



# FREZZH LIMITED

## Terms of Service

### ("Terms")

Your access and use of the Services constitutes your agreement to be bound by these Terms. You understand and agree that the Service is provided on an AS IS and AS AVAILABLE basis as amended from time to time.

These Terms outline the terms and conditions under which **FREZZH LIMITED**, a company duly organized and established under the laws of UK, bearing company registration number 13589219, and having its registered address at 27 Old Gloucester Street, London, England, WC1N 3AX ("**Contractor**") will provide Services to the Customers.

**Customer and Contractor are individually referred to as a "Party" and jointly referred to as the "Parties".**

Whereas, Contractor and Customer desire to enter into a relationship in which Contractor will provide Services, specified in particular Subscription Plan and/or Purchase Order (hereinafter "PO").

Now, therefore, in consideration of the premises, and of the mutual promises and undertakings herein contained, the parties, intending to be legally bound, do hereby agree as follows:

### 1. DEFINITIONS

For purposes of this Agreement, the following terms shall have the following meanings:

a. "Services" means any and all services specified in Subscription Plan and/or PO ( **the Statement of Work, Purchase Orders** as defined below).

b. "Deliverables" means any tangible and intangible property, including software media, delivered to Customer under this Service Contract, as specified in the Statement of Work.



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c. "Project" means the combination of Services and Deliverables to be provided under this Agreement.

d. "Subscription Plan" means the specific Plan chosen by Customer via a webpage - <https://frezzh-ltd.co.uk/> (if applicable).

## **2. STATEMENT OF WORK**

2.1. Contractor shall perform and deliver the Project as set forth in the Subscription Plan, PO and/or Statement of Work issued against and subject to the terms and conditions of this Agreement.

2.2. The work which the Contractor shall perform shall be specified in Subscription Plan, PO.

2.3. The Statement of Work shall specify: (i) description of Services and Deliverables, (ii) schedule for Deliverables, (iii) price and payment schedule, (iv) the procedure of providing Services.

2.4. Other additional services (including, but not limited to, software support, training, and improvement services) may be provided by mutual agreement of the Parties within the framework of this Agreement. In this case, the Parties enter into an appropriate Additional Agreement indicating the specific type of services, the term of their performance, cost, and term of payment for services. It is an integral part of the contract.

## **3. OBLIGATIONS OF THE PARTIES**

### **3.1. The Contractor undertakes:**

3.1.1. Perform work and services in accordance with the list specified by the parties in the Subscription Plan, PO.

3.1.2. Submit the results of the performed works for the approval of the Customer and, if necessary, together with the Customer's representatives to carry out their correction, as well as to agree on their structure and content.

3.1.3. Perform work and services within the time limits stipulated by the terms of this Agreement and its PO, Statements of Work, Subscription Plan etc.

3.1.4. Upon completion of the works to transfer them to the Customer under the act of acceptance-transfer in accordance with the terms of this Agreement.



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3.1.5. Do not disclose or use information, data, passwords, and program codes that became known to him during the performance of the contract.

3.1.6 Ensure control over the quality of services provided by professional control staff who can professionally control and supervise the provision of relevant services.

3.1.7. Ensure installation and configuration of software on the Customer's equipment, conduct its tests (upon prior written agreement of the procedure and terms of such testing with the Customer), prepare for the introduction of information and telecommunications system in permanent (industrial) operation;

### **3.2. The Customer undertakes:**

3.2.1. Transfer in a timely manner and in electronic form all necessary information for services, creating software or other products described in the PO to this Agreement.

3.2.2. Coordinate the results of the work and services performed by the Contractor in a timely manner, as well as, if necessary, indicate the need for completion and implementation of corrective measures.

3.2.3. Accept the work and services performed by the Contractor in accordance with section 4 of this Agreement.

3.2.4. Pay the full cost of performed work and services in a timely manner in accordance with the terms of this Agreement.

3.2.5. Immediately inform the Contractor if deficiencies and defects are identified during the use of the results of the provided services, that must be recorded in writing by the relevant act.

