

# Terms & Conditions

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planet**



## **Positive Planet Eco Technology Ltd trading as Positive Planet Terms and Conditions of Service**

### **Definitions**

#### **Positive Planet**

Positive Planet Eco Technology Ltd, trading as Positive Planet, (company number 13279512) registered office Department, Bonded Warehouse, 18 Lower Byrom Street, Manchester. M3 4AP

#### **Services**

Services, products and software supplied to a Client by Positive Planet including Onboarding, Data Management, Carbon Measurement, Certification, Reduction Planning, Offsetting, Stakeholder Engagement, Training and any other advisory services

#### **Certification**

Positive Planet certification. An annual or one-off certification programme for organisations and/or products

#### **Certification Start Date**

The first day of the Client's certification reporting period

#### **Code of Practice**

Outline of criteria for Certification and other relevant Services

#### **Agreement**

The agreed scope of works issued by Positive Planet to the Client, and agreed to by the Client, through acceptance of a proposal or other document

#### **Client**

The organisation or individual procuring Services from Positive Planet

## **Content**

### **1. General Terms and Conditions**

- 1.1. The Client's provision and use of Services (excluding any services provided to the Client by Positive Planet under a separate written agreement) is subject to the terms of a legal agreement between the Client and Positive Planet
- 1.2. Unless otherwise agreed in writing with Positive Planet, the Client's Agreement with Positive Planet will always include, at a minimum, the terms and conditions set out in this document. These are referred to below as the "Universal Terms".
- 1.3. The Client's agreement with Positive Planet will also include the terms of any Legal Notices applicable to the Services, in addition to the Universal Terms. All of these are referred to as the "Additional Terms". Where Additional Terms apply to a Service, these will be accessible for the Client to read either within, or through its use of that Service.
- 1.4. The Universal Terms, together with the Additional Terms, form a legally binding agreement between the **Client** and **Positive Planet** in relation to its use of the Services. It is important that the Client takes the time to read them carefully. Collectively, this legal agreement is referred to below as the "Terms".
- 1.5. If there is any contradiction between the Additional Terms and the Universal Terms, then the Additional Terms shall take precedence in relation to that Service.

### **2. Accepting the Terms**

- 2.1. In order to use the Services, the Client must first agree to the Terms. The Client may not use the Services if it does not accept the Terms.
- 2.2. The Client is accepting the Terms by using the Services. In this case, the Client understands and agrees that Positive Planet will treat its use of the Services as acceptance of the Terms from that point onwards.
- 2.3. The Client may not use the Services and may not accept the Terms if (a) it is not of legal age to form a binding contract with Positive Planet, or (b) it is a person barred from receiving the Services under the laws of the United Kingdom or other countries including the country in which it is resident or from which it uses the Services.
- 2.4. Before the Client continues, it should save a local copy of these Terms for its records.

### **3. Schedule of Fees**

- 3.1. The Schedule of Fees is stipulated in the Agreement.
- 3.2. The Client agrees to pay the fee, as set out in the Agreement, in full within 30 days of accepting the Agreement, unless otherwise agreed.
- 3.3. Services commence when fees have been received.

3.4. Any additional costs arising for Positive Planet in the delivery of Service, such as travel and accommodation costs for necessary site visits, are chargeable at cost. These will be agreed in advance.

#### **4. Provision of Services**

4.1. Positive Planet is constantly innovating in order to provide the best possible experience for its members. The Client acknowledges and agrees that the form and nature of the Services may change from time to time with prior notice by email to the Client.

4.2. The Client is expected to and agrees to provide the requested information for the delivery of Services within a three-month period from the acceptance of the Agreement. If requested information is not received within nine months, Positive Planet is not obliged to carry out part or all of the Services outlined in the Agreement.

4.3. Payment is non-refundable if Services are not delivered due to a failure on the part of Client to fulfil its responsibility in providing requested information.

4.4. Positive Planet warrants that it and its employees and external assessors are committed to undertaking Services with diligence, accuracy and professionalism and commit to the highest standards of honesty, integrity and fairness.

