Terms of Purchase (US)

These terms and conditions ("Terms") govern the purchase of goods or services (together "Services") by Content Guru and/or any affiliate purchasing entity within CG's corporate group ("CG") from you (the "Supplier") under any "Order(s)".

1. Supplier Obligations

1.1 In supplying the Services, the Supplier shall:

1.1.1 perform the Services with the highest level of care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;

1.1.2 co-operate with CG in all matters relating to the Services, and comply with all instructions of CG;

1.1.3 appoint or, at the request of CG, replace without delay a nominated representative, who shall have sufficient authority to contractually bind the Supplier on all matters relating to the Services (ensuring that Supplier contact information is accurate and complete at all times);

1.1.4 only use personnel who are suitably skilled, experienced and trained to perform the tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled. Supplier personnel shall operate under the supervision, direction and control of Supplier at all times;

1.1.5 ensure that it obtains, and maintains all consents, licences and permissions (statutory, regulatory, contractual or otherwise) it may require and which are necessary to enable it to comply with its obligations;

1.1.6 ensure that the Services conform in all respects with the service description set out in the Order, and ensure that Services shall be fit for any purpose that CG expressly or impliedly makes known to the Supplier;

1.1.7 provide all equipment, systems, tools, vehicles and other items required to provide the Services;

1.1.8 ensure that the goods, materials, standards and techniques used in providing the Services are of the best quality and are free from defects in workmanship, installation and design;

1.1.9 comply with all applicable laws, statutes, regulations and codes from time to time in force;

1.1.10 observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of CG's premises from time to time as notified to the Supplier;

1.1.11 not do or omit to do anything which may cause CG to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business, or otherwise bring CG into disrepute; and

1.1.12 notify CG in writing immediately upon the occurrence of a change of control of the Supplier.

1.2 Time is of the essence in relation to any performance dates or milestones agreed between the parties. If the Supplier fails to meet the relevant deadlines, then (without prejudice to CG's right to terminate any impacted Order and any other rights it may have), CG may:

1.2.1 refuse to accept any subsequent performance of the Services which the Supplier attempts to make;

1.2.2 purchase substitute services and reclaim from the Supplier any additional costs incurred as a result of procuring such services from a third party;

1.2.3 hold the Supplier accountable for any loss and additional costs incurred; and

1.2.4 have any sums previously paid by CG to the Supplier in respect of the affected Services refunded by the Supplier.

2. CG's obligations

CG shall co-operate with the Supplier, and provide such access to CG's premises, systems and information as reasonably necessary for the provision of the Services.

3. Charges & Payment

3.1 In consideration for receiving Services, CG shall pay to the Supplier the agreed charges in any Order which may comprise:

3.1.1 one-off charges invoiced upon delivery and CG's acceptance of the Services in writing; and

3.1.2 recurring charges invoiced monthly in arrears from delivery and CG's acceptance of the Services in writing.

3.2 The Supplier shall submit invoices and CG shall pay them within thirty (30) days of receipt, or in accordance with the provisions set out in any Order, to a bank account nominated by the Supplier.

3.3 Disputed invoices shall be notified by CG to the Supplier in writing within thirty (30) days of receipt of the invoice and handled in accordance with the Dispute Resolution procedure.

3.4 If an invoice is not disputed, the Supplier may start to accrue interest at two percent (2%) per annum, providing the Supplier has notified CG of its intention to do so, and afforded CG a grace period of fourteen (14) days to resolve the overdue amount.

4. Compliance

The Supplier will comply with CG's Supplier Code of Conduct (as updated from time to time), Data Processing Agreement, Privacy Policy, and the Supplier's obligations under applicable laws.

As part of the contractual obligation for continuous monitoring, the Supplier may be required to complete a minimum of an annual security questionnaire or assessment (audit under section 10.2).

5. Intellectual property

5.1 For the purposes of this section, intellectual property and/or intellectual property rights shall be taken to include patents, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, business names and domain names, goodwill rights in designs, rights in computer software, database rights, rights to use and protect the confidentiality of confidential information (including know-how and trade secrets and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world).

