

# Sensory Dimensions Terms and Conditions

In these terms and conditions (**'Terms and Conditions'**), **'Sensory Dimensions'** means Sensory Dimensions Limited, a company registered in England, with company number 04429884, whose principal place of business is at Unit 5 Cutbush Industrial Park, Danehill, Lower Earley, Reading, RG6 4UT (**'Sensory Dimensions'**), and **'Customer'** means the company wishing to procure Services from Sensory Dimensions.

## THE PARTIES HEREBY AGREE

### 1 Definitions

<b>'Commission Date'</b>	means the date on which the Services will begin.
<b>'Customer IP'</b>	means any intellectual property subsisting in data or products owned by Customer and provided to Sensory Dimensions under these Terms and Conditions.
<b>'Deliverables'</b>	means any outputs of the Services as agreed between the parties and set out in a Proposal, including but not limited to data files, written reports, and verbal presentations (which may be face-to-face or online as agreed between the parties).
<b>'Fees'</b>	means the agreed fees for the Services, as detailed in a Proposal.
<b>'Product Samples'</b>	means any product that Customer requires Sensory Dimensions to test/sample in the course of the Services.
<b>'Proposal'</b>	means the documentation sent by Sensory Dimensions to the Customer, confirming Sensory Dimension's understanding of Customer's requirements and outlining the Fees, Commission Date, proposed timelines and Deliverables.
<b>'Services'</b>	means the services provided by Sensory Dimensions including but not limited to product evaluation, consumer and market research services, sensory evaluation, and/or consumer testing.

### 2 Contract Formation

- 2.1 These Terms and Conditions should be read in conjunction with the Proposal that Customer has received from Sensory Dimensions.
- 2.2 A Proposal is valid for 90 days from the date of issue, subject to clause 6.5, after which it shall lapse unless Sensory Dimensions expressly agrees otherwise in writing.
- 2.3 Customer's written acceptance of a Proposal shall create a binding for the purchase by Customer and the supply by Sensory Dimensions of the Services subject to these Terms and Conditions. For the avoidance of doubt, the provision of a PO referencing the Proposal by the Customer will constitute acceptance of the Proposal.

- 2.4 Any terms and conditions set out in any document supplied by Customer that are in addition to or at variance with these Terms and Conditions shall be void and of no effect unless Sensory Dimensions expressly agrees otherwise in writing.

### **3 Supply of Services**

- 3.1 Sensory Dimensions shall provide the Services as set out in each accepted Proposal.
- 3.2 Timescales set out in these Terms and Conditions and any Proposal are given in good faith, but due to the nature of the Services they must be considered to be estimates only. While Sensory Dimensions shall make reasonable endeavours to maintain the timescales quoted, time shall not be considered of the essence.
- 3.3 If Sensory Dimensions is unable to perform the Services or is unable to perform them in accordance with the agreed timescales, due to Customer's delay or Customer's failure to meet its obligations, Product Samples not being available where Sensory Dimensions has agreed to source such products, or a delay in Product Samples delivery as a result of a third party, then Sensory Dimensions shall not be considered to be in default under these Terms and Conditions to the extent so affected or delayed, and the timescales shall be extended by the amount of any such delay and Customer shall remain fully obligated to pay Sensory Dimensions as provided in these Terms and Conditions regardless of the delay.

