

**SOCIAL CUSTARD**  
**TERMS & CONDITIONS OF RETAINER**

By placing an order with Social Custard (the “Supplier”), you (the “Customer”) agree and undertake to comply with and be bound by the Terms and Conditions stated below.

**1. Basis of Contract**

- 1.1 The Order constitutes an offer by the Customer to supply and provide (as applicable) (as defined within the Order), crew (employee(s), agent(s) or sub-contractor(s) of the Supplier supplied with the equipment to operate the same), facilities (whether creative, streaming, media storage or otherwise howsoever) or production services of the Supplier (the “Services”) (as defined on the Quotation Form) from the Supplier in accordance with these Terms and Conditions.
- 1.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Quotation Form, Order and these Terms and Conditions (together the “Contract”) shall crystallise and become effective and in the absence of a formal document specifying the precise and specific terms of the retainer (in whatever form) shall be binding. For the avoidance of doubt acceptance shall be constituted by clicking the “accept” button on the Quotation Form and written confirmation or writing shall include correspondence by letter and email.
- 1.3 The Contract will constitute the entire agreement between the parties and supersede and replace any and all prior arrangements made between the parties. The Customer acknowledges that it will not have relied on any statement, promise or representation made or given by or on behalf of the Supplier, which is not expressly set out in the Contract.
- 1.4 These Terms and Conditions apply to the Contract to the exclusion of any and all other terms that the Customer may seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 1.5 Any quotation given by the Supplier shall not constitute an offer and shall only be valid for a period of thirty (30) days from the date that such quotation is initially issued and may be withdrawn at any time by the Supplier in its sole and absolute discretion.
- 1.6 By acting in accordance with the terms of the Contract and/ or making any payment under its terms and/ or taking receipt of the Services the Customer is deemed to have agreed to and be bound by these Terms and Conditions unless otherwise agreed in writing.

**2. Supply of Services**

- 2.1 The Supplier shall supply the Services to the Customer in accordance with the express terms set out in the Quotation Form and as may subsequently be amended by the Customer (whether verbally or in writing) and as such additions, variations or adaptations may be accepted by the Supplier from time-to-time.
- 2.2 The Supplier shall use its reasonable endeavours to meet the dates expressly set out in the Quotation Form provided always that reasonable and adequate notice shall have been given to the Supplier in writing.
- 2.3 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law(s) or safety requirement(s), or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer by prior writing notice in any event.

### **3. General Conditions**

The Supplier shall only be obligated to commence or supply the Services once the Contract has been received by the Supplier from the Customer in writing, together with a purchase order from the Customer detailing project and cost and any and all payments to be made prior to commencement of the supply of the Services and as set out in the Quotation Form or Order.

### **4. Customer's Obligations**

4.1 Throughout the whole period of provision of Services the Customer agrees and undertakes that it shall:-

4.1.1 ensure that the terms of the Contract are adhered to in full and any information it provides as specified in particular to the Contract are complete and accurate;

4.1.2 provide the Supplier with any and all information and materials as the Supplier may reasonably require in order to supply the Services and ensure that such information is accurate in all material respects;

4.1.3 obtain and maintain all necessary insurances (of whatever nature), licenses, permissions and consents which may be required in advance of the commencement date for the Services and provide the Supplier with a copy of all such insurance policies; and,

4.1.4 comply with any and all relevant and applicable Government or Local Authority Regulations.

4.2 In the event that the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("Customer Default"):-

4.2.1 the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Contract until the Customer remedies the event of Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;

4.2.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this Clause 4; and

4.2.3 the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

### **5. Supply, Usage, Return & Breakdown**

5.1 Where the Services comprises the supply of content data distribution and/ or streaming transmission the Supplier shall be required to conduct a full and unrestricted site/ venue visit and inspection and applicable data line test. In the absence of such visit and inspection (regardless of the reason therefore), the Customer shall deliver a waiver in writing relinquishing any right to action arising from circumstances that would have been disclosed as a consequence of such site/ venue inspection.

5.2 It shall be a condition precedent where the Services incorporate the streaming or transmission of content that any and all requisite data transmission/ data distribution ports for the provision of the Services shall be made available and remain open during the entire period in which the Services are to be provided.

