

# Purchase order terms and conditions

## 1. Definitions

“Agreement” means these Terms and Conditions together with the terms of any applicable Purchase Order.

“Purchase Order” or “Order Form” means the standard Buyer document which includes or is attached to a statement of work describing “The Order” – the goods and/or services to be provided by the Supplier; and which provides a maximum value payable by the Buyer to the Supplier.

“Buyer” means Marketing Walk Ltd, Limeway, Newdigate, Surrey, RH5 5DS.

“Supplier” means the organisation or person who supplies goods and/or services to the Buyer.

“Goods” and “Services” mean the goods and or services described in The Order.

“Intellectual Property” means all patents, registered and unregistered designs, copyright, trademarks, know-how and all other forms of intellectual property wherever in the world enforceable.

## 2. General

These Terms and Conditions shall apply to all contracts for the supply of goods and/or services by the Supplier pursuant to one or more Purchase Order.

These conditions shall take precedence over and shall operate to the exclusion of any conditions appearing on any acceptance form, delivery form or other document issued by the Supplier. However, where the Buyer has a written contract for the supply of Goods and/or Services with the Supplier and these terms and conditions conflict with such contract then that contract shall prevail over these terms and conditions.

Subject to the above, neither party shall be bound by any variation, waiver or addition to these terms and conditions unless such variation, waiver or addition has been agreed in writing and signed on their behalf by the parties.

## 3. Price and Payment

The price and any taxes and expenses for the goods and/or services shall be as specified in the Purchase Order. Unless otherwise indicated, prices shall be inclusive of UK Customs and Excise duties and other import duties or taxes but are otherwise exclusive of VAT or relevant sales tax.

An invoice shall be produced by the Supplier to the Buyer in accordance with the terms set out in the Purchase Order. The Buyer shall pay for the goods and/or services at the end of the month following the month in which the goods and/or services are supplied or in which the invoice is received, whichever is the later. In no circumstances shall the time for payment be of the essence of the Agreement.

The Buyer shall not be responsible for any expenses, charges or price other than those set out in the Purchase Order.

Where provision is made for the payment of the Supplier's expenses in respect to the provision of Services on this Order, the Supplier shall forward to the Buyer a VAT invoice for such expenses not exceeding the limit (if any) on the Order Form at the end of each month in which the expenses are incurred during the term that the Services are being performed under the Order together with all proof of expenditure as the Buyer requires at no cost to the Buyer.

In the event of late payment by the Buyer, the Supplier shall be entitled to charge the Buyer interest at the rate of 2% per annum above the base rate of the Bank of England, from the date when payment becomes due from day to day until the date of payment.

If the parties agree that the Supplier is to provide goods and/or services or resources in addition to those specified in a Purchase Order, then such agreement will be reflected in a further Purchase Order, which will be deemed incorporated into this Agreement.

Once a Purchase Order has been agreed by the Buyer the price for the goods and/or services shall be fixed.

#### 4. Goods

Where the Order relates to Goods, then: -

##### (i) Delivery

Time of delivery shall be of the essence.

All Goods supplied against the Order must be properly packed and secured and shall be delivered at the Supplier's risk to the address on the Order Form (or any such other place as the Buyer may advise) by the Required Date on the Order Form.

Without prejudice to any of the Buyer's other rights. The Buyer has the right to cancel the whole or any part of the Order if the Goods are not delivered by the Required Date or instruct the Supplier to deliver the Goods at the Supplier's expense by an appropriate express service.

The Supplier shall be responsible for the cost of pallets, packing cases or containers and the Buyer shall return such pallets, cases and containers at the Supplier's expense, if required by the Supplier.

##### (ii) Title

Title to the Goods shall pass to the Buyer on acceptance of delivery.

##### (iii) Quality

It shall be a condition of this Order that the Goods comply in all respects with the Goods stated on the Order form and with any statements or undertakings made by the Supplier, or its servants or agents, prior to the giving of the Order. The Supplier undertakes that all Goods supplied shall be of first class quality, be equal in all respects to any samples or descriptions given by either party and be fit for the purpose for which they are required under the Order and the Supplier recognises that the Buyer has placed the Order relying on the skill and expertise of the Supplier and any statements and representations made by the Supplier.