### **4 Obligations**

- 4.1 Customer shall:
- a) provide Sensory Dimensions with:
    - i. all necessary co-operation in all matters relating to the Services under these Terms and Conditions; and
    - ii. access to such documents, information, items and materials as may be reasonably required by Sensory Dimensions;
    - iii. all necessary approvals or sign-offs of Deliverables as may be required by Sensory Dimensions;
    - iv. all agreed Product Samples as may be required by Sensory Dimensions (as agreed by the parties);in order to provide the Services.
  - b) without affecting Customer's other obligations under these Terms and Conditions, comply with all applicable laws and regulations with respect to its activities under these Terms and Conditions;
  - c) carry out all responsibilities set out in these Terms and Conditions in a timely and efficient manner. In the event of any delays in Customer's provision of such assistance as agreed by the parties, Sensory Dimensions may adjust any agreed timetable or delivery schedule as reasonably necessary;
  - d) ensure that any persons authorised by Customer to use the Services do so in accordance with these Terms and Conditions, and Customer shall be responsible for any breach of these Terms and Conditions by them.
- 4.2 Delivery of Product Samples to Sensory Dimensions must be made to its approved test facilities, and must be made during the regularly scheduled office hours of 8.30am to 5.00pm (local time) on weekdays, excluding public holidays. Out of hours deliveries can be arranged but may incur additional charges.
- 4.3 In the event that either party (the '**Guest**') visits the premises of the other (the '**Host**'), the Host shall advise the Guest of all rules, regulations and practices they should comply with whilst on the Host's premises. The Guest's staff, agents and sub-contractors shall comply

with such rules and regulations whenever they are on the Host's premises. The Host shall take reasonable precautions to ensure the health and safety of the Guest's staff, agents and sub-contractors whilst they are on its premises.

## **5 Changes, Deliverables and Additional Work**

- 5.1 During the provision of the Services, Sensory Dimensions shall provide the Deliverables as set out in the relevant Proposal.
- 5.2 If either party requires changes to be made to the Services, Sensory Dimensions reserves the right to charge additional costs for items such as but not limited to Product Sample purchases, returning Product Samples, equipment rental and power modification for use of nonstandard equipment, as required to implement the change. Sensory Dimensions will communicate such additional costs to Customer in writing, and Customer must confirm acceptance of such additional costs in writing. Sensory Dimensions will continue the Services as originally agreed until such confirmation from Customer is received. Sensory Dimensions will use its reasonable endeavours to ensure that the changes can be made within the time frame.
- 5.3 If Customer requests any additional analysis after completion of the Services, Sensory Dimensions reserves the right to charge additional fees for such work. Such additional work will be set out in a new Proposal by Sensory Dimensions in accordance with clause 2.

## **6 Fees and Payment**

- 6.1 Sensory Dimensions shall invoice, and Customer shall pay the Fees, as follows (unless otherwise specified in the Proposal):
  - a) 50% of the Fees on the Commission Date;
  - b) 50% on completion of the Services.
- 6.2 Customer must pay all valid and undisputed invoices within 28 days from the date of the invoice (or as otherwise agreed in writing).
- 6.3 Customer shall be liable for any other agreed upon costs, any national, European Union, value added, sales, excise, state, local or other taxes or customs duties applicable.
- 6.4 All Fees included in a Proposal are exclusive of VAT. VAT will be applied at the then-current rate if applicable.
- 6.5 Where Fees have been quoted in currencies other than GBP (£), the quotation will have been prepared based on the current exchange rate at the time of preparing the Proposal. Sensory Dimensions reserves the right to adjust the final cost to reflect the then-current exchange rate (according to <https://www1.oanda.com/currency/live-exchange-rates/>) at the time of invoicing.
- 6.6 If payment of the Fees or any part thereof is overdue, then unless Customer has notified Sensory Dimensions in writing that such payment is in dispute within 10 days of Customer's receipt of the corresponding invoice, Customer shall pay an interest charge on any undisputed sum outstanding to Sensory Dimensions at the rate of 8% above Barclays Bank Sterling base rate as at the date of invoice, until the outstanding sum and any interest thereon is paid in full, and Sensory Dimensions may at its option:
  - a) suspend provision of the Services until the corresponding overdue Fees are paid in full; and/or
  - b) treat such as a material breach and terminate these Terms and Conditions in accordance with clause 8.

