

**TERMS AND CONDITIONS FOR THE SUPPLY  
OF SERVICES BY SUSTRANS**

**The Customer's attention is particularly drawn to the provisions of clause 9.**

**1. Interpretation**

1.1 In these Conditions, the following definitions apply:

<b>"Charges"</b>	the charges payable by the Customer for the supply of the Services as detailed in the Order.
<b>"Conditions"</b>	these terms and conditions as amended from time to time in accordance with clause 12.8.
<b>"Contract"</b>	the contract between Sustrans and the Customer for the supply of Services in accordance with these Conditions.
<b>"Customer"</b>	the person or firm who purchases Services from Sustrans.
<b>"Outputs"</b>	the end result of the Services as set out in the Remit to be delivered to the Customer under the Contract.
<b>"Intellectual Property Rights"</b>	all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
<b>"Order"</b>	the Customer's order for Services as set out in the Customer's purchase order form, or the Customer's written acceptance of a quotation by Sustrans, or overleaf, as the case may be.
<b>"Results"</b>	any results of investigations and conclusions drawn from them by Sustrans in the course of the Services.
<b>"Services"</b>	the services, including the Outputs, supplied by Sustrans to the Customer as set out in the Remit.
<b>"Remit"</b>	the description of the Services in the Order.
<b>"Sustrans"</b>	Sustrans Limited registered in England and Wales with company number 01797726.
<b>"Sustrans Materials"</b>	has the meaning set out in clause 5.1(e).

1.2 In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and a reference to a party includes its, successors or permitted assigns;
- (b) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (c) any phrase introduced by the terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (d) a reference to **writing** or **written** includes faxes but not e-mails.

## 2. **Basis of contract**

2.1 The Order constitutes an offer by the Customer to purchase Services from Sustrans in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when Sustrans issues written acceptance of the Order or starts work on the Services at which point and on which date the Contract shall come into existence ("**Start Date**").

2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Sustrans which is not set out in the Contract. Any samples, drawings, descriptive matter or advertising issued by Sustrans, and any descriptions or illustrations contained in Sustrans catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or any other contract between Sustrans and the Customer for the supply of the Services.

2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.5 Any quotation given by Sustrans shall not constitute an offer, and is only valid for a period of 30 days from its date of issue.

## 3. **Supply of Services**

3.1 Sustrans shall supply the Services to the Customer.

3.2 Sustrans shall use all reasonable endeavours to meet any performance dates specified in the Order or the Remit, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

3.3 Sustrans shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and Sustrans shall notify the Customer in any such event.

3.4 Sustrans warrants to the Customer that the Services will be provided using reasonable care and skill.

#### 4. **Policies and Charitable Status**

4.1 Sustrans is a charity and nothing in the Contract shall be construed as an obligation on it to act beyond its powers.

4.2 Sustrans has a complaints policy and shall monitor all complaints received in relation to the Services with a view to identify and implement improvements to its activities.

4.3 In the provision of the Services under the Contract, Sustrans shall comply with its own:

- (a) equality and diversity policy;
- (b) health and safety policy;
- (c) sustainable travel policy; and
- (d) other policies relevant to the Services and listed in the Remit.

Copies of these policies are available on request.

#### 5. **Customer's obligations**

5.1 The Customer shall:

- (a) ensure that the terms of the Order and any information it provides in relation to the Services are complete and accurate;
- (b) co-operate with Sustrans in all matters relating to the Services;
- (c) provide Sustrans with such information and materials as Sustrans may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
- (d) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start; and
- (e) keep and maintain all materials, equipment, documents and other property of Sustrans ("**Sustrans Materials**") at the Customer's premises in safe custody at its own risk, maintain Sustrans Materials in good condition until returned to Sustrans, and not dispose of or use Sustrans Materials other than in accordance with Sustrans' written instructions or authorisation.

5.2 If Sustrans' performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**"): .

- (a) Sustrans shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays Sustrans performance of any of its obligations;

- (b) Sustrans shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Sustrans' failure or delay to perform any of its obligations as set out in this clause 5.2; and
- (c) the Customer shall reimburse Sustrans on written demand for any costs or losses sustained or incurred by Sustrans arising directly or indirectly from the Customer Default.

## 6. Charges and payment

6.1 If Sustrans has agreed a fixed price for the Services that price shall be as set out in the Order and will be inclusive of all expenses. Accordingly the provisions of Condition 6.2 to 6.4 inclusive shall not apply to a fixed price Contract.

6.2 The Charges for the Services shall:

- (a) be calculated in the manner set out the Order;
- (b) Sustrans shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom Sustrans engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by Sustrans for the performance of the Services, and for the cost of any materials.

6.3 Where the Charges are calculated by reference to time spent in providing the Services the following will apply:

- (a) 'day' means a period of 7 hours and includes the time spent travelling to and from the place where the Services are performed; and
- (b) where more than 7 hours is spent on a Contract in any day Sustrans shall be entitled to charge for that additional time at the pro-rated rate for a day.

6.4 Sustrans reserves the right to increase its standard daily fee rates, provided that such charges cannot be increased more than once in any 12 month period. Sustrans will give the Customer written notice of any such increase at least 90 days before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify Sustrans in writing within 30 days of the date of Sustrans' notice and Sustrans shall have the right without limiting its other rights or remedies to terminate the Contract by giving 30 days written notice to the Customer.