## **6. Approvals & Amends**

- 6.1 For all film and video projects provided as recording or production facility services, the Supplier agrees to carry out one (1) set of amendments or revisions (as appropriate) per project as standard provided always that such amendments or revisions are within the original scope of the Services as set out within the Contract, Order and Quotation Form and do not constitute a material alteration from that original scope.
- 6.2 The Supplier will provide one (1) edit for approval, at which stage the Customer will be required to review and feedback consolidated amendments from all approval and sign-off parties. The Supplier will endeavour to action all required amendments to complete the provision of the Services.
- 6.3 The Supplier will provide one (1) amended file (the "Master") to the Customer in the format specified within the Contract. Any further amendments will be subject to additional cost, charged separately and additional on a time and material basis.
- 6.4 Additional project changes deemed to be over and above those included within the scope of the original Order/ Quotation Form will be subject to additional cost. The Supplier will notify the Customer in writing of any material changes deemed to be outside the original scope brief.
- 6.5 Following delivery of the amended version of the Master by the Supplier, the Master shall be deemed delivered to and accepted by the Customer, the Services shall be deemed completed and any and all remaining payment shall become due and owing.

## **7. Project Back-Up**

- 7.1 Solely where the Customer requires and pays the associated charges for the same the Supplier will back-up (securely save) all shoot footage ("Rushes") immediately following the respective shoot, either on the same working day or, should the shoot wrap outside the standard ten (10) hour shoot day, on the morning of the following working day. Should the latter be the case, the Supplier will take all necessary steps to ensure the security of footage.
- 7.2 During the editing period, project files ("Edits" and "Masters") will be backed up at the end of each working edit day.
- 7.3 A Master Edit Back-Up Fee will be included on every project quote and noted on the Quotation Form. Should the Customer request removal of this fee, the Supplier shall be under no obligation to back-up Edit files following final sign-off of the Master.
- 7.4 Rushes, Edits and Masters will be retained for a period of seven (7) days following final approval. After this date, Rushes, Edits and Masters may be deleted at the discretion of the Supplier, unless an additional Back-Up Fee has been paid (which amount will be advised to Customer following delivery and acceptance).
- 7.5 Where the Supplier provides transmission or distribution by means of hosting or streaming services in respect of the content comprising the Services, the Supplier's obligation to distribute, transmit, host or stream the same shall be contingent upon and limited to the period for which the Customer paying the charges (in full) in respect of such services. Notwithstanding the foregoing and in the absence of settlement of the applicable charges the Supplier's obligation to distribute, transmit, host or stream the content of the Services shall expire three (3) working days following the delivery date of the Services.

## **8. Charges & Payment**

- 8.1 The Charges for the Services shall be on a time and material basis:-
- 8.1.1 the Charges shall be calculated as provided on the Supplier's Quotation Form; and,
- 8.1.2 the Supplier shall be entitled to charge the Customer for any expenses reasonably

incurred by the individuals whom the Supplier engages in connection with the Services including but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses.

8.2 The Supplier may at its discretion require either settlement of charges in relation to the Contract in full or a deposit from the Customer of up to fifty percent (50%) of the total project cost as set within the Contract, which settlement or deposit shall be paid in full (in cleared funds in the Supplier's bank account) not less than five (5) working days prior to the commencement date of the provision of the Services.

8.3 The Supplier shall invoice the Customer for the balance of the Contract amount on completion of the Services.

8.4 The Customer shall settle any and all invoices submitted by the Supplier:-

8.4.1 (where settlement of the charges is required or in relation to deposits) within three (3) working days or twenty one (21) days of the date of any such invoice; and,

8.4.2 in full and in cleared funds to a bank account nominated in writing by the Supplier;

For the avoidance of doubt time for payment shall be of the essence of the Contract and the Supplier shall be entitled to withhold provision of the Services until such time as any outstanding amounts are settled in full.

8.5 Notwithstanding and without limitation to the foregoing any other right or remedy of the Supplier, in the event that the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment ("Due Date"), the Supplier shall have the right to charge interest on the overdue amount at the rate of four percent (4%) per annum above the Bank of England base lending rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding daily.

8.6 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may, without limiting its other rights or remedies, set-off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

8.7 Without prejudice to any other right or remedy available to the Supplier in the event of the cancellation of a Contract by the Customer the Supplier reserves the right to impose a cancellation charge in the following terms:-

<b>Notice Given of Cancellation</b>	<b>% of Total Charges</b>
8 days or more	20% together with the cost of any and all preparatory or pre-production work undertaken by the Supplier (up to and including the date of notice of cancellation) and any and all third party costs already borne and paid by the Supplier
7 - 2 days	50%
2 - 1 days	75%
Less than 24 hours	100%

## **9. Intellectual Property Rights**

9.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall

be owned by the Supplier until such time as the Customer shall have settled any and all invoices due to the Supplier and in full. Following settlement the Supplier shall transfer and assign any and all rights in and to the Delivery Materials being the Master (and as defined in the Quotation Form) to the Customer. For the avoidance of doubt ownership of and title in and to all other materials (not being Delivery Materials) shall remain assigned to and retained by the Supplier.