4.5. By accepting the Agreement for Certification, the Client understands that it is agreeing for Positive Planet to assess its performance in accordance with the criteria laid out in the Code of Practice. Positive Planet will only provide a certificate of achievement on the basis of meeting these criteria.

4.6. Positive Planet acknowledges the importance of impartiality and is committed to fulfil its contractual engagement in an impartial and objective manner in order to endure effectiveness, non-discriminatory practices and consistency.

4.7. The Client shall declare in writing any areas that might cause a conflict and affect the impartiality of Positive Planet or any external assessor in the delivery of any Services.

#### **5. Use of Services**

5.1. In order to access Services, the Client will be required to provide information about its organisation as part of the onboarding process for the Service and for the continued use of the Services.

5.2. The Client acknowledges responsibility for making available to Positive Planet all relevant information which Positive Planet reasonably consider relevant in the provision of Services. The Client will also ensure that the information supplied is accurate. Positive Planet holds no liability for Services which have been provided on the basis of false, inaccurate or incomplete information supplied by the Client. Positive Planet is not obliged to provide or reissue Services, once they have been provided, in order to rectify false, inaccurate or incomplete information provided by the Client. Additional payment can be sought from the Client to provide these additional services.

#### **6. Responsibilities of the Client**

6.1. The Client makes available to Positive Planet all supporting documentation and confirms no relevant information has been withheld. During the course of the provision of Services, and at any time thereafter, if it is found that the Client has knowingly falsified relevant information for the purpose of gaining Certification, Positive Planet has the right to suspend or cancel Certification and associated rights from the Client in relation to the specified Agreement.

6.2. Unless the Client has been specifically permitted to do so in a separate Agreement with Positive Planet, the Client agrees that it will not reproduce, duplicate, copy, sell, trade or resell the Services for any purpose. The output of Services received may be used by the Client to promote their project and certification.

6.3. The Client agrees that it is solely responsible for (and that Positive Planet has no responsibility to the Client or to any third party for) any breach of its obligations under the Terms and for the consequences (including any loss or damage which Positive Planet may suffer) of any such breach.

6.4. If Certification is not continued in the subsequent year, references to Positive Planet which infer to its validity and the use of the Positive Planet logo and other assets must be removed within 30 days following termination.

## **7. Third Party Rights**

7.1. The Agreement shall not create or give rise to, nor shall it be intended to create or give rise to, any third party rights

## **8. Confidentiality of Information**

8.1. Positive Planet has a professional duty of confidentiality with respect to the information supplied by the Client. All information received directly or indirectly will be treated as confidential matter. Information will not be passed on to any third party nor may be made accessible in any other form to any third party unless written permission is given by the Client.

8.2. The obligation of confidentiality shall continue to remain in effect beyond the termination or completion of Services

8.3. The obligation of confidentiality shall not be deemed to exist if and when Positive Planet is able to provide proof of the fact that the information concerned has been:

8.3.1. Generally known in the public domain

8.3.2. Has been generally disclosed in the public domain through no fault of Positive Planet

8.4. The Client consents, during any period of active Certification, to publication of the Positive Planet Certificate, and the information contained therein, in all forms of Positive Planet marketing subject to the Client's prior revocable written permission, for each proposed use of the Client name/logo and related information, such permission shall not be unreasonably withheld.

## **9. Electronic Communications**

During the provision of Services, Positive Planet may communicate with the Client electronically. The Client is aware that the electronic transmission of information cannot be guaranteed to be secure or error free and such information could be intercepted, corrupted, lost, destroyed, delayed or incomplete or otherwise be adversely affected or unsafe to use. Accordingly, whilst Positive Planet will

use commercially reasonable procedures to secure against IT viruses or malware before sending information electronically and notwithstanding any collateral contract, warranty or representation, neither Positive Planet Nor its employees or agents shall have any liability to the Client on any basis, whether in contract, tort (including negligence) or otherwise, in respect of any error or omission arising from or in connection with the electronic communication of information to the Client.

