

## Trade Terms & Conditions

### 1. Interpretation

#### 1.1. In these Conditions:-

- 1.1.1. "the Seller" means Beigebell Limited or its successors in title or assigns
- 1.1.2. "the Goods" means the Goods specified overleaf or such other goods as may be ordered from the Seller whether orally or in writing.
- 1.1.3. "the Buyer" means the person specified overleaf ordering the Goods and/or Services from the Seller or where these conditions do not appear on the reverse of an order form any person who orders the Goods and/or Services from the Seller.
- 1.1.4. "the Order" means the order placed by the Buyer for the supply of the Goods and/or Services as set out overleaf or otherwise.
- 1.1.5. "Specification" means the technical description (if any) of the Goods and/or Services contained or referred to in the Order.
- 1.1.6. "the Contract" means the Contract for the purchase and sale of the Goods and/or Services in accordance with these terms and conditions.
- 1.1.7. "the Services" means the Service specified overleaf or such other services as may be supplied to the Buyer by the Seller.
- 1.1.8. "Intellectual Property Rights" means all copyright, design rights, trademarks, patents, registered designs, moral rights, trade names, goodwill, know-how, confidential information and anything analogous to any of the foregoing.

### 2. Application of Terms

- 2.1. Orders placed for the Goods and/or Services shall be subject to these conditions, whether or not specifically referred to, and no other terms or conditions or any prior or subsequent communications, representations or modifications shall be effective unless specifically agreed to in writing by the Seller's authorised representative.
- 2.2. Orders will only be binding upon the Seller when received and accepted in writing by the Seller.
- 2.3. The geographic scope of performance of the Contract is limited to the United Kingdom unless otherwise agreed.
- 2.4. Unless previously withdrawn, quotations are open for acceptance within the period stated. Where no period is stated the quotation shall be open for acceptance within 30 days from the date it is given unless withdrawn in the meantime.

### 3. Prices

- 3.1. Unless otherwise agreed in writing all quotations are strictly net cash against invoice and are exclusive of value added tax or any similar levies or duties.
- 3.2. The prices for the Goods and/or Services shall be the Seller's prices ruling on the date of dispatch and the Seller reserves the right to amend its quoted prices at any time prior to the date of dispatch.

3.3. The price includes the cost of normal packaging but excludes delivery and transit insurance unless otherwise agreed in writing.

#### **4. Payment**

- 4.1. The Seller may invoice the Buyer for all sums due in respect of the Goods on delivery or collection of the Goods, and for all sums due in respect of the Services on completion of the Services. Payment in full for all the Goods sold and Services provided shall be due immediately upon receipt of the Seller's invoice or proforma invoice unless the Buyer has been granted terms of credit by the Seller, in which case the Seller's credit terms shall apply. Time for payment shall be of the essence and no payment shall be deemed to have been received until the Seller has received cleared funds.
- 4.2. All payments payable to the Seller under the Contract shall become due immediately upon termination of this Contract despite any other provision.
- 4.3. The Buyer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless agreed in writing by the Seller's authorised representative.
- 4.4. Should the Buyer fail to make any payment due under the Contract on the due date then without prejudice to the Seller's other rights and remedies the Seller may suspend performance under this contract and the Seller shall be entitled to claim interest on the amount due under the Late Payment of Commercial Debts (Interest) Act 1998.