## 7 Warranties

- 7.1 Subject to the limitations upon its liability in clause 11, Sensory Dimensions warrants that the Services will be carried out with reasonable skill and care by personnel whose qualifications and experience will be appropriate for the tasks to which they are allocated, and that the Services will conform in all material respects with the requirements set out in the Proposal.
- 7.2 Save as expressly provided in clause 7.1, Sensory Dimensions specifically excludes without limitation all other conditions, warranties, representations or other terms relating to these Terms and Conditions including any conditions, warranties, representations or other terms that might otherwise be implied or incorporated into these Terms and Conditions, such as those of satisfactory quality, fitness for a particular or any purpose, or ability to achieve any particular result.
- 7.3 Customer hereby agrees that its sole remedy in respect of any non-conformance with any warranty in these Terms and Conditions is that Sensory Dimensions will remedy such non-conformance and if in its reasonable opinion, Sensory Dimensions is unable to remedy such non-conformance then it will refund a proportion of the relevant Fees in respect of the non-conforming Services, if paid, whereupon these Terms and Conditions shall immediately terminate.
- 7.4 Customer must promptly notify Sensory Dimensions in writing, and within six (6) months of the provision of the Services at issue, of any breach of the above warranties in order to benefit from the remedy stated above in clause 7.3. Customer shall provide all information as may reasonably be deemed necessary by Sensory Dimensions to assist Sensory Dimensions in resolving such breach.

## 8 Duration & Cancellation

- 8.1 These Terms and Conditions shall become effective on the Effective Date and shall continue until Sensory Dimensions has delivered all Deliverables and completed the Services, unless terminated earlier in accordance with this clause 8.
- 8.2 Customer may cancel or postpone the Services by notifying Sensory Dimensions in writing. If such cancellation and postponement occurs three weeks or less before the Commission Date, Customer will remain liable for all of the Fees. In all other cases, Sensory Dimensions will charge the Customer for all costs incurred by Sensory Dimensions prior to the date of cancellation or postponement or those for which Sensory Dimensions will be liable (including but not limited to fieldwork costs that may have been incurred by a third party).
- 8.3 Either party (**'the Initiating Party'**) may terminate these Terms and Conditions immediately on giving written notice if the other party:
  - a) commits any material breach of any term of these Terms and Conditions, and in the case of a breach which is reasonably capable of remedy fails to remedy that breach to the reasonable satisfaction of the Initiating Party within thirty (30) days of a written request to remedy the same; or
  - b) has a receiver appointed, or enters into administration, or passes a resolution for winding up, or enters into any voluntary arrangement with its creditors, or shall cease or threaten to cease to carry on its business, or any substantially similar or analogous event shall take place.
- 8.4 The expiry or cancellation of these Terms and Conditions shall be without prejudice to either party's rights or remedies accrued prior to such expiry or termination or arising afterwards under these Terms and Conditions or at law.

## 9 Confidentiality

- 9.1 '**Confidential Information**' means any information (disclosed in any form) relating to a party's business affairs or activities and which:
- a) has been marked as confidential or proprietary; or
  - b) has been identified orally or in writing as being of a confidential nature; or
  - c) may reasonably be supposed to be confidential in the circumstances.
- 9.2 Each party undertakes that for a period of five (5) years from the date of last disclosure it shall:
- a) not, without the prior written consent of the other party, use, disclose, copy or modify the other party's Confidential Information (or permit others to do so) other than as is necessary for the performance of its rights and obligations under these Terms and Conditions;
  - b) treat the other's Confidential Information with the same degree of care as it employs with regard to its own Confidential Information of a like nature, and in any event in accordance with industry standard commercial security practices;
  - c) disclose such Confidential Information only to those of its employees, consultants and professional advisers who need to have such information for the purpose of these Terms and Conditions, and ensuring that such employees, consultants and professional advisers shall be bound by the same confidentiality obligations as are set out in this clause.
- 9.3 The provisions of this clause shall not apply to:
- a) any information in the public domain otherwise than by breach of these Terms and Conditions;
  - b) information lawfully in the possession of the receiving party with no obligation of confidentiality, before disclosure by the disclosing party;
  - c) information lawfully obtained without restriction from a third party;
  - d) information required to be disclosed by a court of competent jurisdiction, governmental body or applicable regulatory authority provided that the party under such duty to disclose shall use all reasonable endeavours to give the other party as much prior notice of such disclosure as is reasonably practicable and permitted by law.