9.1. If the communication relates to a matter of significance on which the Client wishes to rely and the Client is concerned about the possible effects of electronic transmission, the Client should request a hard copy of such transmission from Positive Planet.

## **10. Content in the Services**

10.1. The Client understands that all information (such as data files, written text, computer software, music, audio files or other sounds, photographs, videos or other images) which it may have access to as part of, or through its use of, the Services are the sole responsibility of Positive Planet. All such information is referred to below as "Content".

10.2. The Client may not modify, rent, lease, loan, sell, distribute or create derivative works based on this Content (either in whole or in part) unless it has been specifically permitted to do so by Positive Planet or by the owners of that Content, in a separate agreement.

10.3. Positive Planet reserves the right (but shall have no obligation) to pre-screen, review, flag, filter, modify, refuse or remove any or all Content from any Service.

10.4. The Client agrees that it is solely responsible for (and that Positive Planet has no responsibility to the Client or to any third party for) any content that the Client creates, and then transmits or displays while using the Services and for the consequences of its actions (including any loss or damage which Positive Planet may suffer) by doing so.

## **11. Rights to use Certification**

11.1. Positive Planet has the sole authority and right over the Positive Planet trademark.

11.2. Each party understands and confirms that it holds no ownership, licensing and copyright to trade mark, service mark, trade name and logos provided by the other party as part of the Services.

11.3. Positive Planet gives the Client a personal, worldwide, royalty-free, non-assignable and non-exclusive rights to use the Positive Planet trade mark, service mark, trade name and logos provided to the Client by Positive Planet as part of the Services. This right to use is for the sole purpose of enabling the Client to use and enjoy the benefit of the Services as provided by Positive Planet and is for a period of 12 months from the Client's Certification Start Date and each year thereafter providing the Client has paid for their renewal. Such trademark, service mark, trade name, and logos may be changed at any time by Positive Planet upon notification of which the Client will immediately cease to use any trade mark, service mark, trade name, or logos that have been superseded.

11.4. Positive Planet reserves the right to revoke the use of Positive Planet at any time upon the Client's failure to pay for or complete the necessary criteria for Certification.

11.5. The Client understands that there is no cost to display the Positive Planet logo and the use of it is solely upon achieving Certification.

11.6. During the course of the Agreement and for the entire period of Certification, the Client may display the Positive Planet logo on their website. The Client may also use the logo across other relevant materials and assets with prior agreement/approval from Positive Planet.

## **12. Proprietary Rights**

12.1. The Client acknowledges and agrees that Positive Planet (or Positive Planet's licensors) own all legal right, title and interest in and to the Services, including any intellectual property rights which subsist in the Services (whether those rights happen to be registered or not, and wherever in the world those rights may exist). The Client further acknowledges that the Services may contain information which is designated confidential by Positive Planet and that it shall not disclose such information without Positive Planet's prior written consent.

12.2. If the Client has been given an explicit right to use any of these brand features in a separate written agreement with Positive Planet. then it agrees that the use of such features shall be in compliance with that agreement, any applicable provisions of the Terms, and Positive Planet's brand feature use guidelines as updated from time to time.

12.3. The Client agrees that it shall not remove, obscure, or alter any proprietary rights notices (including copyright and trademark notices) which may be affixed to or contained within the Services.

12.4. Unless it has been expressly authorised to do so in writing by Positive Planet. the Client agrees that in using the Services, it will not use any trad mark, service mark, trade name, logo of any company or organisation in a way that is likely or intended to cause confusion about the owner or authorised user of such marks, names or logos.

## **13. Content Licence**

13.1. The Client understands that Positive Planet, in performing the required technical steps to provide the Services to its users, may (a) transmit or distribute its Content over various public networks and in various media; and (b) make such changes to its Content as are necessary to conform and adapt that Content to the technical requirements of connecting networks, devices, services or media. The Client agrees, subject to clause 8.4 above, that this licence shall permit Positive Planet to take these actions.

