



## **TERMS OF SALE OF GOODS AND SUPPLY OF SERVICES**

### 1. **INTERPRETATION**

1.1 The definitions and rules of interpretation in this condition apply in these conditions.

**Contract:** the Customer's order and the Supplier's acceptance of it or the Customer's acceptance of a quotation from the Supplier in accordance with condition 3;

**Customer:** the person, firm or company who purchase Goods or Services from the Supplier;

**Goods:** any Goods agreed in the quotation or acknowledgment of order to be provided to the Customer by the Supplier (including any part or parts of them) under the terms of the Contract;

**Services:** any Services agreed in the quotation or acknowledgment of order to be provided to the Customer by the Supplier under the terms of the Contract;

**Supplier:** Visual Sounds Limited;

**VAT:** value added tax chargeable under English law for the time being and any similar additional tax.

1.2 Headings in these conditions shall not affect their interpretation.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 Words in the singular include the plural and in the plural include the singular.

1.5 A reference to one gender includes a reference to the other gender.

1.6 References to conditions are to the conditions of the Contract.

### 2. **APPLICATION OF CONDITIONS**

2.1 These conditions shall:

2.1.1 apply to and be incorporated into the Contract; and

2.1.2 prevail over any inconsistent terms or conditions contained, or referred to, in the Customer's purchase order, confirmation of order, acceptance of a quotation, or specification or other document supplied by the Customer or implied by law, trade custom, practice or course of dealing.

### 3. **QUOTATIONS AND BASIS OF SALE**

3.1 The Customer's purchase order, or the Customer's acceptance of a quotation for Goods or

Services from the Supplier, constitutes an offer by the Customer to purchase the Goods or Services on these conditions. No offer placed by the Customer shall be accepted by the Supplier other than:

3.1.1 by a written acknowledgement of order issued and executed by the Supplier;  
or

3.1.2 (if earlier) by the Supplier supplying Goods or starting to provide the Services,

when a Contract for the supply of Goods and/or Services on these conditions will be established.

3.2 Quotations are given by the Supplier on the basis that no Contract shall come into existence except in accordance with condition 3.1. Any quotation is valid for a period of 30 days from its date, provided that the Supplier has not previously withdrawn it.

3.3 No order which has been acknowledged by the Supplier may be cancelled by the Customer, except with the agreement in writing of the Supplier and provided that the Customer indemnifies the Supplier in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Supplier as a result of cancellation.

3.4 If Goods are supplied or Services performed pursuant to this Contract by someone other than the Supplier at either the Supplier's or the Customer's direction no Contract will exist between the Supplier and the Customer in relation to those Goods and/or Services supplied.

#### 4. **QUANTITY AND DESCRIPTION OF GOODS AND SERVICES**

4.1 The quantity and description of the Goods and/or Services shall be as set out in the Supplier's acknowledgement of order or quotation.

4.2 All samples, descriptive matter, illustrations, specifications and advertising issued by the Supplier are published for illustrative purposes only and do not form part of the Contract.

4.3 Any typographical, clerical or other error or omission in any sales literature, quotation, acknowledgement of order, price list, acceptance of offer, invoice or other document or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.

4.4 The Supplier reserves the right (but does not assume the obligation) to make any changes in the specification of the Goods and/or Services which are required to conform with any applicable legislation or, where the Goods and/or Services are to be supplied to the Customer's specification, which do not materially affect their quality or performance.

4.5 The Supplier's employees, contractors and agents are not authorised to make any contractually binding representations concerning the storage, application, use or otherwise of the Goods and/or Services. Any advice or recommendation given by the Supplier or its employees, contractors or agents is followed or acted on entirely at the Customer's own risk. In entering into the Contract, the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which have not been confirmed in writing by an authorised officer of the Supplier. This condition is subject to condition 10.3.2.

4.6 The Supplier is not responsible for the practicality or efficacy of any designs or specifications that the Customer or any third party under the Customer's direction gives to the Supplier pursuant to the Contract.

4.7 If the Customer varies any aspect of design or specification the Supplier reserves the right

to alter the Contract price and/or terms of payment.