#### **5. Delivery**

- 5.1. The Goods shall be delivered Ex Works (Incoterms 2000) from the Seller's premises, unless otherwise agreed in writing.
- 5.2. Any time or date for delivery of the Goods and/or the performance of the Services agreed by the Seller is an estimate only and the Seller shall not be liable for the consequences of any delay. If no dates are specified, delivery of the Goods and/or the performance of the Services will be within a reasonable time.
- 5.3. Delivery of the Goods shall be taken by the Buyer within the period (if any) named in the quotation or Order and such full details as may be necessary (or required by the Seller) to enable the Seller to complete delivery within that period shall be supplied by the Buyer. If for any reason the Buyer is unable to accept delivery of Goods at the time when the Goods are ready for delivery:
  - 5.3.1. risk in the Goods will pass to the Buyer (including for loss or damage caused by the Seller's negligence);
  - 5.3.2. the Goods will be deemed to have been delivered; and
  - 5.3.3. the Seller shall (if its storage facilities permit) store the Goods and take all reasonable steps to prevent their deterioration until actual delivery and the Buyer shall be liable to the Seller for the reasonable costs (including insurance) of its so doing.
- 5.4. This provision shall be in addition to and not in substitution for any other payment or damages for which the Buyer may become liable in respect of his failure to take delivery at the appropriate date.
- 5.5. If the Seller delivers to the Buyer a quantity of Goods of up to 5% more or less than the quantity ordered by the Buyer, the Buyer shall not be entitled to reject the Goods or any part of them by reason of the surplus or shortfall and shall pay for such goods at the pro rata Contract rate.
- 5.6. The Buyer will provide to the Seller within a reasonable time such material and information as is necessary to enable the Seller to provide the Services specified in the Order. In the event that the provision of the Services is delayed for a period in excess of 14 days by the Buyer's failure to provide instructions, data or other matter the Seller

shall be entitled to invoice the Buyer for work in progress, materials specially ordered and any additional costs reasonably incurred.

## **6. Risk / Title**

- 6.1. The risk in the Goods shall pass to the Buyer on delivery of the Goods to the Buyer in accordance with clause 5.1.
- 6.2. Subject to clause 7.6, ownership of the Goods shall not pass to the Buyer until the Seller has received in full (in cash or cleared funds) all sums due to it in respect of:
  - 6.2.1. the Goods; and
  - 6.2.2. all other sums which are or which become due to the Seller from the Buyer on any account.
- 6.3. Until ownership of the Goods has passed to the Buyer, the Buyer must:
  - 6.3.1. hold the Goods on a fiduciary basis as the Seller's bailee;
  - 6.3.2. store the Goods (at no cost to the Seller) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Seller's property;
  - 6.3.3. not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - 6.3.4. maintain the Goods in satisfactory condition and keep them insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller. On request the Buyer shall produce the policy of insurance to the Seller; and
  - 6.3.5. hold any proceeds of the insurance referred to in condition 5.3 d) on trust for the Seller and not mix them with any other money, nor pay any proceeds into an overdrawn bank account.
- 6.4. The Buyer may resell the Goods before ownership has passed to it solely on the following conditions: a) any sale shall be effected in the ordinary course of the Buyer's business at full market value; and b) any such sale shall be a sale of the Seller's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
- 6.5. The Seller shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Seller.
- 6.6. The Buyer grants the Seller, its agents and employees an irrevocable license at any reasonable time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

## **7. Intellectual Property Rights, Specification and Retention of Materials**

- 7.1. The Buyer warrants that it owns or is properly licensed to use the Intellectual Property Rights in any data or other material supplied by the Buyer as part of the Specification and shall indemnify the Seller against all damages penalties costs and expenses to which the Seller may become liable if any work done in accordance with the Buyer's specification involves an infringement of any third party's Intellectual Property Rights.
- 7.2. The Buyer hereby agrees to grant to the Seller (to the extent that it is able) the right to use production overs for the purposes of demonstration and sampling and for use in advertising and/or promotional activities.
- 7.3. Where the Buyer is to supply data and/or media to the Seller as part of the Specification, the Buyer warrants that such data and/or media so supplied shall not be the original master and the Buyer shall retain in its possession at all material times a minimum of one copy of all data and/or media so provided. The Seller accepts no liability for any loss of data and/or media supplied by the Buyer.