## **14. Termination of the Agreement**

14.1. Certification will expire on the anniversary of the Certification Start Date and each year thereafter.

14.2. Any Client wishing to renew their Certification on the anniversary date **must agree a new Agreement** with Positive Planet at least 60 (sixty) calendar days in advance of the anniversary of the Certification Start Date.

14.3. Any party desiring to terminate the Agreement may do so for any reason whatsoever by providing written notification to the other party with at least 30 (thirty) calendar days' notice.

14.4. The Agreement shall remain in effect indefinitely, unless otherwise amended or terminated.

14.5. The Client will not be entitled to refund of any payment already made to Positive Planet unless by reason of Positive Planet's failure to provide the Services and/or default of their obligations under this Agreement.

14.6. Positive Planet may at any time, terminate its legal agreement with the Client if:

14.6.1. The Client has breached any provision of the Terms (or have acted in manner which clearly shows that the Client does not intend to, or is unable to comply with the provisions of the Terms); or

14.6.2. Positive Planet is required to do so by law (for example, where the provision of the Services is, or becomes, unlawful);

14.7. Nothing in this Section shall affect Positive Planet's rights regarding provision of Services under Section 4 of the Terms.

14.8. When these Terms come to an end by Termination of Agreement, all of the legal rights, obligations and liabilities that the Client and Positive Planet have benefited from, been subject to (or which have accrued over time whilst the Terms have been in force) or which are expressed to continue indefinitely, shall be unaffected by this cessation including the obligation of Confidentiality.

## **15. Amendments to the Agreement**

15.1. Any party desiring to amend the Agreement shall advise the other party, in writing, of the proposed amendments and should the amendments be acceptable to the other party, it shall be affected within 30 (thirty) days after notification of the suggested amendments.

15.2. Any additional costs arising from an amendment sought by the Client are payable to Positive Planet.

## **16. Exclusion of Warranties**

16.1. Nothing in these Terms shall exclude or limit Positive Planet's warranty or liability for losses which may not be lawfully excluded or limited by applicable law and shall include liabilities arising from negligence, loss of personal or confidential data and infringement of intellectual property. Some jurisdictions do not allow the exclusion of certain warranties or conditions or the limitation or exclusion of liability for loss or damage caused by negligence, breach of contract or breach of implied terms, or incidental or consequential damages. Accordingly, only the limitations which are lawful in the Client's jurisdiction will apply to it and Positive Planet's liability will be limited to the maximum extent permitted by law.

16.2. The Client expressly understands and agrees that the hosted element of the Services are provided "as is" and "as available."

16.3. In particular, Positive Planet, its subsidiaries and affiliates, and its licensors do not represent or warrant that:



16.3.1. The Client's use of the Services will meet The Client's requirements,

16.4. The Client's use of the hosted element of the Services will be uninterrupted, timely, secure or free from error. No advice or information, whether oral or written, obtained by the Client from Positive Planet or through or from the Services shall create any warranty not expressly stated in the Terms.

16.5. Positive Planet further expressly disclaims all warranties and conditions of any kind, whether express or implied, including, but not limited to the implied warranties and conditions of merchantability and fitness for a particular purpose except for such purposes as agreed in each Agreement and as detailed in each accepted proposal.

## **17. Limitation of liability**

17.1. Subject to overall provision in paragraph 9.1 above, each party expressly understands and agrees that neither party shall be liable to the other for:

17.1.1. Any indirect, incidental, special consequential or exemplary damages which may be incurred by the indemnified party, however caused and under any theory of liability. This shall include, but not be limited to, any loss of profit (whether incurred directly or indirectly), any loss of goodwill, cost of procurement of substitute goods or services, or other intangible loss;

17.1.2. Any loss or damage which may be incurred by the indemnified party, including but not limited to loss or damage as a result of:

17.1.2.1. Any changes which Positive Planet may make to the Services, or for any permanent or temporary cessation in the provision of the Services (or any features within the services);

17.1.2.2. The deletion of, corruption of, or failure to store, any content and their communications data maintained or transmitted by or through the Client's use of the services;

17.1.2.3. The Client's failure to provide Positive Planet with accurate information;

17.1.2.4. The Client's failure to keep its password or account details secure and confidential;

17.2. The limitations on each party's liability to the other in paragraph 15.1 above shall apply whether or not either party has been advised of or should have been aware of the possibility of any such losses arising.

