



## STANDARD TERMS AND CONDITIONS OF BUSINESS

### 1. Interpretation

In these terms and conditions (the "Conditions") the following terms shall have the following meanings:

"Prescient"	means Prescient Limited, a company registered in England and Wales (Company Number: 03378772) whose registered office address is at 27 Barncroft Drive, Hempstead, Kent ME7 3TJ;
"Agreement"	means the agreement between Prescient and the Client consisting of these Conditions and the Proposal. In the event of any inconsistency between the documents comprising the Agreement, the documents shall take precedence in the following order: (i) Conditions, (ii) Proposal;
"Client"	means the entity appointing Prescient to provide the Services;
"Work"	means any physical deliverables subject to copyright or design protection prepared specifically for and delivered to the Client in the performance of the Services but not including any software, computer programs, methodologies, systems or know-how;
"Fees"	means the fees payable by the Client to Prescient in respect of the Services as set out in the Proposal;
"Proposal"	means the proposal document setting out the Services and the Fees; and
"Services"	means the services to be performed by Prescient for the Client as set out in the Proposal.

### 2. General

These Conditions are complete and exhaustive and shall be in substitution for any oral or other arrangements made between Prescient and the Client. No other terms and conditions shall apply to the Agreement relating to the provision of the Services by Prescient to the Client. By accepting the Proposal and commissioning the Services, the Client is deemed to have accepted these Conditions in their entirety. No addition or amendment to the Conditions, any exclusion of the Conditions or any substitution of any other terms by the Client will be accepted by Prescient unless such an addition, exclusion or amendment has been confirmed by a director of Prescient in writing.

### 3. Fees, Costs and Expenses

- 3.1. Prescient agrees to provide the Services in return for payment of the Fees (together with any applicable VAT).
- 3.2. The latest Proposal prior to the Client instructing the Company to commence the Services will be regarded as containing the agreed Fees.
- 3.3. Proposals are valid for 2 months from date of issue and, unless otherwise stated, assume the commencement of fieldwork within one month of commissioning. Should either period be exceeded, for any reason, Prescient reserves the right to re-quote.
- 3.4. Fees will normally be invoiced on completion of the Services unless the Proposal states otherwise. Should it do so, Prescient may invoice in up to three stages (each a 'Stage') as follows: (1) up to 50% on completion of the first wave of data collection, and then, (2) up to 50% on completion of the second wave of data collection and, finally, (3) the balance (if any) on completion of the Services (normally ending with the issue of a Report), unless otherwise expressly agreed in advance in writing with the Client. Payments are due within fourteen (14) days of invoice date. Each invoice for each Stage shall be a separate and distinct amount due and payable within fourteen (14) days of invoice date irrespective of whether invoices for any other Stage (or expenses to be charged in accordance with clause 3.6 below) have been issued or have become payable.
- 3.5. Unless otherwise expressly agreed by Prescient in writing, Prescient shall issue invoices and payments are to be made in pounds sterling.
- 3.6. In addition to payment of the Fees, the Client shall also reimburse Prescient for all out-of-pocket costs and expenses (together with any applicable VAT) incurred by Prescient in carrying out the Services, provided that any item in excess of two hundred and fifty pounds (£250) has been approved in advance by the Client in writing. Reimbursement of all costs and expenses shall be made within fourteen (14) days of presentation of an applicable receipt and invoice. In the event that any costs or expenses to be incurred by Prescient are a substantial sum, Prescient will have the right to require that the Client pays such costs or expenses in advance.
- 3.7. Subject to further written agreement between Prescient and the Client, any delays to the provision of the Services or additional work carried out by Prescient for the Client which does not expressly fall within the scope of the Proposal (or which results from delayed, incomplete or inaccurate information and / or materials having been provided by the Client) shall be subject to additional fees.
- 3.8. Prescient shall be entitled to charge interest on all invoices presented to the Client which are not paid by the relevant due date at the rate prescribed by the Late Payment of Commercial Debts (Interest) Act 1998 (or any similar / successor / related legislation) from time to time. Such interest will accrue on a daily basis from the date on which payment becomes overdue up to the date on which Prescient receives the full outstanding amount together with all accrued interest.
- 3.9. Each party shall pay all monies which are payable by it to the other without any right of set off, abatement or withholding in respect of monies which are due to it or alleged to be due to it from the other party.

