



## TERMS AND CONDITIONS OF SALE

### 1. Definitions

- 1.1 Contract - these terms and conditions and the document agreed between the parties setting out the parties, Specification of Goods, any Target Delivery Date, Delivery Address and Contract Price.
- 1.2 Contract Price - the price agreed between the parties for the Goods.
- 1.3 Customer - the person, firm or company with whom the Vendor contracts.
- 1.4 Delivery Address - the address to which the Goods will be delivered.
- 1.5 Goods - the goods set out in the Specification.
- 1.6 Guarantee Period - the period of 3 months from the date of delivery of the Goods.
- 1.7 Specification - the specification of the Goods to be provided under the Contract set out in writing and agreed by both parties.
- 1.8 Target Delivery Date - the date, if any, agreed between the parties on which the Vendor will endeavour to deliver the Goods.
- 1.9 Vendor - Corporate Media Supplies Limited of Zenith House, Highlands Road, Solihull, B90 4PD.

### 2. Basis of the Contract

- 2.1 The Vendor agrees to supply the Goods to the Customer and the Customer agrees to pay the Contract Price in accordance with the terms of the Contract.
- 2.2 Any quotation provided by the Vendor shall not constitute a contractual offer, shall be subject to these terms and conditions unless otherwise stated, shall be valid for 30 days and may be revoked at any time. A Contract shall only be formed on acceptance by the Vendor of the Customer's order.
- 2.3 These terms and conditions shall apply to all contracts for the provision of goods and/or services by the Vendor to the Customer to the exclusion of all other terms and conditions including any terms and conditions which the Customer may purport to apply under any order or other document. In the case of any conflict or ambiguity between the Customer's original specification and the Specification set out on this document, the latter shall prevail.
- 2.4 Acceptance of delivery of the Goods by the Customer shall be deemed conclusive evidence of the Customer's acceptance of the Contract.
- 2.5 The Vendor may employ sub-contractors to carry out any part of its obligations under the Contract at its sole discretion and it may assign its rights and obligations under this Contract to any other party. The Customer may not employ sub-contractors nor assign its rights and obligations under this Contract without the written consent of the Vendor.
- 2.6 Any variation of these terms and conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by a duly authorised representative of the Vendor.
- 2.7 Any reference in this Contract to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 2.8 Where delivery is agreed to be made by instalments, each instalment may be deemed at the Vendor's discretion to be a separate and distinct contract and no default by the Vendor in respect of any one or more instalment shall entitle the Customer to reject or withhold payment in respect of any other instalment.

### 3. Payment Provisions

- 3.1 The Contract Price shall be agreed between the parties in writing before delivery of the Goods.
- 3.2 The Vendor reserves the right by giving notice to the Customer at any time before delivery of the Goods to increase the Contract Price if:-
  - 3.2.1 the costs to the Vendor of providing or producing such Goods increase due to any factor beyond the control of the Vendor;
  - 3.2.2 the Customer changes the Specification;
  - 3.2.3 the Customer agrees to any change to the Specification proposed by the Vendor;
  - 3.2.4 the Customer causes any delay;
  - 3.2.5 Goods are required by the Customer with exceptional urgency;
  - 3.2.6 the Customer fails to give the Vendor adequate or accurate information, instructions or facilities.
- 3.3 Unless alternative payment provisions are agreed, the Vendor may submit an invoice or invoices at any time during or after delivery of the Goods in respect of such part of the Goods delivered to that date. The Vendor may submit an invoice for any balance of the Contract Price immediately on delivery of any balance of the Goods. Invoices shall be sent to the Customer's address recorded in this Contract.
- 3.4 All sums due under the Contract will be paid by the Customer within 30 days of the date of invoice without any deduction, set-off, counterclaim or abatement and time for payment shall be of the essence. The Vendor may specify which currency and method of payment it requires the Customer to use, failing which payment shall be in sterling.
- 3.5 The Contract Price does not include VAT or any similar sales tax, impost or customs duties which will be paid additionally by the Customer at the then prevailing rate.
- 3.6 The Contract Price includes normal (but not special) packaging but does not include carriage or insurance unless expressly stated, and such sums may be added by the Vendor to the Contract Price.
- 3.7 If the Customer fails to make any payment within the time specified in this Contract the Vendor may take any or all of the following steps:-
  - 3.7.1 immediately invoice the balance of the Contract Price in advance of the delivery of any further Goods;
  - 3.7.2 cancel the Contract and any other contract between the Vendor and the Customer;
  - 3.7.3 charge the Customer interest (both before and after any judgement) on the amount unpaid at the compound rate of 4% per annum above the Lloyds TSB Bank Plc base lending rate from time to time until payment in full is made, accruing on a weekly basis and also charge the Customer for all costs and expenses (including legal costs) incurred by the Vendor in the collection of any overdue amount;
  - 3.7.4 appropriate any payment made by the Customer and set-off any monies due to the Customer, whether under this Contract or any other contract or otherwise (including any VAT applicable), to or against the unpaid invoice or invoices;
  - 3.7.5 refuse to deliver any balance of Goods or provide any services or guarantee services, whether under this Contract or any other contract or otherwise, until payment is made in full;