These exceptions only apply to the extent that the receiving party can provide reasonable evidence or written proof.

## 10 Intellectual Property

- 10.1 Sensory Dimensions is the owner or licensee of the patent, copyright, trade secrets, trademarks and any other intellectual property rights which subsist in its Services. For the avoidance of doubt title and all intellectual property rights to any design, new software, new protocol, new interface, enhancement, template, mailer, web page, update, derivative works, revised screen text or any other items that Sensory Dimensions creates whilst providing the Service to Customer shall remain vested in Sensory Dimensions. Any rights not expressly granted herein are reserved to Sensory Dimensions.
- 10.2 Customer is the owner or licensee of the patent, copyright, trade secrets, trademarks and any other intellectual property rights which subsist in Customer IP. Title to Customer

IP shall remain vested in Customer or its licensors. Customer hereby grants to Sensory Dimensions a limited licence to use such Customer IP for the sole purpose of fulfilling Sensory Dimensions' obligations under these Terms and Conditions.

- 10.3 Upon payment in full of the Fees, Sensory Dimensions shall transfer intellectual property that subsists in the Deliverables which were created by or on behalf of Sensory Dimensions in the performance of its obligations under these Terms and Conditions to the Customer.
- 10.4 Subject to the provisions of this clause 10, Sensory Dimensions shall defend at its own expense any claim brought against Customer alleging that the normal use or possession of the Deliverables infringes a patent, copyright, or other proprietary right belonging to a 3rd party in the United States of America or European Union or similar right belonging to a third party ('**Intellectual Property Claim**') and Sensory Dimensions shall pay all damages awarded or agreed to be paid to any third party in settlement of an Intellectual Property Claim provided that Customer:
- a) promptly furnishes Sensory Dimensions with written notice of the Intellectual Property Claim upon becoming aware of the same;
  - b) makes no admissions or settlements without Sensory Dimensions' prior written consent;
  - c) acts in accordance with Sensory Dimensions' reasonable instructions and provides Sensory Dimensions with reasonable assistance in respect of the Intellectual Property Claim; and
  - d) gives Sensory Dimensions the sole authority to defend or settle the Intellectual Property Claim.
- 10.5 If in Sensory Dimensions' reasonable opinion, the Deliverables are or may become the subject of an Intellectual Property Claim then it shall either:
- a) obtain for Customer the right to continue using the Deliverables which are the subject of the Intellectual Property Claim;
  - b) replace or modify the Deliverables which are the subject of the Intellectual Property Claim so they become non-infringing; or
  - c) if such remedies in (a) and/or (b) above are not in Sensory Dimensions' opinion reasonably available, then Customer shall return the Deliverables which are or may become the subject of the Intellectual Property Claim and Sensory Dimensions shall refund to Customer the corresponding portion of the Fee, as normally depreciated and these Terms and Conditions shall then terminate.
- 10.6 Sensory Dimensions shall reimburse Customer's reasonable costs incurred in complying with the provisions of clause 10.