##### (iv) Guarantee

If the Goods supplied are defective upon delivery or shall prove to be defective within 12 months of delivery or within their guaranteed shelf-life if this is shorter, then the Buyer may call upon the Supplier (but without prejudice to the Buyer's other rights) to rectify the defects or replace the Goods at the Supplier's expense or refund the Buyer with the price of the Goods and collect the

defective Goods at the Supplier's expense and pay the Buyer's reasonable expenses in replacing the Goods. In all cases, the Supplier agrees that it will rectify the defects, replace the Goods or pay the Buyer the appropriate refund and expenses referred to above within 7 days of receiving such notice from the Buyer. All the obligations in these terms and conditions shall further apply to any such rectified or replaced Goods.

#### (v) Safety

The Supplier warrants the safety of the Goods and fully indemnifies the Buyer against any claims arising from the Goods being unsafe. The Supplier shall perform those duties which are placed on a producer under the General Product Safety Regulations 1994 and any amendment or re-enactment thereof.

## 5. Services

Where the Order relates to Services, then: -

#### (i) Extent of services

The Supplier shall provide the Services as detailed on the Order Form with the utmost professionalism and care and skill. The Supplier has (or will obtain prior to commencement) any necessary licenses consents and permits required of it for the performance of the service. Supplier personnel will possess the qualifications, professional competence and experience to carry out such services in line with industry best practice.

Time of delivery shall be of the essence.

Subject to meeting the agreed quality and delivery-time, the supplier shall choose the time and place at which they carry out the work; the individual(s) agents and or sub-contractors who actually complete the work; and the equipment used to carry out the work.

The Supplier shall meet and discuss the progress of the Services with the Buyer on a regular basis and shall advise the Buyer immediately of any problems or difficulties encountered by the Supplier in performing its Services. If this leads to a variance in the final output, then this is to be agreed in writing and best endeavours made to accommodate this variance within the original description and price.

#### (ii) Copyright and Moral Rights

The Supplier, as beneficial owner hereby assigns (and undertakes to procure and supply the assignment) to the Buyer absolutely all of its existing and future copyright and all other rights of whatsoever nature in all of the work, created by the Supplier in connection with this Order.

The supplier hereby waives all of its moral rights in all the work created under this Order. All material prepared and created by the Supplier for the Buyer in connection with this Order shall be the property of The Buyer.

## 6. Trademarks and Intellectual Property Rights

The Supplier recognises that the trademarks of the Buyer, its associated companies and its clients remain the exclusive property of those companies. Any uses by the Supplier are strictly limited to those uses required to carry out and deliver the Goods and or Services in the Purchase Order.

The Supplier may not use these trademarks for any other purpose, including for the publicity of their own business, without specific written permission from the trademark owners

The Supplier shall fully indemnify the Buyer against any claim or proceedings commenced for infringement of any Intellectual Property, Patent, Registered Design, Copyright and Trademark, Trade Names or other rights, which arise from the sale or use of the Goods or services supplied by The Supplier. This indemnity shall extend to all expenses, costs, damages and any other loss which The Buyer may incur because of such action.

## 7. Confidentiality

Both The Supplier and The Buyer recognise that this is a competitive industry and will ensure that any business, financial, operational, design, strategic, product or other information or data of whatever kind relating to each other's businesses or the businesses of our respective clients will be kept confidential. Disclosure of any such information will be strictly limited as necessary for the delivery of The Order. The Supplier will ensure that each of its staff, associates and subcontractors to whom any disclosure is made adheres to this requirement. All such materials will be returned at the end of the agreement.

In certain circumstances, a separate Non-Disclosure Agreement may be entered into by both parties, which would be supplementary to these terms and conditions.

## 8. Bribery

The Supplier shall not (i) offer, promise or give a financial or other advantage to The Buyer officer, employee, contractor, agent or any third party in order to induce or reward improper performance by that person in connection with the Order; or (ii) request, agree to receive or accept a financial or other advantage from The Buyer officer, employee, contractor, agent or any third party intending improper performance by the Supplier or another person in connection with the Order. "Improper performance" shall have the meaning set out in the Bribery Act 2010.

## 9. Modern Slavery

The supplier shall ensure that both its own business and its supply chain is appropriately audited to comply with Modern Slavery Act (2015) (as amended) and similar legislative requirements.

## 10. Liability and Insurances

The Supplier agrees to indemnify and keep indemnified the Buyer from and against any losses, costs (including any costs of enforcement), expenses, liabilities, claims or damage incurred or suffered by the Buyer by reason of, or arising out of, any act or omission of the Supplier, its employees, agents or subcontractors in the performance of any of the obligations expressed or assumed in the Order.