5.2 The Supplier and its licensors shall retain ownership of all intellectual property rights attached to the Services. CG shall retain ownership of all intellectual property rights in the CG materials.

5.3 The Supplier:

5.3.1 grants to CG a fully paid-up, worldwide, non-exclusive, royalty-free, perpetual and irrevocable licence for the purpose of receiving and using the Services; and

5.3.2 assigns to CG, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the any work product or deliverables as agreed in any Order.

5.4 The Supplier shall indemnify CG against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by CG arising out of or in connection with any claim brought against CG for actual or alleged infringement of a third party's rights (including any intellectual property rights) arising out of, or in connection with, the receipt, use or onward supply of the Services by CG and its licensees and sub-licensees. This section shall survive any termination of these Terms or any Order.

6. Limitation of Liability

6.1 References to liability in this section include every kind of liability arising under or in connection with these Terms or any Order, including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

6.2 Nothing in these Terms shall limit the Supplier's liability in relation to confidentiality, data protection, security and intellectual property claims, including any accompanying indemnities.

6.3 Nothing in these Terms limits any liability which cannot legally be limited, including liability for:

a) death or personal injury caused by negligence;
b) fraud or fraudulent misrepresentation; and
c) gross negligence or wilful misconduct.

6.4 Subject to the foregoing, the total liability of either party for all claims in aggregate shall not exceed the fees paid under all Orders.

6.5 The following specified types of loss are either excluded as indirect or consequential losses or, by contrast, losses which are not excluded from being recoverable.

6.6 Types of loss wholly excluded:

a) Loss of profits;
b) Loss of sales or business;
c) Loss of contracts;
d) Loss of anticipated savings; and
e) Other indirect or consequential losses.

6.7 Types of loss and specific losses not excluded:

a) Sums paid by CG to the Supplier pursuant to any Order, in respect of Services not provided in accordance with any Order;
b) Wasted expenditure;
c) Additional costs of procuring and implementing replacements for, or alternatives to, Services not provided in accordance with any Order. These include but are not limited to consultancy costs, management time and other personnel costs, and costs of equipment and materials; and
d) Losses incurred by CG arising out of or in connection with any third party claim against CG which has been caused by or are otherwise attributable to any act or omission of the Supplier. For these purposes, third party claims shall include but not be limited to demands, fines, penalties, actions, investigations or proceedings, including but not limited to those made or commenced by Supplier subcontractors, Supplier personnel, regulators and/or customers of CG.

7. Insurance

During the term of any Order and for a period of six (6) years thereafter, the Supplier shall maintain in force, with a reputable insurance company, commercial general liability insurance (including products-completed operations coverage), professional liability/errors and omissions insurance, workers' compensation and employers' liability insurance, and cyber liability insurance, to cover the liabilities that may arise under or in connection with the Order, and shall provide to CG on request both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

8. Termination

8.1 Without affecting any other right or remedy available to it, CG may terminate any Order with immediate effect by giving written notice to the Supplier if:

a) there is a change of control of the Supplier; or
b) the Supplier's financial position deteriorates to such an extent that, in CG's reasonable opinion, the Supplier's capability to adequately fulfil its obligations under the Order has been jeopardised.

8.2 Without affecting any other right or remedy available to it, either party may terminate the Order with immediate effect by giving written notice to the other party if:

a) the other party commits a material breach of any term of any Order or these Terms which is irremediable or (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so;

b) the other party repeatedly breaches any of the terms of any Order or these Terms in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to these Terms or the Order;

c) the other party takes any step or action in connection with its entering administration, liquidation or any composition or arrangement with its creditors, being wound up (whether voluntarily or by Order of the court), having a receiver appointed to any of its assets or ceasing to carry on business; or

d) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

8.3 Unless agreed otherwise in any Order, CG may terminate any Order without further liability (other than payment for Charges for the Services until the termination date) by providing a minimum of thirty (30) days' notice.

8.4 Any provision of any Order or these Terms that expressly or by implication is intended to come into or continue in force on or after termination or expiry of any Order shall remain in full force and effect.

8.5 Termination or expiry of any Order shall not affect the validity of any other Order or these terms, and/or any of the rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of any Order which existed at or before the date of termination or expiry.