- 9.2 The Customer acknowledges, agrees and undertakes that, in respect of third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on the Customer obtaining a written licence from the relevant licensee.
- 9.3 The Supplier shall be entitled to include the product(s) of Services as supplied to the Customer, being the Delivery Materials on the Social Custard Website (and any associated group company) (unless it is agreed in writing by both parties at the commencement of the Contract that this is confidential) and links to the Customer's website.
- 9.4 The Customer hereby agrees and undertakes to indemnify and keep indemnified the Supplier against any and all claims arising from the usage of any and all of the assets resulting from the Services (whether by exploitation or howsoever arising) and furthermore the Supplier accepts no responsibility for copyright infringements caused by materials used and submitted to or by the Customer. The Supplier reserves the right to refuse any material that it believes to contravene copyright laws unless proof is given that permission has been granted to use the material. It is the responsibility of the Customer to provide all agreed materials as agreed in writing. Any significant delays caused due to the failure of the Customer to provide agreed materials may be chargeable in addition to the costs stated in the Contract at the discretion of the

## **10. Confidentiality**

- 10.1 A party ("Receiving Party") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are (or may reasonably be anticipated to be) of a confidential nature and have been disclosed to the Receiving Party by the other party ("Disclosing Party"), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This Clause 10 shall survive termination or expiry of the Contract.
- 10.2 The Supplier regards privacy as important and any personal information provided by the Customer will be used in accordance with the Data Protection Act 1998 as shall be or has been amended and/ or replaced by the General Data Protection Regulation (Regulation (EU) 2016/679) (the "Act"). The Supplier does not store any information about individuals visiting the site except where such is to provide contact information in relation to the provision of the Services. Any information provided by the Customer will only be used for the reasons specified, and it will not be shared with any third party without the Customer's consent, unless required by law.
- 10.3 The Supplier uses a third party hosting company to manage the servers and store the data and for the data subject's assurance.
- 10.4 The information that is collected by the Supplier is used for the following purposes:-
- 10.4.1 to provide the Customer with the Service;
- 10.4.2 for the ongoing administration of the Service;
- 10.4.3 for the prevention and detection of crime and fraud; and,

- 10.4.4 to enable the Supplier to comply with the Supplier's legal and regulatory obligations.
- 10.5 The Supplier will not use the Customer's information for marketing purposes.
- 10.6 The Supplier will retain the Customer's information for as long as necessary to fulfil the purpose(s) above, and in accordance with the law. The Supplier will only disclose the Customer's information to other parties in the following limited circumstances:-
  - 10.6.1 where the Supplier is legally obliged to do so, e.g. to law enforcement and regulatory authorities;
  - 10.6.2 where there is a duty to disclose in the public interest;
  - 10.6.3 where disclosure is necessary to protect the Supplier's interest e.g. to prevent or detect crime and fraud; and
  - 10.6.4 where the Customer gives the Supplier permission to do so e.g. on an application form.
- 10.7 Where the Services incorporate a financial charge element for the onward transmission of the Services by the Supplier to and by third parties (including, but not limited to, streaming services) the Customer will be solely and absolutely responsible for administering those financial charging elements and agrees and undertakes that the Supplier will have no responsibility or liability in relation to the same. Furthermore, the Customer agrees and undertakes to use reputable agents (data processors) to fulfil services on the Customer's behalf, e.g. payment service providers and acquiring banks for the authorisation and settlement of credit and debit card transactions and the Customer's agents are required to process the information in accordance with the Act.

## **11. Limitation of Liability**

- 11.1 The Supplier shall not be liable for any loss or damage arising from any cause beyond its reasonable control.
- 11.2 Notwithstanding the foregoing nothing in these Terms and Conditions shall limit or exclude the Supplier's liability for:-
  - 11.2.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
  - 11.2.2 fraud or fraudulent misrepresentation; or
  - 11.2.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 11.3 However, notwithstanding Clause 11.2 above:-
  - 11.3.1 the Supplier will not be liable to the Customer whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or for any indirect or consequential or other economic loss arising under, in connection with or by operation of the Contract or the provision of the Services hereunder (including, but not limited to, the composition and content of the Services (whether in relation to the breach of the legislation or regulations of any country), event organization (facilities and personnel including but not limited to hire charges, cancellation or rebooking fees), location or appropriate and applicable licenses relating to the content of the Services and any and all associated fees, any and all costs incurred as a consequence of the corruption and retrieval of data, files, Rushes, Edits or Masters (whether created in accordance with the Services or supplied to the Supplier by the Customer), failure of equipment or facilities or data streaming (howsoever arising and/ or irrespective of the format, media or system used to provide the same), transmission or distribution (howsoever arising and/ or irrespective of the format, media or system used to provide the same), loss of content (howsoever arising and/ or irrespective of the format, media or