- 7.4. The seller will keep any data and/or media supplied by the Buyer for a maximum period of 6 months. At the expiration of the 6-month period the Seller may without further notice to the Buyer destroy the items.
- 7.5. The Seller will keep any data and/or media supplied by the Buyer for the execution of the Order within secure storage. Fireproof storage will not be provided unless specifically requested by the Buyer.
- 7.6. All Intellectual Property Rights in material produced by the Seller or in any Services rendered to the Buyer by the Seller shall be at all times vested in the Seller. The Seller hereby grants a non-exclusive licence to the Buyer for the non-broadcast use of the Intellectual Property Rights contained within material produced for the Buyer for its own internal purposes only, to non-paying viewers for the full period of protection of such rights and any extension or renewals thereof. Such licence shall be effective from the date at which the Buyer makes payment in full of all sums due in connection with the Goods and Services. The Buyer acknowledges and agrees that it shall not use or exploit the Intellectual Property Rights otherwise than in accordance with these Conditions without the Seller's prior written Agreement.
- 7.7. The Buyer acknowledges that any Intellectual Property Rights developed and presented by the Seller to the Buyer in relation to the Specifications of the Order are available only for such Order and shall not be used for any other purpose whatsoever without the Seller's prior written agreement.
- 7.8. Where the Intellectual Property Rights presented by the Seller are not used for the development of the Goods and Services set out in the Order the Buyer agrees that such rights remain strictly confidential and may not be used by the Buyer in any way whatsoever and the Buyer shall take reasonable precautions to prevent disclosure to any third party.

## **8. Quality**

- 8.1. Where the Seller is not the manufacturer of the Goods, the Seller will endeavor to transfer to the Buyer the benefit of any warranty or guarantee given to the Seller.
- 8.2. The Seller warrants that (subject to the other provisions of these conditions) upon delivery the Goods will be of satisfactory quality within the meaning of the Sale of Goods Act 1994.
- 8.3. The Seller warrants that (subject to the other provisions of these conditions) the Services will be performed with reasonable care and skill.
- 8.4. No condition is made or to be implied nor is any warranty given or to be implied 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 Seller.
- 8.5. Any description of the goods (including the matching of any colour) given by the Seller 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.
- 8.6. The Seller will use its best endeavors 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 Buyer accepts that there may be variations between different production runs.
- 8.7. Defects in the quality or dimensions of any delivery shall not be a cause for cancellation of the remainder of any order or contract.
- 8.8. The Seller shall not be liable for a breach of the warranty in condition 8.2 or 8.3 unless:
  - 8.8.1. the Buyer gives written notice of the defect to the Seller within 7 days of the time when the Buyer discovers or ought to have discovered the defect; and

- 8.8.2. the Seller is given a reasonable opportunity after receiving the notice of the defect to inspect the Goods and/or investigate the provision of the Services provided and the Buyer (if asked to do so by the Seller) returns such Goods to the Seller's place of business at the Seller's cost for the examination to take place and/or provides such reasonable assistance as is necessary to fully investigate the Services provided.
- 8.9. The Seller shall not be liable for a breach of the warranty in condition 8.2 or 8.3 if:
- 8.9.1.a) the Buyer makes any further use of such Goods or Services after giving such notice; or
- 8.9.2.b) the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, use or maintenance of the Goods or (if there are none) good trade practice;
- 8.10. No claim for damage in transit, shortage of delivery or loss of Goods will be examined unless:
- 8.10.1. in case of damage in transit or shortage of delivery a separate notice is given to the carrier concerned and to the Seller within seven days of the receipt of the relevant Goods followed by a complete claim in writing within twenty-eight days of receipt of such Goods or
- 8.10.2. in the case of loss of Goods notice in writing is given to the carrier concerned and to the Seller as soon as reasonably possible and a complete claim in writing made within seven days of the date on which the Goods were delivered to the carrier by the Seller
- 8.11. Where Goods are accepted from the carrier concerned without being checked the delivery book of the carrier must be signed "not examined".
- 8.12. Subject to conditions 8.8, 8.9 and 8.10, if any of the Goods or Services do not conform with the warranties in conditions 8.2 and 8.3 the Seller shall at its option repair or replace such Goods (or the defective part), make good the provision of such Services or refund the price of such Goods or Services at the pro rata Contract rate provided that, if the Seller so requests, the Buyer shall, at the Seller's expense, return the Goods or the part of such Goods which is defective to the Seller.
- 8.13. If the Seller complies with condition 8.12 it shall have no further liability for a breach of the warranties in conditions 8.2 and 8.3 in respect of such Goods.
- 8.14. Any Goods replaced will belong to the Seller.
- 8.15. Any data media supplied by the Buyer in connection with the Order will be scanned for the presence of computer viruses as will be all master discs authored by the Seller. The Seller 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 Buyer.
- 8.16. Before releasing the Goods to the Buyer, the Seller shall conduct quality and compatibility checks on the Goods in accordance with the Specification. The Seller does not guarantee that the Goods shall 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.