The Supplier shall be responsible for taking out and maintaining suitable insurance policies concerning the provision of the Services or Goods.

## 11. Assignment and sub-contracting

The Supplier shall not assign, transfer or sub-contract the Order or any part thereof to any third party without the Buyer's prior written consent.

## 12. Relationship Status and Liabilities

The parties acknowledge that the Supplier is not an employee, partner or agent of the Buyer.

It is expressly understood that neither the Supplier nor the Supplier Personnel have the authority to act as agent for the Buyer or to contract on the Buyer's behalf.

The Supplier Personnel shall at no time be deemed to be employed or otherwise engaged by the Buyer.

The Supplier shall be responsible for paying the Supplier Personnel and for making any deductions required by law in respect of income tax and National Insurance contributions or similar contributions relating to the provision of the services. The Supplier agrees to indemnify the Buyer in respect of any claims that may be made by the relevant authorities against the Buyer in respect of tax demands or National Insurance or similar contributions relating to the provision of the services by the Supplier.

The Supplier shall, and shall procure that the Supplier Personnel shall, comply with all applicable statutes, rules and regulations in providing the services, including all immigration and employment requirements imposed by any applicable jurisdiction, and the Supplier shall indemnify and hold harmless the Buyer from damages arising out of any failure to do so.

## 13. Termination

(i) the Buyer may terminate this Order in writing with immediate effect in the event of any of the following events:

if the Supplier is in material or persistent breach of the terms of the Order which cannot be immediately remedied to the satisfaction of the buyer; whereupon the Buyer shall be entitled to return to the Supplier at the Suppliers expense any of the Goods delivered at the date of termination and recover from the Supplier any monies paid by the Buyer for the Goods and recover from the Supplier any additional expenditure incurred by the Buyer in replacing the Goods in respect of which the Order was terminated: or

if the Supplier makes or offers to make any arrangement or composition with its creditors or commits an act of bankruptcy or if any petition of bankruptcy is presented against the Supplier or if in the case of the supply of Services the Supplier dies or is unable to properly perform the Services due to illness or incapacity or if the Supplier is a company, any resolution to wind up the Supplier is passed or if a receiver is appointed or if a third party seizes or threatens to seize the Goods before title has passed under Clause 4(ii) above.

if the Supplier, its subcontractors and or employees are found to be acting illegally or criminally, or engaging in deceptive, misleading or unethical practices or conduct which could bring the supplier, and by association the buyer and or the buyer's clients into public disrepute.

(ii) Upon expiry or termination of the Order howsoever caused:

the Supplier shall return immediately to the Buyer any material which is the Buyer property under Clause 6 above: and

all copyright in any material as referred to under Clause 4 above shall immediately pass to the Buyer and the Supplier shall execute any documents as the Buyer requires in order to give effect to this.

#### 14. Force majeure

If the Supplier fails to perform any part of the Order due to any circumstances outside its reasonable control, then the Buyer may at its discretion remove, suspend or cancel the delivery of the Goods and/or Services without any liability to the Supplier for payment.

#### 15. Equitable remedies

Without prejudice to any other rights or remedies that either Party may have, the Supplier acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the provisions of this Agreement, and that the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of the provisions of this letter would be appropriate remedies and that no proof of special damages shall be necessary for the enforcement of this agreement.

#### 16. No waiver

The Buyer's failure to insist upon strict performance of any of the terms and conditions of the Order shall not be deemed to be a waiver of its rights or remedies or a waiver by it of any subsequent default by the Supplier in the performance or compliance with any part of the Order.

In the event that any clause or clauses within this agreement become invalid or are set aside by the English Courts, then the agreement and its remaining clauses will remain enforceable.

#### 17. Notices

All notices given in connection with this Order shall be addressed in the case of the Buyer to the Managing Director of the Buyer at the address on the Order Form and in the case of the Supplier to the address on the Order Form and all notices shall be sent on paper by personal delivery or registered mail as well as by E-mail.

#### 18. Jurisdiction

The construction, validity and performance of the Order shall be governed by English Law. In the event of dispute, both parties will make best endeavours to find a mutually acceptable solution, either directly and or through mediation, and thereafter submit to the jurisdiction of the English Courts.