### **3.3. The parties undertake**

3.3.1. Ensure the confidentiality of information obtained in the performance of the Agreement, not to disclose and not use in their interests and the interests of third parties information constituting a trade secret and other information or information of the other Party that became known to the Party during the contract.

## **4. TERM**

This Agreement shall enter into force upon its acceptance by the Parties and in terms of calculations and conditions of the Statement of Work - until the full fulfillment of the obligations assumed by the Parties. If 30 (thirty) calendar days before the expiration of this Agreement neither of the Parties declares its termination, the Agreement is considered automatically extended for the next calendar year.

## **5. TERMS OF PAYMENT**

5.1. Projects will be performed on a firm-fixed-price basis or a time and materials basis, as indicated in the applicable Subscription Plan, Statement of Work. Any additional or unscheduled Services or Deliverables to be provided by Contractor outside of the Statement of Work must be mutually agreed upon in writing signed by both parties hereto referencing this Agreement.

5.2. The Project Price includes all taxes, tariffs, and any additional charges due on Contractor`s side.

5.3. Customers will receive invoices based upon the billing/payment schedule contained in the applicable Statement of Work. Invoices will contain a description of the Services or Deliverables provided.

5.4. The Customer undertakes to pay the cost of services provided according to the invoice issued by the Contractor within 3 (two) banking days.

5.5. If during the performance of works/ services the Customer has a need to make adjustments to current tasks (if these are not due to the fault of the Contractor), such adjustments are considered as additional work that requires additional time and, accordingly, are paid extra. Adjustments and changes to the PO are made in written, which is an integral part thereof.

5.6. Making a payment to the settlement account of the Contractor for the provided services confirms the full fulfillment of obligations under the Contract by the Contractor and the absence of any claims on the part of the Customer.

5.7. The Statement of Work can be given in the written and electronic form, including e-mail, Telegram (chat, voice messages), Slack, etc. that contain a list, scope, timing, requirements, and procedure for providing Services.

5.8. In case of payment using credit or debit cards Client will see the following descriptor on the banking statement "Frezzh\_IT".

## **6. DELIVERABLES**

6.1. Except for commercial off-the-shelf type products where the license for such products is contained in the applicable Statement of Work, the Customer shall have exclusive unlimited ownership rights to all deliverables developed under this Agreement. All of the foregoing shall be deemed to be work made for hire, except as hereafter specified, and belong to Customer, with Customer having the sole right to obtain, hold, and renew, in its own name or for its own benefit, patents, copyrights, registrations, or other appropriate protection.

6.2. Customer acknowledges that Contractor uses, or may develop hereunder, methods, concepts, code sequences, format, sequence structure, organization, menu command hierarchy, templates, masks, user interface, techniques, program organization, database structuring techniques, and the like (Contractor proprietary items) that are proprietary to Contractor.

6.3. It is agreed that these Contractor proprietary items shall remain the sole and exclusive property of Contractor. Contractor grants Customer a perpetual, non-exclusive, paid-up license to use Contractor proprietary items subject to the following:

a. Customers may use Contractor proprietary items solely in connection with the products purchased hereunder, for the purpose for which those products were originally purchased.

b. Customers may not transfer, sell, or otherwise dispose of any Contractor proprietary items without the prior written consent of the Contractor.

c. This license gives no title or ownership rights in Contractor proprietary items or related intellectual property to Customer.

d. If software source code is delivered to Customer under this license, Customer agrees to keep the source code strictly confidential in accordance with Section 14 below. If software object code is delivered, Customer will not copy or modify the software or subject the software to any process intended to create computer source code from Contractor proprietary items.

e. Customer agrees to retain or reproduce on all copies of any Contractor proprietary items all copyright notices and other proprietary legends and all trademarks or service marks of Contractor or any third party.

f. Customers will have no rights to assign or sell the license granted herein to others.

g. If Customer orders any commercial off-the-shelf type products, a separate licensing agreement shall be negotiated and shall become part of the applicable Statement of Work.