6.5 Sustrans shall invoice the Customer on completion of the Services or as agreed in the Order (as the case may be).

6.6 The Customer shall pay each invoice submitted by Sustrans:

- (a) within 30 days of the date of the invoice ("**Due Date**"); and
- (b) in full and in cleared funds to a bank account nominated in writing by Sustrans, and

time for payment shall be of the essence of the Contract.

6.7 All amounts payable by the Customer are expressed as exclusive of value added tax ("**VAT**"). Where any taxable supply for VAT purposes is made under the Contract

the Customer shall, on receipt of a valid VAT invoice from Sustrans, pay to Sustrans such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

- 6.8 Without limiting any other right or remedy of Sustrans, if the Customer fails to make any payment due to Sustrans under the Contract by the Due Date for payment, Sustrans shall have the right to charge interest on the overdue amount at the rate of 5% per annum above the then current base lending rate of [National Westminster Bank plc] accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 6.9 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against Sustrans in order to justify withholding payment of any such amount in whole or in part. Sustrans may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Sustrans to the Customer.

## **7. Intellectual property rights**

- 7.1 All Intellectual Property Rights in the Outputs or arising out of or in connection with the Services shall be owned by Sustrans.
- 7.2 Subject to the Customer paying all charges to Sustrans in full, Sustrans grants the Customer a royalty free licence to use the Results for its own internal purposes and any other purposes specified in the Order. The Customer will not be entitled to publish the Results without Sustrans' consent in writing.
- 7.3 The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on Sustrans obtaining a written licence from the relevant licensor on such terms as will entitle Sustrans to license such rights to the Customer.
- 7.4 Sustrans shall use reasonable endeavours to obtain but does not warrant that it has obtained all licences required under clause 7.3 so far as Sustrans are aware.
- 7.5 All Sustrans Materials are the exclusive property of Sustrans.

## **8. Confidentiality**

- 8.1 A party ("**Receiving Party**") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party ("**Disclosing Party**"), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party.
- 8.2 Notwithstanding the provisions of Condition 8.1 Sustrans shall be entitled to publicise the Results without restriction.

8.3 This clause 8 shall survive termination of the Contract.

**9. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

9.1 Nothing in these Conditions shall limit or exclude Sustrans' liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

9.2 Subject to clause 9.1:

- (a) Sustrans shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or for any indirect or consequential loss arising under or in connection with the Contract; and
- (b) Sustrans' total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise shall not exceed the Charges paid under that Contract.

9.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

9.4 This clause 9 shall survive termination of the Contract.

**10. Termination**

10.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- (b) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company);
- (c) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (d) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- (e) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party; or

- (f) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 10.2 Without limiting its other rights or remedies, Sustrans may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 10.3 Without limiting its other rights or remedies, neither party shall have the right to terminate the Contract by notice unless expressly set out in the Order.
- 10.4 Without limiting its other rights or remedies, Sustrans shall have the right to suspend provision of the Services under the Contract or any other contract between the Customer and Sustrans if
- (a) the Customer becomes subject to any of the events listed in clause 10.1(a) to clause 10.1(f), or
  - (b) Sustrans reasonably believes that the Customer is about to become subject to any of them, or
  - (c) the Customer fails to pay any amount due under the Contract on the due date for payment.

## **11. Consequences of termination**

- 11.1 On termination of the Contract for any reason:
- (a) the Customer shall immediately pay to Sustrans all of Sustrans outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Sustrans shall submit an invoice, which shall be payable by the Customer immediately on receipt;
  - (b) the Customer shall return all of Sustrans Materials and any Outputs which have not been fully paid for. If the Customer fails to do so, then Sustrans may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract;
  - (c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
  - (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## **12. General**

- 12.1 Force majeure:
- (a) For the purposes of the Contract, ("**Force Majeure Event**") means an event beyond the reasonable control of Sustrans including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of Sustrans or any other party), failure of a utility service or transport network,

act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

- (b) Sustrans shall not be liable to the Customer as a result of any delay or failure to perform its obligations under the Contract as a result of a Force Majeure Event.
- (c) If the Force Majeure Event prevents Sustrans from providing any of the Services for more than 90 consecutive days, Sustrans shall, without limiting its other rights or remedies, have the right to terminate the Contract immediately by giving written notice to the Customer.

12.2 Assignment and subcontracting:

- (a) Sustrans 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 or all of its obligations under the Contract to any third party or agent.
- (b) The Customer shall not, without the prior written consent of Sustrans, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract. Sustrans will not unreasonably withhold its consent.

12.3 Notices:

- (a) Any notice or other communication required to be given to a party under or in connection with the Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.
- (b) Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at [9.00 am] on the [second] day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next day after transmission.
- (c) This clause 12.3 shall not apply to the service of any proceedings or other documents in any legal action.
- (d) For avoidance of doubt notice given under the Contract shall not be validly served if sent by e-mail.

12.4 A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy. Unless specifically

provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

- 12.5 If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 12.6 Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 12.7 A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 12.8 Any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by Sustrans.
- 12.9 This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.