### 4. Status at Law

- 4.1. Where Prescient enters into sub-contracts with third party suppliers in order to provide the Services to the Client, Prescient shall enter into such contracts as principal at law. The rights and liabilities between the Client and Prescient shall correspond to those between Prescient and such third party sub-contractors.
- 4.2. In the event of the Client amending plans, schedules or work in progress, Prescient shall take all reasonable steps to negotiate with third party suppliers to amend where necessary any commitments which have been entered into by Prescient with such third party suppliers but nothing in this clause shall be construed as obliging Prescient to break any lawful commitment with such third party suppliers or as relieving the Client of its obligations to make payment for and to indemnify Prescient against any commitments, expenditure, costs, fees or other liabilities incurred by Prescient in carrying out the Services.

## 5. Copyright

- 5.1 Save as set out in the remainder of this Clause 5, upon completion of the Services and upon the Client's payment in full of the Fees and related costs and expenses payable, Prescient shall assign to the Client all intellectual property rights owned by Prescient in and to the Report (defined below) but solely for the Client's own internal use only (and for no other purpose without Prescient's prior written consent). The Report may only be used by the Client in the ways and made available to such third parties, as Prescient agrees in advance. The "**Report**" means all graphs, tables, spreadsheets, and, subject to the remainder of this clause 5, the original content forming part of the final report submitted to the Client containing the results of the Services, analysed and presented to the Client and which usually signifies completion of the Services. The Report expressly excludes any video clips which we have used in any presentations or reporting ("**Video**"). Prescient shall, upon payment in full of the Fees, and subject to the remainder of this clause 5, grant the Client a non-exclusive, personal, non-transferable, perpetual licence to use all intellectual property rights in and to the Video for the Client's own internal use only (and for no other purpose without our prior written consent). The Video may only be used by the Client in the ways and made available to such third parties, as Prescient agrees in advance.
- 5.2 Prescient shall use its reasonable endeavours to obtain any relevant usage rights in all artwork, copy and all other material the creation of which is commissioned by Prescient from third parties and any pre-existing material owned by a third party for the purposes of providing the Services (whether the same is comprised in a Report or not) ("**Third Party Material**") as it deems reasonably necessary at the time such material is commissioned, selected or obtained. The Client must comply with any third party restrictions and limitations of use in relation to such Third Party Material
- 5.3 The completed physical records of research performed in providing the Services remain Prescient's property (as distinct from the statistical data compiled as a result of the research). Prescient shall, without reference to the Client, be entitled to destroy them one year or more after the end of relevant fieldwork. Within this period copies may be made available to the Client on request, at additional cost.
- 5.4 Nothing in this Agreement shall affect Prescient's right to use, as it see fit, any general research or marketing intelligence gained in the course of its appointment and all pre-existing materials, precedents, formats and know-how used in preparing each Report is expressly reserved to Prescient or the applicable licensors. Nothing in this Agreement shall affect Prescient's right to publicise the fact that it has a relationship with the Client.

## 6 Confidential Information

- 6.1 The Client acknowledges and agrees that all ideas and proposals made by Prescient are made in the strictest commercial confidence and shall not be used or disclosed to any third party by the Client unless agreed with Prescient in advance in writing.
- 6.2 Prescient undertakes not to disclose the Client's identity, the results of the Services, or any information obtained in confidence regarding the business of the Client, without first obtaining the Client's approval. Similarly, the identity of any respondents used in the performance of the Services shall remain anonymous to the Client and all reasonable precautions will be taken to avoid embarrassing them.
- 6.3 Prescient shall be entitled to refer to the Client and in outline to the nature of work performed for the Client for the purpose of publicising and describing Prescient and its work.