## **7. ACCEPTANCE**

7.1. Upon completion of Services/ works on the Statement of Work, the Contractor shall send to the Customer the Invoice and/or Act of acceptance-transfer of the performed works/services (hereinafter - the Act).

7. 2. Before sending of Act of acceptance-transfer, the Deliverables, if any, shall be deemed accepted by Customer upon completion of the following acceptance test:

a. Immediately upon receipt of said Deliverables, the Customer shall promptly perform testing of the Deliverables to confirm that the Deliverables perform in accordance with the documentation or other standards applicable thereto as set forth in the Statement of Work.

b. Customer shall either promptly provide Contractor with written acceptance of the Deliverables, or deliver to Contractor a detailed written statement of nonconformities to be corrected prior to Customer's acceptance of the Deliverables. Unless otherwise agreed to in writing by the parties, the Contractor will redeliver corrected Deliverables to Customer within a reasonable amount of time after receipt of such statement of nonconformities.

c. Following redelivery of corrected Deliverables, a new acceptance test shall be immediately commenced by the Customer. Any such written statement of nonconformities shall provide sufficient detail to enable Contractor to remedy the failure to conform to the Completion Criteria. If Customer fails to provide a written acceptance or a written statement of nonconformities within five (5) days of initial receipt of said Deliverables or such other mutually acceptable period as defined in the applicable Statement of Work, or within five (5) days of re-delivery of said corrected Deliverables or such other mutually acceptable period, the Deliverables shall be deemed immediately accepted by Customer.

## **8. WARRANTIES AND REMEDIES**

8.1. Contractor warrants deliverable functionality substantially as defined in the Statement of Work for a period of 30 days following final delivery.

8.2. Contractor warrants that with respect to any Deliverable assigned by Contractor to Customer that Contractor has the right to transfer title to Customer.



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8.3. Contractor further warrants that to its knowledge the Deliverables do not infringe any intellectual property right held by a third party.

8.4. Customer's sole and exclusive remedy and Contractor's only obligation for breach of the warranty hereunder will be, at Contractor's option, to correct any material errors in the provision of Services or to replace or repair Deliverables which do not conform to the warranty. In order for Customer to exercise this remedy, Customer must give Contractor written notice of such nonconformity within the warranty period, and Contractor must determine that any nonconformity did not arise due to any cause specified below. The contractor shall be given free and full access to deliverables to make corrections, and the Customer shall promptly inform the Contractor of any changes in the location of Deliverables during the warranty period. If this remedy is adjudged to have failed of its essential purpose, the Contractor's total liability will be to refund the price paid to Contractor by Customer for the nonconforming Deliverables. The remedy provided by Contractor for breach of warranty does not include the following, which may be provided, at Contractor's sole option, at Contractor's then-current time and materials rates:

- i. Repair of damage to Deliverables caused by Customer during unpacking.
- ii. Repair of damage caused by events beyond Contractor's reasonable control.
- iii. Repair of damage caused by Customer's improper installation, relocation, or rearrangement of Deliverables.

8.5. Except for the warranties stated in this Section, Contractor **DISCLAIMS ALL OTHER WARRANTIES WITH RESPECT TO THE SERVICES AND DELIVERABLES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW, COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND WARRANTIES AGAINST NON-INFRINGEMENT.** Contractor expressly does not warrant that the operation of Deliverables which are software shall be uninterrupted or error-free; or that Deliverables will operate on any system, or with any software, other than the system with which the Contractor tested such Deliverables. Contractor does not warrant any third-party software development tools. Contractor specifically does not warrant the accuracy of any technical or subject matter content of the courseware or software that is based upon information or direction provided by the Customer.

## **9. LIMITATION OF LIABILITY**

9.1. The total liability of Contractor to Customer from any cause whatsoever, will be limited to the lesser of Customer's actual damages or the Project price paid to Contractor for those Services and Deliverables in a Project that are the subject of Customer's claim.



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9.2. In no event will either party be liable for SPECIAL, INDIRECT, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, including but not limited to loss of profits, revenues, data or power, damage to or loss of the use of products, damage to property, claims of third parties, including personal injury or death, suffered as a result of provision of Services or use of Deliverables.