- 3.8 Where payment is made by means of any bill of exchange, cheque or other negotiable instrument, payment shall not be treated as having been made until such instrument has been honoured on presentation for payment.

### 4. Goods

- 4.1 The Goods shall be at the Customer's risk as from delivery to the Delivery Address, or in the case of collection by the Customer, from the date and time of such collection, save for later damage caused to the Goods by any negligent act of the Vendor or any of its sub-contractors and the Customer will be responsible for insuring the Goods from the time risk passes.
- 4.2 Any intellectual property rights in the Goods or in any designs or specifications produced by the Vendor for the purpose of the Contract shall remain the property of the Vendor. No right or licence is granted except the right to use or resell the Goods. The Customer acknowledges that any intellectual property rights developed and presented by the Vendor to the Customer in relation to the Goods are available only for such order and shall not be used for any other purpose whatsoever without the Vendor's prior written agreement.
- 4.3 The Customer hereby agrees to grant to the Vendor (to the extent that it is able) the right to use any production overs of the Goods for the purposes of demonstration and sampling and for use in advertising and/or promotional activities.
- 4.4 Where the Customer is to supply data and/or media to the Vendor as part of the Specification, the Customer warrants that such data and/or media so supplied shall not be the original master and the Customer shall retain in its possession at all material times a minimum of one copy of all data and/or media so provided. The Vendor accepts no liability for any loss of data and/or media supplied by the Customer.
- 4.5 The Vendor will keep any data and/or media supplied by the Customer for a maximum period of 6 months. At the expiration of the 6-month period the Vendor may without further notice to the Customer destroy such material.
- 4.6 The Vendor will keep any data and/or media supplied by the Customer for the execution of this Contract in secure storage. Fireproof storage will not be provided unless specifically requested by the Customer.
- 4.7 The Customer will provide the Vendor with such artwork, information, copies, logos, drawings and designs, and will do so at such time or times, as the Vendor may reasonably need to produce the Goods. The Customer is responsible for ensuring that such material and answers are accurate and complete.
- 4.8 The Vendor reserves the right to edit, amend or refuse to accept proposed material which it considers to be offensive, unlawful or inappropriate or which appears to infringe the intellectual property rights of any third party.
- 4.9 The Vendor may from time to time (but shall not be obliged to) submit to the Customer for its specific approval proofs before production of the Goods. Within 7 days of receipt by the Customer of such proofs, the Customer shall notify the Vendor in writing of any changes required. The Vendor shall, however, be entitled to rely upon verbal approval or other instructions received from the Customer.
- 4.10 If no such notification is received within that period, the Customer shall be deemed to have accepted the proof concerned, whether or not expressly requested to approve. After acceptance, whether deemed or otherwise, the Customer shall not be entitled to reject the item nor to have any defects in the proof remedied by the Vendor, whether or not it complies with the Specification, without the consent of the Vendor, in which event the Vendor may levy reasonable additional charges for such work.

