



# STANDARD TERMS & CONDITIONS OF SERVICE

## INTRODUCTON

These are our standard terms of business.

These terms & conditions sets out the general terms under which Zettasphere provides **services** to fulfil a **project definition**.

Zettasphere services include advice for email marketing and managed email marketing services.

The following are defined separately to these terms and agreed within a **project definition** between Zettasphere and the **client**.

- Project scope & deliverables
- Project fees, expenses and payment terms
- Project and contract duration

All services are delivered from the UK under the law of England and Wales.

Zettasphere is a registered limited company, 07866005, registered in England and Wales.

## WARRANTY AND LIABILITY

Zettasphere warrants that, the services and obligations under this agreement and defined by the project definition will be performed by competent persons with appropriate levels of qualification and experience and with reasonable diligence, skill and care in a first-class professional manner.

Projects will be delivered solely using its employees and third-party contractors or consultants.

Zettasphere shall indemnify the client for the amount of any final award of damages made against the client by a court of competent jurisdiction as a result of any claim arising out of any breach of the above warranty provided always that the client shall not compromise or settle any such claim without giving the Zettasphere in writing full details of such claim and of the proposals to settle and without affording Zettasphere a reasonable opportunity to consider the proposals and, if it so wishes, to take over at the Zettasphere's own expense, the conduct of any such proceedings.

The client warrants and undertakes to Zettasphere that so far as it is aware:

The client has full power to enter into this Agreement and is wholly free to make this appointment, and the appointment and performance of Zettasphere will not be impaired, restricted or interfered with by any other contract or obligations it may have or by any outstanding litigation or dispute in which it or any of its personnel are involved;

All information it supplies to Zettasphere will be accurate and will in no way whatever be a violation or infringement of any third-party Intellectual Property Rights, right of privacy or publicity, or any other rights whatever of any person and the information (or any part thereof) shall not be obscene, libellous or defamatory or in any other way unlawful and will not in any way inhibit restrict or impair the free and/or unrestricted exercise by Zettasphere of the rights granted.

#### LIMITATION OF LIABILITY

The liability in relation to the provision of services and warranty will be no greater than the fees paid or due to be paid by the client in the 6-month period immediately preceding the event that gives rise to the claim. This limit will not apply in the case of death or personal injury caused by either party's negligence, for any breach by either party of data protection legislation.

Notwithstanding anything contained in the agreement, neither party will be liable to the other party for any loss of profits, consequential, economic, or indirect loss arising in any way in connection with the performance (or non-performance) of the obligations related to this agreement.

#### TERMINATION

This agreement terminates on completion of the project as detailed in the project definition.

Either party may terminate this Agreement immediately by notice in writing to the other if:

The other commits any material breach of this Agreement which is capable of remedy and fails to remedy the same within 14 days of notice from the other party requiring such remedy; or

The other commits any material and irremediable breach of this Agreement or repeats any such breach as has previously.

## CONFIDENTIALITY

“Confidential Information” means, with respect to each Party, information of a confidential nature, in whatever form disclosed by the Party, which relates to that Party or to the Project, including without limitation business and technical information and data, which, although not directly related to the Project, is nevertheless disclosed in written or other tangible form during the Project or otherwise.

Zettasphere undertakes that it will not disclose to a third party any confidential information relating to the Services or the client’s business in general or any information obtained from the client under this Agreement, and shall procure that each of its directors, employees and subcontractors shall not do so, except with the prior consent in writing of the client, as required by law, or to the extent to which that confidential information is publicly available or already known to Zettasphere at the date of receipt other than through any unauthorised disclosure by any person.

Zettasphere acknowledges a duty not to disclose without the client’s permission during or after the term of appointment any confidential information resulting from studies, campaigns or surveys commissioned and paid for by the client.

The client, in turn, acknowledges Zettasphere’s right to use as it sees fit any general marketing intelligence which Zettasphere has gained during delivery of services.

The provisions of this Clause shall survive the termination of this Agreement.

## PUBLICITY

Both parties shall keep confidential the details of the project definition. Zettasphere may use the clients name in a fair and reasonable way in press releases and marketing materials, unless the client has explicitly withheld such consent.

## DATA PROTECTION

Both parties agree to comply with their obligations under the GDPR (2018) and as applicable to the client as a “data controller” and to Zettasphere as a “data processor” in respect of any personal data supplied by the client to Zettasphere.

Zettasphere will:

- Only act on written instructions of the client
- Ensure that all personnel processing the data are subject to a duty of confidence
- Take appropriate measures to ensure security of processing
- Only engage sub-processors with prior written consent of the client
- Assist the client in providing subject access and allowing data subjects to exercise their rights under the GDPR
- Assist the client in meeting its GDPR obligations in relation to the security of processing, the notification of personal data breaches and data protection impact assessments
- Delete or return all personal data to the client as requested at the end of the project
- Provide the client with whatever information it needs to ensure that they are both meeting their Article 28 obligations
- Tell the controller immediately if it is asked to do something infringing the GDPR or other data protection law of the EU or a member state

Zettasphere has the further responsibilities under the GDPR

- To co-operate with supervisory authorities (such as the ICO)
- To ensure the security of its processing
- To keep records of processing activities
- To notify any personal data breaches to the data controller

## **FORCE MAJEURE**

Each party will be excused from performance of its obligations under this Agreement if and to the extent that such performance is prevented directly or indirectly by an event beyond its reasonable control including, without limitation, by any strike, lock out, labour disturbance, government action, riot, armed conflict, accident, unavailability or breakdown of normal means of transport, act of God or any other matter beyond its reasonable control.

## **WHOLE AGREEMENT**

These terms together with the project definition constitutes the whole agreement and understanding of the parties as the provision of and the payment for the Services and there are no prior or contemporaneous agreements between the parties with respect of the Services.

## **NO PARTNERSHIP**

Nothing in this Agreement shall create or be deemed to create a partnership or the relationship of principal and agent between the parties and neither party shall have any right or authority to bind or make any representation or warranty on behalf of the other.