17.3. Subject to clause 16.1 the total extent of each party's liability to the other shall not exceed the total amount that has been paid for Services provided.

## **18. Other content**

18.1. The Services may include hyperlinks to other web sites or content or resources. Positive Planet may have no control over any web sites or resources which are provided by companies or persons other than Positive Planet.

18.2. The Client acknowledges and agrees that Positive Planet is not responsible for the availability of any such external sites or resources, and does not endorse any advertising, products or other

materials on or available from such web sites or resources.

18.3. The Client acknowledges and agrees that Positive Planet is not liable for any loss or damage which may be incurred by it as a result of the availability of those external sites or resources, or as a result of any reliance placed by the Client on the completeness, accuracy or existence of any advertising, products or other materials on, or available from, such web sites or resources.

## **19. Changes to the Terms**

19.1. Positive Planet may make changes to the Universal Terms or Additional Terms from time to time. When these changes are made, Positive Planet will notify and make a new copy of the Universal Terms available to the Client for agreement and any new Additional Terms will be made available from within, or through, the affected Services.

19.2. The Client understands and agrees that by using the Services after the date on which the Universal Terms or Additional Terms have changed, Positive Planet will treat the Clients' use as acceptance of the updated Universal Terms or Additional Terms.

## **20. Rights to Complaints, Appeals and Disputes**

20.1. The Client shall have the right to complain, appeal and/or dispute any Services provided by Positive Planet within 30 days of the receipt of Content. Positive Planet is obliged to follow the company procedures and complete the said complaint, appeal and/or dispute within 90 days.

## **21. General Legal Terms**

21.1. The Terms constitute the whole legal agreement between the Client and Positive Planet and govern the Clients use of the Services (but excluding any services which Positive Planet may provide to the Client under a separate written agreement), and completely replace any prior agreements between the Client and Positive Planet in relation to the Services.

21.2. The Client agrees that Positive Planet may provide notices, including those regarding changes to the Terms, by email to [legal@nfer.ac.uk](mailto:legal@nfer.ac.uk) on the Services.

21.3. The Client agrees that if Positive Planet does not exercise or enforce any legal right or remedy which is contained in the Terms (or which Positive Planet has the benefit of under any applicable law), this will not be taken to be a formal waiver of Positive Planet's rights and that those rights or remedies will still be available to Positive Planet.

21.4. If any court of law, having the jurisdiction to decide on this matter, rules that any provision of these Terms is invalid, then that provision will be removed from the Terms without affecting the rest of the Terms. The remaining provisions of the Terms will continue to be valid and enforceable.

21.5. The Client acknowledges and agrees that each member of the group of companies of which Positive Planet is the parent shall be third party beneficiaries to the Terms and that such other companies shall be entitled to directly enforce, and rely upon, any provision of the Terms which confers a benefit on (or rights in favour of) them. Other than this, no other person or company shall be third party beneficiaries to the Terms.

21.6. The Terms, and the Client's relationship with Positive Planet under the Terms, shall be governed by the laws of England without regard to its conflict of laws and provisions. The Client and Positive Planet agree to submit to the exclusive jurisdiction of the courts located within

London, UK to resolve any legal matter arising from the Terms. Notwithstanding this, each party agrees that the other party shall still be allowed to apply for injunctive remedies (or an equivalent type of urgent legal relief) in any jurisdiction.

21.7. In order to properly perform our contract and to administer our services Positive Planet collects personal information and data in line with its privacy policy.

Positive Planet regularly reviews its privacy notice and will make an updated version available upon request.