the Customer to purchase the Services upon these Terms and Conditions. The Contract is formed when the Order is accepted by Ecliptic Dynamics, by way of a written acknowledgement of Order. No contract will come into existence until a written acknowledgement of the Order is issued by Ecliptic Dynamics.
- 3.3 Any Quotation given by Ecliptic Dynamics shall not constitute an offer, and is valid for a period of 30 (thirty) days only from its date of issue or such period as is specified in the Quotation, provided Ecliptic Dynamics has not previously withdrawn it.

4 The Services

- 4.1 All samples, drawings, descriptive matter, specifications and advertising issued by Ecliptic Dynamics and any descriptions or illustrations contained in Ecliptic Dynamics's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services represented by or described in them. They will not form part of the Contract and this is not a sale by sample.
- 4.2 The Services are those Services as described in our Quotation to Customer ("**Services**"). Ecliptic Dynamics shall supply the Services to the Customer in accordance with the Quotation in all material respects. Ecliptic Dynamics reserves the right to amend the Quotation if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and Ecliptic Dynamics shall notify the Customer in any such event.
- 4.3 Ecliptic Dynamics warrants to the Customer that the Services will be provided using reasonable care and skill.

5 Delivery

- 5.1 Ecliptic Dynamics may deliver the Services in stages. Each separate instalment or stage will be invoiced and paid for in accordance with the provisions of the Contract.
- 5.2 Ecliptic Dynamics shall use reasonable endeavours to deliver the Services by the delivery date given to the Customer. Ecliptic Dynamics shall be deemed to have delivered the Services to the Customer by delivering them to the email address shown on the Customer's Order, unless otherwise agreed in writing. Time shall not be of the essence for delivery of the Services. Ecliptic Dynamics will not be liable for any liability caused directly or indirectly by any delay in the delivery of the Services (even if caused by Ecliptic Dynamics's negligence), nor will any delay entitle the Customer to terminate or rescind the Contract unless such delay is in excess of 60 (sixty) days from the delivery date and until the Customer has given 30 (thirty) days' written notice to Ecliptic Dynamics requiring the delivery or performance to be made and Ecliptic Dynamics has not fulfilled the delivery or performance within that period. If the Customer cancels the Order in accordance with this Clause 5.2 then:
- 5.2.1 Ecliptic Dynamics will refund to the Customer any sums which the Customer has paid to Ecliptic Dynamics in respect of that Order or part of the Order which has been cancelled; and
- 5.2.2 the Customer will be under no liability to make any further payments in respect of that Order or part of the Order which has been cancelled.
- 5.3 The Customer shall:
- 5.3.1 ensure that the terms of the Order are complete and accurate;
- 5.3.2 cooperate with Ecliptic Dynamics in all matters relating to the Services and promptly provide Ecliptic Dynamics with all necessary drawings or other information about its requirements which Ecliptic Dynamics informs the Customer it needs to be returned.
- 5.4 If for any reason the Customer will not accept delivery of any of the Services when they are ready for delivery, or Ecliptic Dynamics is unable to deliver the Services on time because the Customer has not provided appropriate instructions, documents, licenses or authorisations ("**Customer Default**"):
- 5.4.1 the Services will be deemed to have been delivered or performed on the due date;
- 5.4.2 without limiting or affecting any other right or remedy available to it, Ecliptic Dynamics shall 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 in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- 5.4.3 Ecliptic Dynamics shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Ecliptic Dynamics's failure or delay to perform any of its obligations as set out in this Clause 5.4; and
- 5.4.4 the Customer shall reimburse Ecliptic Dynamics on written demand for any costs or losses sustained or incurred by Ecliptic Dynamics arising directly or indirectly from the Customer Default.