### 5. Delivery

- 5.1 The Vendor will be responsible at the Customer's cost for the delivery of the Goods to the Delivery Address.
- 5.2 The Vendor will use all reasonable endeavours to deliver the Goods on the Target Delivery Date but this date will be treated as a target date only and time will not be of the essence. If no dates are specified, delivery of the Goods will be within a reasonable time.
- 5.3 In particular, the Vendor shall not be responsible for delay caused by factors beyond its control, including adverse weather conditions.
- 5.4 The Vendor reserves the right by giving notice to the Customer at any time before delivery of the Goods to change the Target Delivery Date if:-
  - 5.4.1 the Customer changes or agrees to change the Specification;
  - 5.4.2 the Customer causes any delay;
  - 5.4.3 the Customer fails to give the Vendor adequate or accurate information, instructions or facilities.
- 5.5 The Customer shall make such arrangements as are necessary to take delivery of the Goods at the Delivery Address on the Target Delivery Date or on such other date as the Vendor notifies the Customer that delivery will be made.
- 5.6 If the Customer changes the Target Delivery Date of any Goods or fails to take delivery on the date the Goods are ready for delivery or indicates to the Vendor that it will not accept delivery on any date agreed or notified under clauses 5.4 or 5.5, the Vendor shall be entitled:-
  - 5.6.1 at the Customer's risk and expense to store the Goods at the Vendor's premises and to demand payment as if they had been delivered;
  - 5.6.2 to add a financing and stocking charge to the Contract Price in respect of the period from that date to the actual date of delivery at the rate of 4% per annum above the Lloyds TSB Bank Plc base rate from time to time.
- 5.7 Following delivery of the Goods the Customer shall follow any instructions of the Vendor as to use and maintenance of the Goods.
- 5.8 No act or omission of the Customer which prevents the Vendor from delivering the Goods or from delivering them according to any agreed time-scale shall prevent the Vendor from raising invoices in accordance with clause 3.
- 5.9 The Customer shall take delivery of the Goods notwithstanding that the quantity delivered is greater or less than that contained in the Specification, provided that:-
  - 5.9.1 such discrepancy shall not exceed 5% unless a different figure is agreed;
  - 5.9.2 the Vendor shall at its discretion either make up any shortfall or adjust the Contract Price pro rata to the discrepancy, provided that it is notified in writing of the shortfall within 7 days of delivery and is given the