5. **PRICES AND PAYMENT**

- 5.1 All prices shall be as stated in the Supplier's acknowledgment of order or quotation as accepted by the Customer.
- 5.2 The price for the Goods and/or Services is based on the rate prevailing at the date of the Supplier's acknowledgement of order. The Supplier reserves the right to increase the price to cover any increases due to market conditions, any other factor which is beyond the control of the Supplier, any change in delivery dates, quantities or specifications for the Goods and/or Services which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate information or instructions.
- 5.3 The Customer must pay the price of the Goods and/or Services within 30 days of the date of the Supplier's invoice, whether or not delivery of the Goods and/or performance of the Services has taken place and whether or not title in the Goods has passed to the Customer.
- 5.4 Time for payment of the price shall be of the essence of the Contract.
- 5.5 If the Customer fails to make payment in full on the due date, the whole of the balance of the price of the Goods and/or Services then outstanding shall become immediately due and payable and, without prejudice to any other right or remedy available to the Supplier, the Supplier may:
- 5.5.1 terminate the Contract in accordance with condition 12;
  - 5.5.2 suspend any further deliveries, installation or warranty service of Goods or Services;
  - 5.5.3 appropriate any payment made by the Customer to such of the Goods and/or Services as the Supplier thinks fit;
  - 5.5.4 *[charge interest on the amount outstanding from the due date to the date of receipt by the Supplier for the time being in force at the annual rate of [8%], accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgement and the Customer shall pay the interest immediately on demand. The Supplier may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998];*
  - 5.5.5 stop any Goods in transit; and
  - 5.5.6 exercise a general lien on all Goods and property belonging to the Customer, exercisable in respect of all sums lawfully due from the Customer to the Supplier. The Supplier shall be entitled, on the expiry of 14 days' notice in writing, to dispose of such Goods or property in such manner and at such price as it thinks fit and to apply the proceeds towards the amount outstanding.

6. **DELIVERY OF GOODS, PERFORMANCE OF SERVICES AND ACCEPTANCE**

- 6.1 The Supplier shall use its reasonable endeavours to deliver the Goods and/or supply the Services on the date or dates specified in the Supplier's acknowledgement of order, but any such date is approximate only. If no dates are specified, delivery of Goods or supply of Services shall take place within a reasonable time of acceptance of the order.
- 6.2 Time is not of the essence as to delivery of the Goods and/or supply of the Services and the Supplier is not liable for any such delay, however caused.

- 6.3 The Goods may be delivered and/or the Services provided in advance of the quoted delivery or provision date on giving reasonable notice to the Customer.
- 6.4 Delivery of Goods or supply of Services shall be made during normal business hours (except bank or public holidays). The Supplier may levy additional charges for any deliveries made or Services supplied outside such hours at the Customer's request.
- 6.5 The Customer shall be responsible for preparing the delivery location for the delivery of the Goods and for the provision of all necessary access and facilities reasonably required to deliver the Goods and supply the Services. If the Supplier is prevented from carrying out delivery of the Goods or supply of the Services on the specified date because no such preparation has been carried out, the Supplier may:
- 6.5.1 store the Goods themselves; or
- 6.5.2 have them stored by third parties on such terms as the Supplier thinks fit,
- at the Customer's expense. The cost together with any additional insurance or double handling charges will be added to and form part of the price for the Goods and/or Services.
- 6.6 The Customer shall be deemed to have accepted the Goods and/or Services when the Customer has had 30 days to inspect after delivery or performance and has not exercised in writing its right of rejection in accordance with condition 9.
- 6.7 The Supplier shall be responsible for any damage or shortage in the provision of Services or for any damage, shortage or loss in transit of Goods, provided that the Customer notifies it to the Supplier within 3 days of delivery or proposed delivery of the Goods or provision of the Services and that the Goods and/or Services have been handled or used in accordance with the Supplier's stipulations. Any remedy under this condition shall be limited, at the option of the Supplier, to the replacement or repair of any Goods or re-provision of any Services which is proven to the Supplier's satisfaction to have been lost or damaged in transit or provision. The Supplier shall have the option of testing or inspecting the Goods and/or Services at their current location or moving the Goods to the Supplier's premises at the cost of the Supplier. If the Customer's claim is subsequently found by the Supplier to be outside the scope or duration of the warranty in condition 9, the costs of transportation of the Goods, investigation and repair shall be borne by the Customer.

## **7. RISK AND PROPERTY**

- 7.1 Ownership of the Goods remains with the Supplier and will not pass to the Customer until one of the following events occurs:
- 7.1.1 the Customer pays the Supplier for all of the Goods and owes no other amounts to the Supplier in respect of Goods supplied by the Supplier; or
- 7.1.2 the Customer sells the Goods in accordance with this agreement in which case ownership of the Goods will pass to the Customer immediately before the Goods are delivered to the Customer's buyer.
- 7.2 Until ownership of the Goods has passed to the Customer, the Customer will hold the Goods in a fiduciary capacity, will not obliterate any identifying mark on the Goods or their packaging and will store the Goods separate from any other goods.
- 7.3 Where the Goods are attached to or incorporated in other goods or are altered by the Customer, ownership of the Goods shall not pass to the Customer by virtue of the attachment, incorporation or alteration if the Goods remain identifiable and, where attached to or incorporated in other goods, can be detached or removed from them.
- 7.4 If the Customer is overdue in paying for the Goods supplied by the Supplier, the Supplier may, if still the owner of the Goods, recover and resell them. The Supplier may

enter the Customer's premises for this purpose and may, if necessary, detach or remove the Goods from any other goods. All costs incurred by the Supplier in repossessing the Goods shall be borne by the Customer. This does not affect any other right of the Supplier.