## 11 Limitation of Liability

- 11.1 Nothing in these Terms and Conditions shall exclude or limit either party's liability for (i) fraud or other criminal act, (ii) personal injury or death caused by negligence, or (iii) any other liability that cannot be excluded by law.
- 11.2 Customer shall defend at its own expense any claim brought against Sensory Dimensions as a result of an adverse reaction to a Product Samples ('**Third Party Claim**'), and Customer shall pay all damages awarded or agreed to be paid to any third party in, provided that Sensory Dimensions:

- a) promptly furnishes Customer with written notice of the Third Party Claim upon becoming aware of the same;
  - b) makes no admissions or settlements without Customer's prior written consent;
  - c) acts in accordance with Customer's reasonable instructions and provides Customer with reasonable assistance in respect of the Third Party Claim; and
  - d) gives Customer the sole authority to defend or settle the Third Party Claim.
- 11.3 Customer shall reimburse Sensory Dimensions' reasonable costs incurred in complying with the provisions of clause 11.2.
- 11.4 In no event will Sensory Dimensions be liable under these Terms and Conditions for any damages resulting from loss of use, lost profits, loss of anticipated savings, loss of revenue, loss of opportunity, loss of goodwill, loss of reputation, or any indirect or consequential loss. Such liability is excluded whether such damages were reasonably foreseeable or actually foreseen.
- 11.5 Except as provided in clause 11.1 and in clause 11.4, Sensory Dimensions' maximum aggregate liability to Customer for any cause whatsoever shall be for direct costs and damages only and will be limited to a sum equivalent to 125% of the Fees paid and payable by Customer under these Terms and Conditions.
- 11.6 To the fullest extent permitted by law, Sensory Dimensions excludes all liability that it has not expressly accepted in these Terms and Conditions.
- 11.7 No action, regardless of form, arising out of or in relation to these Terms and Conditions may be brought more than two (2) years after the event giving rise to the cause of action.
- 11.8 Customer acknowledges that in entering into these Terms and Conditions it has not relied on any representation or warranty not set out in these Terms and Conditions, and shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement made by Sensory Dimensions. Sensory Dimensions does not exclude or limit any liability for any misrepresentation made by it fraudulently.
- 11.9 Sensory Dimensions' employees, sub-contractors, licensors and suppliers shall have the right to the benefit of these limits and exclusions of liability under the Contracts (Rights of Third Parties) Act 1999.

## 12 Data Protection

- 12.1 '**Data Protection Legislation**' means the Data Protection Act 2018 and any other applicable European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications) and any statutory instrument, order, rule or regulation made thereunder, as from time to time amended, extended, re-enacted or consolidated).
- 12.2 The terms '**Personal Data**', '**Personal Data Breach**', '**Data Protection Officer**', '**Data Controller**', '**Data Processor**', '**Data Subject**', and '**process**' (in the context of the use of Personal Data) shall have the meanings given to them in the Data Protection Legislation.
- 12.3 Where one party receives Personal Data for processing, before commencing any processing, they will agree with the Data Controller the following: (a) the subject-matter and duration of the processing; (b) the nature and purpose of the processing; (c) the type of Personal Data and categories of Data Subjects involved; (d) the obligations and rights of the controller and processor.
- 12.4 The Data Processor will:
- a) act solely on the instructions of the Data Controller;

- b) ensure that, (i) the appropriate technical and organisational measures are in place to comply with the Data Protection Legislation and protect the rights of the Data Subjects, and (ii) persons authorised to access the Personal Data are subject to appropriate confidentiality undertakings;
- c) not transfer the Personal Data outside of the EEA, or to any third party without the Data Controller's consent;
- d) give the Data Controller reasonable assistance and information in relation to either party's compliance with the Data Protection Legislation;
- e) at the end of the processing, (i) either delete or return the Personal Data to the Data Controller, and (ii) delete copies of the Personal Data unless subject to a legal obligation to store the copies
- f) not engage another processor of the Personal Data without the prior written consent of the Data Controller.

### **13 Anti-Bribery**

- 13.1 Each party agrees to comply with the UK Bribery Act 2010 and each party undertakes, warrants and represents that it shall maintain policies, procedures and guidelines that are intended and designed to prevent them doing or failing to do any act or thing that contravenes the UK Bribery Act.