- opportunity, if required to examine the Goods before they are used or resold by the Customer.
- 5.10 The Vendor shall not be liable for any claim for loss or damage to the Goods in transit unless such claim is notified in writing both to the Vendor and the carrier within 7 days of delivery of the Goods. Where the Customer accepts the Goods from the carrier without checking, the Vendor shall not be liable for such claim unless the Customer has marked the delivery note "not examined".
- 6. Acceptance, Defects and Guarantee**
- 6.1 Within 7 days of delivery of the Goods (or 14 days in the event of non-delivery) the Customer shall notify the Vendor in writing, either that it accepts the Goods and that they are free of defects, or a list of such defects as are known to it at that time.
- 6.2 If no such notification is received the Customer shall be deemed to have accepted the Goods. After acceptance, whether deemed or otherwise, the Customer shall not be entitled to reject the Goods outright.
- 6.3 During the Guarantee Period the Customer shall notify the Vendor in writing within 7 days of discovery of any defects in the Goods.
- 6.4 The Vendor shall use its best endeavours to correct any defect arising under normal use and due solely to faulty design (except where supplied by or on behalf of the Customer), materials or workmanship, which is notified to it within the Guarantee Period within a reasonable time of receiving such notification, and may at its discretion:-
- 6.4.1 carry out such work as is necessary to remedy the defect;
- 6.4.2 replace all or any part of the Goods;
- 6.4.3 refund the Contract Price or such part of it as relates to the defective Goods.
- 6.5 The Vendor may invoice the Customer for the cost of any work or materials brought about by the Customer's notification of any defect where such defect is not attributable to any act or omission of the Vendor or is attributable to:-
- 6.5.1 misuse of the Goods by the Customer;
- 6.5.2 failure to follow the Vendor's advice as to use and maintenance of the Goods;
- 6.5.3 any modification made to the Goods by the Customer or by third parties without the prior written consent of the Vendor.
- 6.6 If any unauthorised modification is made to the Goods or the Customer continues to use them or re-sells them (or any of them) after identification of a defect, the Vendor shall not be obliged to correct any defects or provide any guarantee services under this Contract.
- 7. Warranties**
- 7.1 The Vendor warrants that the Goods will comply with the Specification.
- 7.2 Where the Vendor is not the manufacturer of the Goods, the Vendor will endeavour to transfer to the Customer the benefit of any warranty or guarantee given to the Vendor.
- 7.3 Any description of the Goods (including the matching of any colour) given by the Vendor or contained in any brochures or other descriptive matter is given by way of identification only and the use of such description shall not constitute a sale by description.
- 7.4 The Vendor will use its best endeavours to ensure that any printed element of the Goods matches any proof but no warranty is given or implied that these printed elements will match the proof and the Customer accepts that there may be variations between different production runs.
- 7.5 Defects in the quality or dimensions of any delivery shall not be a cause for cancellation of the remainder of any order or contract.
- 7.6 The Customer shall be responsible for ensuring that the Goods are fit for the purpose for which it or any third party intends to use them, and covenants that the Goods will only be used for purposes for which they are sufficient and suitable. No condition is made or to be implied nor is any warranty given or to be implied by the Vendor as to the life or wear of the Goods supplied or that they will be suitable for any particular purpose or use under any specific conditions notwithstanding that such purpose or conditions may be known to the Vendor.
- 7.7 The Customer warrants that it has not relied on any representations made by or on behalf of the Vendor or upon any descriptions, illustrations or specifications contained in any material produced by or on behalf of the Vendor save for the Specification of the Goods as agreed between the parties.
- 7.8 The Customer warrants that any specification, design or instruction given by it to the Vendor will not infringe any intellectual property or other rights of any third party, nor will it be defamatory or otherwise unlawful, and the Customer will indemnify the Vendor in respect of any claim relating to such infringement.
- 7.9 The Customer agrees to indemnify the Vendor against all costs and liabilities incurred by it due to any breach by the Customer of the terms of this Contract, including any consequential losses.
- 7.10 Any data media supplied by the Customer in connection with this Contract will be scanned for the presence of computer viruses as will be all master discs authored by the Vendor. The Vendor does not accept any liability for loss or damage in any way brought about by the transmission to the Goods of computer viruses from any material supplied by the Customer.
- 7.11 The Vendor does not warrant that the Goods will be compatible with computer systems not included within the scope of the Specification and accepts no liability for any loss or damage arising in any way from use of the Goods on such incompatible computer systems.
- 8. Limitation of Liability**
- 8.1 The Vendor shall not be responsible for any defects in the Goods which are not notified in writing to it within the Guarantee Period, for any defects notified to it within this period but not in accordance with the time limits set out at clauses 6.1 or 6.3 above nor for any defects which are the fault of the Customer or any third party.
- 8.2 The terms of this Contract represent the whole agreement between the parties and all other warranties, conditions, terms, undertakings or representations of any kind, whether express or implied, statutory or otherwise relating to the provision of any goods or services under or in connection with the Contract including (without limitation) as to the condition, quality, performance or fitness for purpose of the Goods or any of them or the standard of care used in the provision of any services are hereby expressly excluded from the Contract save for the undertakings implied by statute in respect of title to any goods.
- 8.3 The Vendor shall not be liable under contract, tort (including negligence) or otherwise for any loss of production, loss or corruption of data, loss of profits or of contracts, loss of operation time, loss of goodwill and loss of anticipated savings, nor for any indirect or consequential loss, damage, cost or expense of any kind whatever and however caused.