6 Price and Payment

- 6.1 The price for the Services and any applicable expenses is set out in the Quotation. Unless otherwise specified such price shall be in pounds sterling, and shall not include value added tax or other applicable sales tax which will be added to the sum in question. All prices and charges are based upon the taxes in force at the date of acceptance of the Order. Ecliptic Dynamics shall be entitled to increase such prices and charges correspondingly if Ecliptic Dynamics's own costs or expenses in respect of the Services or Ecliptic Dynamics's obligations under this Contract are in any way increased by any change in:
- (i) Ecliptic Dynamics's obligations under this Contract; or
- (ii) legal or regulatory requirements;
- at any time prior to the date of Delivery.
- 6.2 Unless the Quotation states otherwise:
- 6.2.1 the Customer shall pay 20% (twenty percent) of the price of the Order at the time of placement of the Order. If Ecliptic Dynamics does not accept the Order Ecliptic Dynamics shall refund the 20% (twenty percent) payment; and
- 6.2.2 the balance of the Order price is payable by the Customer within 15 days of Delivery of the Order by Ecliptic Dynamics.
- 6.3 Time shall be of the essence for payment and no payment shall be deemed to have been received until Ecliptic Dynamics is in possession of cleared funds.
- 6.4 All payments payable to Ecliptic Dynamics under the Contract shall become due immediately upon termination of the Contract despite any other provision.
- 6.5 If the Customer fails to make any payment for the Services by the due date for that payment then (unless some other payment arrangement is agreed in writing by the parties) the whole of the balance of the purchase price shall immediately become due and owing.
- 6.6 The Customer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement, restriction, condition or otherwise and without any deduction or withholding for or on account of any counterclaim or any present or future taxes, levies, duties, charges, fees, deductions or withholdings of any nature, unless the Customer is required by law to make any such deduction or withholding.

6.7 Ecliptic Dynamics reserves the right to claim interest at the annual rate of 2% (two percent) above LIBOR from time to time (but at 4% a year for any period when that base rate is below 0%), per month or part thereof, after as well as before judgment, on invoices not fully paid when due.

7 Limit of Liability

- 7.1 Subject to Clause 7.2 the Customer agrees and accepts that to the maximum extent permissible in law the express obligations made by Ecliptic Dynamics in this Contract are in lieu of and to the exclusion of any warranty, condition, term, undertaking or representation of any kind (excluding fraudulent misrepresentation) whether express or implied, statutory, customary or otherwise relating to the Services provided under or in connection with this Contract, including (without limitation) those as to quality and performance which, but for such exclusion, would or might subsist in favour of the Customer.
 - 7.2 Notwithstanding anything to the contrary contained in this Contract, Ecliptic Dynamics does not seek to limit or exclude its liability (if any) to the Customer for:
 - (i) any matter which it would be illegal for Ecliptic Dynamics to exclude or to attempt to exclude its liability; or
 - (ii) fraud.
 - 7.3 Subject to Clause 7.2 and 7.5 Ecliptic Dynamics aggregate liability to the Customer under or in connection with this Contract (whether in contract (by way of indemnity or otherwise), tort (including negligence), breach of statutory duty, restitution or otherwise) in respect of all and any loss or damage howsoever caused shall not in any circumstances exceed the sum equal to 105% (one hundred and five percent) of the aggregate of the amount or amounts payable by the Customer under this Contract.
 - 7.4 Subject to Clause 7.2, Ecliptic Dynamics shall have no liability to the Customer (whether in contract (by way of indemnity or otherwise), tort (including negligence), breach of statutory duty, restitution or otherwise) for any of the following types of losses (whether those losses arise directly in the normal course of business or otherwise or in connection with or arising out of the supply or failure or delay in supply of the Services by Ecliptic Dynamics or on the part of Ecliptic Dynamics's employees, agents or subcontractors or in connection with or arising out of any statement made or not made, or advice given or not given, by or on behalf of Ecliptic Dynamics whether prior to or in the course of this Contract):
 - 7.4.1 pure economic loss, loss of profits, loss of business, loss of revenue, loss of contract, loss or depletion of goodwill and/or business opportunity, loss of anticipated earnings or savings or like loss;
 - 7.4.2 loss of use or value of any data, information or software;
 - 7.4.3 wasted management, operational or other time; or
 - 7.4.4 any special, indirect or consequential losses even if such losses are foreseeable and/or Ecliptic Dynamics has been advised of or is aware (or reasonably should have been aware) of the possibility of the Customer incurring or suffering such losses.
 - 7.5 The Customer shall have no right to specific performance of any contract to which Ecliptic Dynamics is a party.
 - 7.6 Ecliptic Dynamics will maintain at its own cost employer's liability and public (including product) liability policies of insurance covering all risks normally covered by policies of that type.
 - 7.7 Ecliptic Dynamics will not be liable for any claim unless made with details in writing to Ecliptic Dynamics no later than 90 (ninety) days after the date the claimable event first comes to the notice of the Customer.
- ### 8 Confidentiality
- 8.1 The provisions of this clause shall not apply to Confidential Information that;
 - 8.1.1 is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause);
 - 8.1.2. was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
 - 8.1.3. was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party; or
 - 8.1.4. the parties agree in writing is not confidential or may be disclosed.
 - 8.2. Each party shall keep the other party's Confidential Information confidential and shall not:
 - 8.2.1. use such Confidential Information except for [the purpose of exercising or performing its rights and obligations under or in connection with this Contract (**Permitted Purpose**); or
 - 8.2.2. disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this Clause 8.
 - 8.3. A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:
 - 8.3.1. it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and