9. Exit arrangements

On termination or expiry of any Order, the Supplier will provide all assistance reasonably required by CG to facilitate the smooth transition of the Services to CG or any replacement supplier appointed by it. The Supplier shall immediately deliver to CG all work product and deliverables whether or not then complete, and return or destroy any CG materials in its possession.

10. General

10.1 **Force majeure.** Neither party shall be in breach of any Order nor liable for delay in performing, or failure to perform, any of its obligations under the Order if such delay or failure arises from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance exceeds fourteen (14) days, the party not affected may terminate the Order by written notice to the affected party.

10.2 **Subcontracting.** The Supplier may not subcontract any or all of its rights or obligations under any Order without the prior written consent of CG. If CG consents to any subcontracting by the Supplier, the Supplier shall remain responsible for all acts and omissions of its subcontractors as if they were its own.

10.3 **Confidentiality.** Each party undertakes that it shall not at any time during any Order, and for a period of three (3) years after termination or expiry of the Order, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the Group to which the other party belongs, except as permitted by this section.

10.3.1 Each party may disclose the other party's confidential information:

a) To its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under any Order. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this section; and

b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

10.3.2 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Order.

10.4 **No Partnership or Agency.** Nothing in these Terms is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of the other party. CG provides no exclusivity, guarantee or spend commitment to the Supplier under these Terms; any Orders will be scoped and agreed between the parties.

10.5 **Entire Agreement.** These Terms constitute the entire agreement between the parties and supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings, whether written or oral, relating to its subject matter. No quotation, confirmation, shipment or delivery docket, invoice, purchase order, terms and conditions or other document issued by or on behalf of the Supplier in relation to the Services shall vary these Terms.

10.6 **Variation.** No variation of these Terms or any Order shall be effective unless it is in writing and signed by authorised representatives of the parties.

10.7 **Waiver.** A waiver of any right or remedy under these Terms, any Order or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

10.8 **Severance.** If any provision or part-provision of these Terms or any Order is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision shall not affect the validity and enforceability of the rest of these Terms or the relevant Order.

10.9 **Notices.** Any notice or other communication given to a party under or in connection with any Order shall be in writing and shall be sent by email to the address specified in the Order, or as otherwise communicated in writing from time to time.

10.9.1 Any notice or communication sent by email shall be deemed to have been received at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. For the purposes of this section, business hours are 09:00 to 17:00 Monday to Friday on a day that is not a public holiday in the place of receipt.

10.9.2 This section does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

10.10 **Third party rights.** The parties acknowledge and agree that any Order is entered into by and between, and for the sole benefit of, CG and the Supplier; there are no third-party beneficiaries. A person who is not a party to any Order shall have no rights under or in connection with the Order or these Terms.

10.11 **Credit Checks.** Following written notice of its intention to do so, CG may perform credit checks on the Supplier before entering into, or during the term of, any Order.

10.12 **Audit.** The Supplier shall allow CG (or its professional advisers) to access the Supplier's premises, personnel, systems and relevant records to verify the Supplier's adherence to its obligations under these Terms or the Order. The Supplier shall provide CG with all reasonable co-operation, access and assistance in relation to each audit. CG shall provide at least ten (10) Business Days' notice of its intention to conduct an audit and any audit shall be conducted during normal business hours.

10.13 **Dispute Resolution.** Should a dispute arise in connection with any Order, the parties shall use reasonable endeavours to resolve the "Dispute", by providing written notice to appropriate representatives, and such representatives shall attempt to resolve the matter.

10.13.1 If the Dispute cannot be resolved within fourteen (14) days of written notice, the Dispute shall be escalated to the next level of management.

10.13.2 If, after a further thirty (30) days, the Dispute is still unresolved, the parties shall be entitled to commence legal proceedings.

10.14 **Governing law.** These Terms and all Orders, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with them or their subject matter or formation, shall be governed by, and construed in accordance with, the laws of the State of California.

10.15 **Jurisdiction.** Each party irrevocably agrees that the federal courts of San Francisco, California shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with these Terms or any Order.

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