9.3. For breach of payment obligations under this Agreement, the Customer shall pay to the Contractor a penalty in the amount of 10 (ten) percent from the amount of overdue payment for each day of delay, and for delay over 30 (thirty) working days an additional fine of 30 (thirty) percent percent of the owed amount.

9.4. All claims against Contractor must be brought within one (1) year after the cause of action arises and Customer waives any statute of limitations which might apply by operation of law or otherwise.

## **10. INDEMNIFICATION**

10.1. Customer shall defend, indemnify, and save Contractor harmless, at Customer's own expense, against any action or suit brought for any loss, damage, expense or liability that may result by reason of an infringement of any patent, trademark, copyright, or trade secret based upon the normal and intended use of the Deliverables furnished to Contractor hereunder. Should any of the Deliverables furnished to Contractor hereunder become the subject of a claim of any infringement of a patent, trademark, copyright, or trade secret, Customer shall, at its option and expense, deliver non-infringing material, modify the material so that it becomes non-infringing, or procure for Contractor the right to continue using Customer's infringing material.

10.2. Customer agrees to indemnify and hold Contractor harmless against all claims, liabilities, demands, damages, or expenses (including attorneys' fees and expenses) arising out of or in connection with Customer's use of the Deliverables.

## **11. FORCE MAJEURE**

11.1. Neither Party shall be liable for full or partial failure to fulfill any of its obligations if such failure is the result of circumstances such as fire, flood, earthquake, hostilities, acts, decrees or other actions of public authorities that arose after the conclusion of the Agreement. If any of these circumstances directly affects the performance of obligations within the period specified in this Agreement, this period is accordingly postponed to the time of the above circumstances.





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11.2. The Party for which it is impossible to fulfill the obligations, as soon as possible (but not later than 5 calendar days after the occurrence of force majeure) must notify the other Party in writing of the occurrence of force majeure. The occurrence of force majeure must be certified by a competent authority determined by the current legislation. Failure to notify or untimely notification shall deprive the Party concerned of the right to be temporarily relieved of its obligations due to the above circumstances.

## **12. TERMINATION**

12.1. Termination of Project. Customer reserves the right to terminate a Project in whole or in part, upon 10 days written notice to Contractor. In the event the Project is terminated by Customer prior to completion, Contractor shall use its best efforts to conclude or transfer the Project, as directed by Customer, as expeditiously as possible. Contractor shall not undertake further work, incur additional expenses, or enter into further commitments with regard to the Project after receiving such notice of termination from Customer, except as mutually agreed upon by the parties. In the event of termination of a Project as described above, Contractor shall be entitled to compensation as follows:

a. All payments due and owing under this Agreement at the time of Contractor's receipt of the written notice of termination for work completed and in progress;

b. Reimbursement for any non-cancelable services and commitments entered into by Contractor, in connection with the Project being terminated, provided Contractor provides Customer with documentation of completion of work or expenses incurred.

12.2. Termination of the Project shall not affect either party's obligations in connection with any other ongoing Projects and the rights and obligations of all non-terminating parties to the Agreement shall remain in full force and effect.

12.3. Failure by either party to comply in any material respect with any of its obligations in this Agreement shall entitle the other party to give notice to the party in default requiring it to cure such default. If such default is not cured within 7 days after receipt of such notice, the notifying party shall be entitled to terminate this Agreement by giving notice of such termination to take effect immediately. The right of either party to terminate this Service Contract, as herein provided, shall not be affected in any way by its waiver of, or failure to take action with respect to, any previous default.

## **13. DELAY OR SUSPENSION OF WORK**



13.1. If Customer's acts or failure to act causes Contractor to delay or suspend performance of Services, Contractor, and Customer will mutually agree to one of the following remedies:

a. Contractor will use reasonable efforts to continue performance as practicable under the circumstances and Customer will continue to make all scheduled payments; or

b. Contractor will re-assign personnel to extend Contractor's work schedule without liability, and Customer will pay all additional costs if any.