## **9. Limitation of Liability**

- 9.1. Subject to condition 8, the following provisions set out the entire financial liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
- 9.1.1. any breach of these conditions; and
- 9.1.2. any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

- 9.2. All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 9.3. Nothing in these conditions excludes or limits the liability of the Seller for death or personal injury caused by the Seller's negligence, breach of contract or fraudulent misrepresentation.
- 9.4. Subject to conditions 9.2, and 9.3
- 9.4.1. the Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to £5,000 or the price of the Contract (whichever is the larger) in respect of any one occurrence; and
- 9.4.2. the Seller shall not be liable to the Buyer for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of the use or unavailability of such Goods, the provision of or failure to provide the Services or out of or in connection with the Contract even if the Seller has been advised of the possibility of such losses.
- 9.5. A number of defaults which together result in or contribute to the same loss or damage shall be treated as one occurrence in assessing the Seller's liability. The Seller shall always be awarded a reasonable opportunity to correct any default before being in breach of its obligations.
- 9.6. Neither party shall be liable for any delay or failure to meet its obligations (other than a payment obligation) under the contract due to any cause outside its reasonable control.

## **10. Assignment**

- 10.1. The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Seller.
- 10.2. The Seller may assign the Contract or any part of it to any person, firm or company.

## **11. Default**

- 11.1. The Seller shall be entitled to determine at any time (by written notice posted or delivered to the last-known address of the Buyer) any subsisting contracts with the Buyer (but without prejudice to any pre-existing claim which the Seller may have under these conditions or otherwise against the Buyer) if the Buyer:
- 11.1.1. a) breaches the contract (including failure to pay any sum due) and, if capable of remedy fails to rectify such breach within 14 days of receiving written notice from the Seller; or
- 11.1.2. b) has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed in respect of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or

- 11.1.3. c) suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe/perform any of his/its obligations under the Contract or any other contract between the Seller and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or d) encumbers or in any way charges any of the Goods.
- 11.2. If any of the circumstances listed in condition 11.1 occur then, whether or not notice under paragraph 11.1 is given:
- 11.2.1. the Buyer's right to possession of the Goods shall terminate immediately; and
- 11.2.2. the Seller shall (without prejudice to any other claim or remedy which it may have) be entitled to recover possession of the Goods so long as they are still identifiable forthwith and shall be entitled to enter upon the premises of the Buyer and remove the Goods and shall not be liable for any damage or injury reasonably done to any other property of the Buyer to which the Seller's Goods have been attached during the course of removing the Seller's Goods and retaking possession thereof.

## **12. Cancellation**

All cancellations are to be notified in writing. Charges will be levied for all work done, materials and administration by the seller. The Seller will advise to the Buyer in writing the percentage of the total order value being charged for cancellation.

## **13. General**

- 13.1. Should any provision of these Conditions be held to be wholly or partly illegal, invalid, void, unreasonable or unenforceable then such provision shall be given no effect and shall be deemed not to be included in these conditions but without invalidating any of the remaining provisions of these conditions. The Buyer and the Seller shall then use all reasonable endeavors to replace the invalid or unenforceable provision by a valid provision the effect of which is as close as possible to the intended effect of the invalid or unenforceable provision.
- 13.2. Any notice required or permitted to be given by either party to the other under these terms and conditions shall be in writing addressed to that other party and shall be sent to the address of that other party set out in the Contract or such other address as may at the relevant time have been notified pursuant to this provision to the party giving notice. Any notice may be delivered personally or by prepaid registered letter or facsimile transmission and shall be deemed to have been served if by personal delivery when delivered, if by registered post 48 hours after posting and if by facsimile transmission when dispatched.
- 13.3. No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any provision.
- 13.4. The Contract shall be the entire agreement between the parties in relation to the subject matter hereof and to the exclusion of prior representations, undertakings, agreements or other communications. The Buyer acknowledges that no reliance is placed on any representations made but not embodied in the Contract.
- 13.5. The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English Law and the parties agree to submit to the exclusive jurisdiction of the English Courts.