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8.3.2. it procures that its Representatives shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in this clause as if they were a party to this Contract, and at all times, it is liable for the failure of any Representatives to comply with the obligations set out in this clause 8.4. A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this Clause 8.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

8.5. A party may, provided that it has reasonable grounds to believe that the other party is involved in activity that may constitute a criminal offence under the Bribery Act 2010, disclose Confidential Information to the Serious Fraud Office without first informing the other party of such disclosure.

8.6. Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this clause are granted to the other party, or to be implied from this Contract.

8.7. On termination of this Agreement, each party shall:

8.7.1. destroy or return to the other party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information;

8.7.2. erase all the other party's Confidential Information from computer and communications systems and devices used by it, including such systems and data storage services provided by third parties (to the extent technically and legally practicable); and

8.7.3. certify in writing to the other party that it has complied with the requirements of this clause, provided that a recipient party may retain documents and materials containing, reflecting, incorporating or based on the other party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority. The provisions of this clause shall continue to apply to any such documents and materials retained by a recipient party, subject to clause 11.

8.8. The provisions of this clause 8 shall continue to apply after termination of this Contract.

9 Non-Solicitation

9.1 Ecliptic Dynamics and the Customer mutually agree that they will not for the duration of this Contract and for a period of three months thereafter without the other Party's prior written consent, directly or indirectly solicit or offer employment or engagement to any of the Party's employees who at the time of such action or during a period of 3 (three) months immediately preceding such action is or was employed by Ecliptic Dynamics or the Customer.

9.2 In the event of a breach of this Clause 9, the offending Party will pay to the other Party damages equivalent to 12 (twelve) months salary of the individual concerned being a reasonable estimation of the loss incurred by the affected party.

10 Force Majeure

10.1 If either party is unable to perform any part of this Contract (other than making a payment of money) and such failure is caused by circumstances beyond its reasonable control, including but not limited to flood, fire, earthquake, war, tempest, hurricane, industrial action, government restrictions, legislation, act of god, or any other occurrence of a like nature, then it shall be excused from performance for a period which is reasonable under the prevailing circumstances and shall not be deemed to be in breach of the Contract or otherwise liable to the other party for such failure to perform.

10.2 If the circumstances described in Clause 10.1 continue for more than 3 (three) months, either party may give written notice to the other to terminate the Contract. The notice to terminate must specify the termination date, which must not be less than 15 (fifteen) days after the date on which the notice is given, and once such notice has been validly given, the Contract will terminate on that termination date.

11 Termination

11.1 Without prejudice to any other right or remedy, this Contract may be terminated forthwith:

11.1.1 By either party if the other commits any material breach of any terms of this Contract and fails (in the case of a material breach capable of being remedied) to remedy the breach within 90 (ninety) days of a written request to remedy the same.

11.1.2 by Ecliptic Designs where the Customer fails to pay any sums due by the due date (without prejudice to any other provisions relating to late payment) or where the Customer breaches Clause 22.

11.1.3 By either party if the other becomes Insolvent.

11.2 Ecliptic Dynamics will be entitled to suspend any Services due to occur following service of a notice specifying a breach under Clause 11.1.1 or 11.1.2, until either the breach is remedied or the Contract terminates, whichever occurs first.

11.3 Upon termination or expiry of the Contract the Customer shall immediately pay all charges whether due and payable or payable for the remainder of the Contract as if such termination had not occurred.

11.4 The rights to terminate this Contract given by this Clause shall be without prejudice to any other right or remedy of either party in respect of the breach concerned (if any) or any other breach.

11.5 Termination of this Contract (howsoever caused) is without prejudice to the rights, remedies, obligations, duties and liabilities of either parties accrued prior to termination and the terms which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

12 Dispute Resolution

12.1 The parties to this Contract will attempt in good faith to resolve any dispute or claim arising out of or relating to this Contract promptly through negotiations between the respective senior executives of the parties who have authority to settle the same.