Notwithstanding the above, the Contractor shall have the right to invoice Customer for any work performed to date of suspension.

#### **14. CONFIDENTIALITY**

14.1. Contractor and Customer acknowledge that during the course of the performance of a Project, information of a confidential nature may be disclosed between the parties. Such information, excluding the Deliverables and any other information incident to the Deliverables that a party could reasonably be expected to be provided to the other party as contemplated hereunder, shall be considered confidential information ("Confidential Information"). Neither party has the right to disclose the Confidential Information of the other, in whole or in part, to any third party, and neither party will make use of the Confidential Information of the other for its own or a third party's benefit or in any way use such Confidential Information other than for the purposes of performance of this Agreement without the prior written consent of the disclosing party. Each party agrees to take all reasonable steps to protect the other's Confidential Information from unauthorized use and/or disclosure. The parties agree not to copy in whole or in part, any Confidential Information nor modify the same in any way without prior written consent from the other party.

14.2. Neither party will be liable to the other for the disclosure of Confidential Information if, as shown by clear and convincing evidence, the Confidential Information: (a) is generally known to the public at the time of disclosure by the disclosing party; or (b) becomes generally known to the public through no fault of the receiving party; or (c) was lawfully in the possession of the receiving party prior to signing this Agreement, or (d) is subject to an applicable valid court order requiring disclosure of such Confidential Information.

In any judicial proceeding, it will be presumed that the Confidential Information in question constitutes protectable trade secrets of the disclosing party, and the receiving party shall bear the burden of proving that the Confidential Information was publicly or rightfully known or disclosed.



## **15. PUBLICITY**

Contractor may use Customer's name or mark and identify Customer as a client of Contractor, on Contractor's website and/or marketing materials. The Contractor may issue a press release, containing the Customer's name, related to any award under this Agreement. Neither party will use the other party's name or marks, refer to or identify the other party for any other reason, except as established in this section, without such other party's written approval. Any approval required under this Section shall not be unreasonably withheld or delayed by either party.

## **16. SUBCONTRACTING**

Contractor may, at its option, subcontract work under a Statement of Work but Contractor's use of subcontractors shall not affect its responsibilities under the applicable Statement of Work. Moreover, the Contractor shall be fully responsible for work done by its subcontractors within the scope of the applicable Statement of Work as it is for work done by its own employees. The Contractor shall have written agreement(s) with its subcontractors that contain, at a minimum, clauses that are the same as or comparable to the sections of this Agreement regarding ownership rights and confidentiality of Customer's materials.

## **17. GENERAL TERMS**

17.1. The agreement is publicly available.

17.2. The PO to this Agreement are integral parts of this Agreement.

17.3. Neither party has the right to transfer its rights and obligations under this agreement to a third party without the written consent of the other party.

17.4. The Parties agreed that in order to guarantee Personal Data Protection according to the legislation, they consent to the processing and use of personal data provided by them. In this case, the consent is considered as obtained at the time of providing their personal data. No additional notifications are required.

17.5. The Parties shall be fully responsible for the correctness of the details specified by them in this Agreement and undertake to notify the other Party in writing of their change in a timely manner, and in case of failure to notify bear the risk of adverse consequences.



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17.6. The invalidity or unenforceability, in whole or in part, of any provision in this Agreement shall not affect in any way the remainder of the provisions herein. This Agreement may not be assigned by the Customer without Contractor's consent.

17.7. This Agreement, together with any other materials referenced in or expressly made a part of the Agreement, constitutes the final and entire Agreement between Contractor and Customer and supersedes all prior and contemporary agreements, oral or written.

17.8. The Parties hereto agree that facsimile signatures shall be as effective as if originals. This Agreement may be executed via facsimile in any number of counterparts, all of which taken together shall constitute one and the same agreement.

**18. GENERAL TERMS.** This Agreement and the interpretation of its terms shall be governed by and construed in accordance with the laws of the United Kingdom and subject to the exclusive jurisdiction of the United Kingdom.

**In force since June 26, 2022**