- system used to provide the same), transmission (howsoever arising and/ or irrespective of the format, media or system used to provide the same), distribution or broadcast capability (howsoever arising and/ or irrespective of the format, media or system used to provide the same) not being within the power or control of the Supplier);
- 11.3.2 the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty or otherwise shall not exceed the amount to be charged by the Supplier to the Customer for the supply of the Services in accordance with the Quotation Form.
- 11.4 Except as set out in these Terms and Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 11.5 This Clause 11 shall survive termination or expiry of the Contract.

## **12. Termination**

- 12.1 Either party may terminate the Contract on one (1) month's written notice to the other party (or such other period as set out in the Quotation Form) subject to the Minimum Payment being paid by the Customer to the Supplier and due as a consequence of such termination are made by the Customer to the Supplier.
- 12.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer should:-
- 12.2.1 the Customer fail to pay any amount due under this Contract on the Due Date;
- 12.2.2 the Customer commit a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within five (5) working days of the Customer being notified in writing of that breach;
- 12.2.3 any winding-up or bankruptcy proceedings are commenced against the Customer;
- 12.2.4 the Customer suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- 12.2.5 the Customer (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 12.3 Upon termination:-
- 12.3.1 the Customer shall immediately pay the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately upon receipt;
- 12.3.2 the Customer shall return all of the assets that are to be delivered which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of the same. Until the assets have been returned, the Customer shall be solely responsible for the assets' safekeeping and will neither use them for any purpose not connected with this Contract nor for any purpose; and,
- 12.3.3 the termination of the Services under this Clause 12 shall not affect the right of the Supplier to recover from the Customer any monies due to the Supplier under the Contract or damages for breach thereof.
- 12.4 The Supplier shall use its reasonable efforts to ensure any deadlines agreed between the parties are met and all reasonable efforts to inform the Customer in the unlikely event of delay. Should a delay exceeding sixty (60) days occur and which is not due to any act or omission of the Customer, the Customer may terminate the Contract, at which date the Supplier will refund monies paid under the Contract up to the date of termination and

which have not been committed to third parties.

**13. Miscellaneous**

- 13.1 For the purposes of this Contract, "Force Majeure Event" means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war (whether or not hostilities are declared or commenced), riot, civil commotion, malicious damage, compliance with any law or governmental order, rule regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors. The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event. If the Force Majeure Event prevents the Supplier from providing any of the Services for more than thirty (30) days, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.
- 13.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights under the Contract and may sub-contract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- 13.3 The Customer shall not, without the prior written consent of the Supplier (which consent may be withheld at the Supplier's discretion), assign, transfer, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 13.4 The Customer agrees to fully indemnify and to keep the Supplier effectually indemnified and hold the Supplier and its successors, assigns, employees and agents harmless from and against all liabilities, legal fees (on an indemnity basis), damages, losses, costs and other expenses in relation to any and all claims or actions brought against the Supplier by any person whatsoever for injury to person or property caused by or in connection with or arising out of the usage and exploitation of the Services (howsoever arising) and during and throughout the entire period of Services. For the avoidance of doubt the Supplier accepts no liability for copyright infringement caused by material used by and/ or submitted to the Customer.
- 13.5 Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business. Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9.00am on the second working day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed. This Clause 13.5 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this Clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.
- 13.6 A waiver of any right under the Contract shall only be effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or these Terms and Conditions or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy. Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 13.7 If any term or provision of these Terms and Conditions is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be deemed deleted and severed and the remainder of the provisions hereof shall continue in full force and effect as if these Terms and Conditions had been agreed with the invalid, illegal or unenforceable provision eliminated. If any invalid, unenforceable or



illegal provision of these Terms and Conditions would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

13.8 Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

13.9 A person who is not a party to the Contract shall not have any rights under or in connection with it and the Contracts (Rights Of Third Parties) Act 1999 shall not apply to this Contract or these Terms and Conditions.

13.10 Any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by the Supplier.

14. **Governing Law & Jurisdiction**

This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be exclusively governed by, and construed in accordance with, English law and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

15. **Supplier Details**

Social Custard is a company whose operational address is: 56 Short's Gardens, London, WC2H 9AN.