12.2 If the matter is not resolved through negotiation within 30 (thirty) days, the parties will attempt to resolve the dispute by the appointment of an independent technical expert in the case of a technical dispute or by mediation in the case of other disputes in accordance with the Centre for Effective Dispute Resolution ("CEDR") dispute resolution procedure (in either case, an "ADR procedure").

12.3 The technical expert nominated to consider a dispute referred to him shall be selected by agreement between the parties or, in default of agreement, within 14 (fourteen) days of the initial reference to adjudication, shall be selected by CEDR.

12.4 If the matter has not been resolved by an ADR procedure within 90 (ninety) days of the initiation of the ADR procedure, or if either party will not participate in an ADR procedure, either party may refer the dispute to the jurisdiction of the courts.

12.5 The fees and the costs of such ADR procedure shall be borne equally by the parties.

12.6 Nothing in this Clause 12 will prevent either party from seeking injunctive relief in the case of any breach or threatened breach by the other of any obligation of confidentiality or commencing any proceedings where this is reasonably necessary to avoid any loss of a claim due to the rules on limitation of actions; or commencing proceedings in the case of non-payment of an undisputed invoice.

13 Entire Contract

13.1 These Contract constitutes the entire agreement between the parties and supersede and extinguishes all prior discussions or written or oral agreements, representations or understandings between the parties or their agents relating to its subject matter.

13.2 The parties acknowledge that this Contract has not been entered into wholly or partly in reliance on nor has either party been given any condition, warranty, guarantee, statement, promise or representations other than as expressly set out in this Contract. To the extent that any such conditions, warranties, guarantees, statements, promises or representations have been given the recipient party unconditionally and irrevocably waives any claims, rights or remedies which it might otherwise have had in relation to them.

13.4 Where the Customer is more than one person the obligations of the Customer will be binding on each person separately and on all persons jointly.

14 Notices

14.1 Any notice or communication to be given under this Contract shall be delivered personally or sent by courier or post to the address of the other party set out in this Contract (or such other address as may have been notified in writing) and addressed to the designated person at the address specified on the Quotation. Any notice or communication shall be deemed to have been received: (i) if delivered by hand, at the time the notice is left at the proper address; or (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the fourth day after posting.

15 Assignment

15.1 Neither party may assign this Contract nor any of its obligations hereunder without the prior written consent of the other which consent shall not be unreasonably withheld.

16 Severance

16.1 If for any reason any provisions of this Contract shall be held by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be deleted from this Contract, but will not affect the validity of the rest of this agreement. If any provision or part-provision of this Contract deleted under this Clause 16.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

17 Waiver

17.1 Failure or delay by Ecliptic Dynamics in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.

18 Variation

18.1 Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

19 No Third Party Rights

19.1 This Contract is made solely and specifically between Ecliptic Dynamics and the Customer for the benefit of the parties to this Contract and is not intended to be for the benefit of, and shall not be enforceable by, any other person.

20 Governing Law

19.1 This Contract shall be governed by the laws of England and both parties agree to submit to the exclusive jurisdiction of the English courts.

21 Intellectual Property

21.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by Ecliptic Dynamics.

21.2 The Customer grants Ecliptic Dynamics a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

22 Acceptable Use

22.1 The Customer may only use the Services for lawful purposes. The Customer may not use the Services:

22.1.1. In any way that breaches any applicable local, national or international law, regulation, treaty, code of conduct, or code of practice.

22.1.2. For the purposes of obtaining information in an illicit manner where such information will, or could reasonably, be used to extort or blackmail any person.

22.1.3. To 'catfish', 'spear phish' 'whale phish', 'phish', perform DDOS attacks, hack, cyber stalk, cyber bully, commit identity theft or appropriation, or any other activity that could reasonably be determined (in our sole determination) as cyber crime, fraud or warfare.

22.1.4. In any way that is unlawful or fraudulent or has any unlawful or fraudulent purpose or effect.

22.1.5. For the purpose of harming or attempting to harm any person in any way.

22.1.6. To bully, insult, intimidate or humiliate any person.

22.1.7. To send, knowingly receive, upload, download, use or re-use any material which does not comply with our content standards.

22.1.8. To transmit, or procure the sending of, any unsolicited or unauthorised advertising or promotional material or any other form of similar solicitation (spam).

22.1.9. To knowingly transmit any data, send or upload any material that contains viruses, Trojan horses, worms, time-bombs, keystroke loggers, spyware, adware or any other harmful programs or similar computer code designed to adversely affect the operation of any computer software or hardware.

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