- 8.4 The Vendor accepts liability for death or injury caused by the negligence of the Vendor or that of its employees, agents or sub-contractors acting in the course of their engagement under this Contract, and liability which cannot be excluded under the Consumer Protection Act 1987 Part I, without limit.
- 8.5 In all other cases not falling within clause 8.4, the Vendor's total liability (whether in contract, tort including negligence or otherwise) under or in connection with this Contract or based on any claim for contribution or indemnity shall not exceed two times the Contract Price in aggregate. The Vendor may be prepared to provide wider limitation terms in return for an enhanced payment.
- 8.6 The Vendor shall not be liable for any change to the Specification of the Goods if the variation does not materially affect the characteristics of the Goods, and the substituted materials (if any) are of comparable quality to the originals.
- 8.7 The Customer agrees that except as expressly provided in this Contract, the Vendor will not be under any liability of any kind whatever and however caused, arising directly or indirectly in connection with this Contract.
- 8.8 Any liability of the Vendor under the Contract shall be subject to and conditional upon the due performance by the Customer of all its obligations under this Contract and, subject to these terms, the Customer shall not be entitled to withhold or delay payment or exercise any right of set-off which might otherwise have been available to it.
- 9. Termination**
- 9.1 The Vendor may terminate this Contract or suspend its performance with immediate effect on written notice if:-
- 9.1.1 the Customer ceases or threatens to cease to carry on its business or becomes insolvent;
- 9.1.2 a Receiver, Administrator or similar Officer is appointed over all or any part of the assets or undertaking of the Customer;
- 9.1.3 the Customer makes any arrangement for the benefit of its creditors;
- 9.1.4 the Customer goes into liquidation save for the purposes of a genuine amalgamation or reconstruction;
- 9.1.5 the Customer commits a material breach of this Contract and (in the case of a breach capable of remedy) fails to remedy it within 7 days of receipt of written notice from the Vendor specifying the breach and containing a warning of an intention to terminate if the breach is not remedied;
- 9.1.6 the Customer refuses to take delivery of the Goods or any part of them or collect them on the Target Delivery Date or on such later date as they are ready for delivery;
- 9.1.7 the Customer defaults in paying the Contract Price or any part of it.
- 9.2 In the event of a suspension, the Vendor shall be entitled to demand pre-payment of any part of the Contract Price not yet due for payment as a condition of re-commencing its performance.
- 9.3 The Vendor may terminate this Contract at its discretion at any time by giving 14 days notice in writing to the Customer.
- 9.4 Upon termination of this Contract for whatever cause, the Customer shall pay to the Vendor all monies due to the Vendor at that date after taking into account amounts previously paid including:-
- 9.4.1 the total value of Goods delivered up to the date of termination, the Contract Price for which shall then become payable immediately notwithstanding any prior contrary arrangement;
- 9.4.2 any cancellation charges payable to the Vendor's sub-contractors;
- 9.4.3 the cost of the Goods ordered for the purposes of the Contract for which the Vendor has paid or is legally bound to pay. The Vendor may at its discretion retain or take back part or all of the Goods in lieu of the payment attributable to such material;
- 9.4.4 the cost of removal from the Delivery Address of any property of the Vendor;
- 9.4.5 any other costs incurred by the Vendor in connection with the Contract or its termination including but not limited to loss of profits, processing costs already incurred and any reduction in the value of the material used.
- 9.5 Termination of this Contract shall not affect any rights of the parties accrued to them up to the date of termination.
- 10. Miscellaneous**
- 10.1 Neither party shall be liable for any delay in performing or failing to perform any of its obligations under this Contract due to any act of God, war, strike, lock-out, industrial action, fire, flood, drought, tempest or other event beyond the reasonable control of either party.
- 10.2 All notices to be given under this Contract shall be in writing and shall be sent to the normal business address of the party concerned by first class post or by hand.
- 10.3 No delay or failure by the Vendor to exercise any of its powers, rights or remedies under this Contract will operate as a waiver of them and any waiver, to be effective, must be in writing.
- 10.4 If any part of this Contract, including for the avoidance of doubt limitation clauses 8.1 to 8.8, is found by a court or other competent authority to be invalid, unlawful or unenforceable then such part will be severed from the remainder of this Contract which will continue to be valid and enforceable to the fullest extent permitted by law.
- 10.5 This Contract is the complete and exclusive statement of the agreement between the parties relating to the subject matter of the Contract and supersedes all previous communications, representations and other arrangements, written or oral.
- 10.6 The Customer undertakes not at any time to disclose any confidential information, documents or other material supplied or made known to it during the existence of this Contract by the Vendor to any third party, save as permitted by this Contract and save for any information in the public domain, and to use its best endeavours to prevent unauthorised publication or disclosure of the same.
- 10.7 The Vendor shall be entitled to set-off against any monies payable to it by the Customer under this Contract, any monies which may be payable by it to the Customer, whether under this Contract or otherwise. The Customer shall not be entitled to any right of set-off.
- 10.8 This Contract will be construed in accordance with and governed by the laws of England and Wales and each party agrees to submit to the jurisdiction of the courts of England and Wales.