### **14 Modern Slavery**

- 14.1 In performing its obligations under these Terms and Conditions, each party shall comply with all applicable anti-slavery and human trafficking laws, statutes and regulations, and any recommendations or codes of practice published by an industry body, in place from time to time, including but not limited to the Modern Slavery Act 2015.

### **15 Law & Jurisdiction and Dispute Resolution**

- 15.1 Any disagreement between the parties arising out of, or in relation to, these Terms and Conditions shall be referred to the parties' respective managing directors (or equivalent role), who shall attempt in good faith to resolve it within [X] days of notification.
- 15.2 The parties shall each continue to discharge their obligations under these Terms and Conditions pending any resolution of a dispute.
- 15.3 If the dispute (except late or non-payment of an undisputed invoice) is not resolved after the procedures detailed in clause 15.1 a party may not commence court proceedings until it has attempted to settle the dispute by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure, and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by the delay, and reserving either party's right to seek an injunction.
- 15.4 Subject to clause 15.3 each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any disputes arising out of or relating to these Terms and Conditions.
- 15.5 Notwithstanding clause 15.3, nothing in these Terms and Conditions shall limit either party's right to seek injunctive relief.
- 15.6 These Terms and Conditions shall be governed by English law.

## 16 General

- 16.1 Neither party may assign these Terms and Conditions or otherwise transfer any rights or obligations without the other party's prior written consent (not to be unreasonably withheld or delayed).
- 16.2 Neither party is responsible for any failure or delay in fulfilling its obligations due to any cause beyond its reasonable control that directly or indirectly delays or prevents its timely performance under these Terms and Conditions. Any specified dates or times for performance by the affected party will be postponed automatically for the extent of the delay or prevention. The affected party must use reasonable endeavours to overcome the cause as soon as possible and to mitigate the delay.
- 16.3 All notices given pursuant to these Terms and Conditions must be in writing, sent by email to [info@sensorydimensions.com](mailto:info@sensorydimensions.com). All notices shall be deemed as given on the day of their receipt by the receiving party.
- 16.4 During the term of these Terms and Conditions, Sensory Dimensions may disclose and publicise the existence of (but not the terms of) these Terms and Conditions solely to identify Customer as a customer of Sensory Dimension. Customer grants to Sensory Dimension the right to use Customer's company logo in marketing, sales, financial, and public relations materials and other communications, including on Sensory Dimensions' website, solely to identify Customer as a customer, provided that:
- a) Sensory Dimensions' use of Customer's logo will comply with all visual branding and formatting instructions or guidelines provided by Customer.
  - b) Other than as expressly stated herein, neither party shall use the other party's marks, codes, drawings or specifications without the prior written permission of the other party.
- 16.5 The following clauses shall continue to be in effect after expiry or termination of these Terms and Conditions: 6, 7, 9, 11, 12.4e), 15, 16.2, 16.3, 16.6, and 16.7 inclusive.
- 16.6 These Terms and Conditions constitutes the entire agreement between the parties and shall supersede all previous representations, agreements and other communications between the parties, both oral and written, with respect to the subject matter hereof.
- 16.7 If any provision of these Terms and Conditions is adjudged by a court of competent jurisdiction to be invalid, void, or unenforceable, the parties agree that the remaining provisions shall not be affected thereby, and that the remainder of these Terms and Conditions shall remain valid and enforceable. No waiver by either party of any term hereof shall constitute a waiver of any such term in any other case whether prior or subsequent thereto. No single or partial exercise of any power or right by either party shall preclude any other or further exercise thereof. These Terms and Conditions may not be changed, modified, amended, released or discharged except by a subsequent written agreement or amendment executed by duly authorised representatives of Sensory Dimensions and Customer. A person who is not a party to these Terms and Conditions has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these Terms and Conditions except as expressly set out herein, but this does not affect any right or remedy that such third party may have without reference to the Contracts (Rights of Third Parties) Act 1999.