## 7 Approvals

- 7.1 The Client shall promptly comply with all requests for information and approval. The Client shall supply Prescient with a list of personnel authorised to act on its behalf for the purposes of the Agreement.
- 7.2 The Client's written approval of any draft Work and estimates will constitute Prescient's authority to purchase, publish, enter into third party contracts and otherwise to do any other act or thing which Prescient considers it reasonable to do in order to carry out its obligations under the Agreement.
- 7.3 Where Prescient provides a contact report confirming a verbal discussion with the Client it is imperative that any disagreement on matters covered are notified to Prescient immediately. If no such disagreements are raised within 4 days of the date of issue of the contact report it shall be deemed to be confirmed as accurate.

## 8 Non-Solicitation

- 8.1 The Client covenants with Prescient that it shall not either on its own account or for any other person, firm or company directly or indirectly solicit, interfere with or endeavour to entice away from Prescient, any director, employee, consultant or sub-contractor of Prescient (whether or not such person would be in breach of his contract of employment or engagement by reason of leaving the service of Prescient) nor shall a Client knowingly employ, aid or assist or procure the employment or engagement by any other person, firm or company of such person during the Agreement and for a period of 12 months thereafter.

## 9 Term and Termination

- 9.1. Except as expressly provided in Clause 9.2 below, once commissioned the Services may not be terminated early by either party except with the written agreement of the other party. If the Client wishes to terminate the commission of the Services before commencement of the Services, the following cancellation fees will apply:
- (i) 100% of the Fees if less than 24 hours notice is given before commencement of the Services;
  - (ii) 70% of the Fees if less than 3 working days' notice is given before commencement of the Services; and
  - (iii) 50% of the Fees if less than 5 working days notice is given before commencement of the Services.
- 9.2. Either party may terminate the Agreement with immediate effect without incurring any liability by service of written notice on the other party and without prejudice to its other rights, if:
- (a) the other party fails to remedy a material breach of its obligations under the Agreement (if capable of remedy) within thirty (30) days of written request; or
  - (b) the other party becomes insolvent or if a receiver or administrator for the other party is appointed or if any court or administrative body shall make any order against the other party in circumstances which indicate that it may be unable to pay its debts in full.

## 10 Liability

- 10.1 If there is an error in a Report or other Work as presented to the Client, or publication or distribution is delayed or does not occur as planned, Prescient will not be liable unless this is caused by its fraud or gross negligence. Prescient agrees to correct minor errors in a Report or other Work (such as typographical errors) at no additional cost provided that such corrections do not require Prescient to incur a significant increase in time or costs in fulfilling the Services. Such corrections shall be limited to one round of corrections.
- 10.2 The Client warrants and undertakes that to the best of its knowledge, information and belief all information and material it supplies to Prescient is accurate and not in any way contrary to English law. The Client agrees to indemnify Prescient in respect of any loss or liability, costs (including legal costs) or damages incurred arising out of or in connection with information or material supplied to Prescient by or on behalf of the Client or arising as a result of the Client's products or services being defective. The Client warrants that where the Client has supplied or supplies the Company with any information or material, the use of such information or material by Prescient (whether in the UK or overseas) shall not be in contravention of any data security and / or data protection laws, rules or regulations.
- 10.3 The Client accepts full legal responsibility in respect of any Report approved by the Client for publication or dissemination and will indemnify Prescient and keep Prescient fully and effectively indemnified in respect of all claims, losses and liabilities, costs (including, without limitation, legal costs) and damages incurred as a result of any use of the Report by the Client or its licensees or agents.
- 10.4 The results / prognoses contained in a Report are the result of careful analysis of the data and are subject to thorough checks. They are, to the best of Prescient's knowledge, accurate, subject to statistical norms and variables applied to research of this nature. Further, as the results/prognoses are just one factor to be taken into account by the Client, the Client accepts that Prescient shall not be held liable for the consequences of any action based on a Report or its interpretation and Prescient shall not be liable for any reliance placed by the Client on the contents of the report or its findings/recommendations.
- 10.5 The Client acknowledges and accepts that, in translating survey results from the controlled test environment to the real market-place, it is possible that some of the assumptions on which a Report is based will not remain constant. Any subsequent change in market conditions, or to the sample/test product itself, could impact the initial performance prediction including possible invalidation of the results.
- 10.6 Nothing in this Agreement shall exclude or in any way limit Prescient's liability for fraud, or for death or personal injury caused by its negligence, or any other liability to the extent such liability may not be excluded or limited as a matter of law. Subject to this:
- (i) Prescient's maximum aggregate liability under or in connection with this Agreement, whether in contract, tort (including negligence) or otherwise, will in no circumstances exceed a sum equal to the Fees payable to Prescient by the Client under this Agreement in relation to a relevant Proposal or £1,000,000 (one million pounds sterling), whichever is less; and
  - (ii) Prescient will not be liable under this Agreement for any loss of actual or anticipated income or profits, loss of contracts or for any special, indirect or consequential loss or damage of any kind howsoever arising and whether caused by tort (including negligence), breach of contract or otherwise, whether or not such loss or damage is foreseeable, foreseen or known.
- 10.7 This Agreement states the full extent of Prescient's obligations and liabilities in respect of the performance of the Services. The parties agree that any condition, warranty representation or other term concerning the performance of the Services which might otherwise be implied into or incorporated in this Agreement, whether by statute, common law or otherwise, is excluded to the maximum extent permitted by law.

## 11 Miscellaneous

- 11.1 This Agreement constitutes the entire understanding between the parties with respect to its subject matter and supersedes all prior agreements, negotiations and discussions between the parties relating to the subject matter of the Agreement. No representation, undertaking or promise shall be taken to have been given or be implied from anything said or in writing in communications between the parties prior to this Agreement, except as set out in this Agreement. Neither party shall have any remedy in respect of any untrue statement made to it upon which it has relied in entering into this Agreement (unless such statement was made fraudulently) and that party's only remedies shall be for breach of contract as provided in this Agreement.
- 11.2 If any provision of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable then such invalidity or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect.
- 11.3 The failure of either party to enforce or to exercise at any time or for any period any term of or any right pursuant to this Agreement shall not be construed as a waiver of any such term or right and shall in no way affect that party's right later to enforce or exercise it.
- 11.4 Neither party shall assign, transfer, charge or deal in any other manner with this Agreement or any of its rights under it without the prior written consent of the other party, such consent not to be unreasonably conditioned, withheld or delayed.
- 11.5 A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 11.6 Neither party shall be liable for the failure to perform its obligations under this Agreement if such failure is caused by any matter wholly beyond that party's control (which shall not include any industrial action by its own or any sub-contractors' employees or any failure to pay any amounts under this Agreement) provided that the party relying on this position shall give immediate written notice of that fact to the other party and such party shall be entitled to a reasonable extension of time for the performance of such obligations.
- 11.7 Any notice, invoice or other communication which either party is required by this Agreement to serve on the other party shall be sufficiently served if sent to the other party at its registered office address (or such other address as is notified to the other party in writing). Any notice shall be treated as having been served:
- (i) if delivered by hand, on delivery;
  - (ii) if sent by email from authorised personnel, the working day immediately following the date of despatch;
  - (iii) if sent by registered or first class post or recorded delivery 3 working days after posting; or
  - (iv) if sent by fax, on confirmation of transmission.
- 11.8 The parties enter into this Agreement as independent contractors and, in particular, Prescient is not an employee, agent or partner of the Client.
- 11.9 This Agreement shall be governed by and construed in accordance with English law and the parties agree to submit to the exclusive jurisdiction of the English Courts over any claim or matter arising under or in connection with this Agreement or the legal relationships established by this Agreement save in relation to the enforcement of judgments where such jurisdiction shall be non-exclusive.