- 7.5 Risk in the Goods passes to the Customer on delivery.
- 7.6 The Supplier shall off-load the Goods and supply the Services at the Customer's risk.
- 7.7 The Customer must insure the Goods against all insurable risks for the price due to the Supplier for the Goods. If the Goods are destroyed by an insured risk before the Customer has paid for them, the Customer shall hold the insurance proceeds as the Seller's trustee.

## 8. **INTELLECTUAL PROPERTY, CONFIDENTIALITY AND THE SUPPLIER'S PROPERTY**

- 8.1 As between the Customer and the Supplier, all intellectual property rights and all other rights in the Goods and/or Services shall be owned by the Supplier:
  - 8.1.1 unless otherwise agreed by the Supplier; and
  - 8.1.2 until the Customer pays the Supplier anything outstanding if the Supplier has agreed those rights will belong to the Customer.
- 8.2 The Supplier licenses all such rights referred to in condition 8.1 to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Goods and/or Services. If the Supplier terminates the Contract under 12, this licence shall automatically terminate.
- 8.3 The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by the Supplier, its employees, agents, consultants or subcontractors and any other confidential information concerning the Supplier's business or its Goods or Services which the Customer may obtain.
- 8.4 All materials, equipment and tools, drawings, specifications and data used by the Supplier in the supply of the Services, at all times, be and remain the exclusive property of the Supplier, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Supplier, and shall not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation.

## 9. **WARRANTY**

- 9.1 Where the Supplier is not the manufacturer of the Goods, the Supplier shall use reasonable endeavours to transfer to the Customer the benefit of any warranty or guarantee given by the manufacturer to the Supplier.
- 9.2 The Supplier warrants to the Customer that the Goods and performance of Services are free from defects of workmanship and materials. The Supplier undertakes (subject to the remainder of this condition 9), at its option, to repair or replace Goods (other than consumable items) which is found to be defective as a result of faulty materials or workmanship within **[6] months** of delivery and installation.
- 9.3 The Supplier shall not be liable for a breach of warranty in condition 9.2 if:
  - 9.3.1 the Customer does not give written notice of the defect to the Supplier within **[7] days** of the time when the Customer discovers or ought to have discovered the defect;
  - 9.3.2 the Customer makes use of any Goods or Services in respect of which it has given written notice under condition 9.3.1;

- 9.3.3 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning use or maintenance of the Goods or Services or (if there are none) good trade practice; or
- 9.3.4 the Customer alters or repairs the relevant Goods or Services without the written consent of the Supplier.
- 9.4 Any repaired or replacement Goods or Services shall be under warranty for the unexpired portion of the **[6] month** period.

## 10. **LIMITATION OF LIABILITY**

- 10.1 Condition 10.4 below sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents, consultants and subcontractors) to the Customer in respect of:
  - 10.1.1 any breach of the Contract;
  - 10.1.2 any use made by the Customer of the Goods and/or Services or any part of them; and
  - 10.1.3 any representation, statement or tortuous act or omission (including negligence) arising under or in connection with the Contract.
- 10.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 10.3 Nothing in these conditions limits or excludes the liability of the Supplier:
  - 10.3.1 for death or personal injury resulting from negligence; or
  - 10.3.2 for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by the Supplier.
- 10.4 Subject to condition 10.2 and condition 10.3 the Supplier's total liability in contract, tort, misrepresentation, restitution and otherwise arising in connection with the performance, or contemplated performance, of the Contract shall be limited to the price paid for the Goods and/or Services.

## 11. **INSOLVENCY**

The Supplier may terminate the Contract immediately without reference to the Customer if the Customer is subject, voluntarily or otherwise, to personal or corporate proceedings or appointments as a result of its insolvency without liability or prejudice to the Supplier's rights against the Customer.

## 12. **TERMINATION**

- 12.1 Upon the termination of this Contract in accordance with condition 5.5.1, condition 11, or any other material breach under the terms of this Contract:
  - 12.1.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Goods delivered and/or Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately in receipt;
  - 12.1.2 the Customer shall, within a reasonable time, return all of the Supplier's equipment and Goods. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned or

repossessed, the Customer shall be solely responsible for their safe keeping; and

12.1.3 the accrued rights and liabilities of the parties as at termination and the continuation of condition 8.1 and condition 8.3 and any conditions implicitly surviving termination, shall not be affected.

13. **FORCE MAJEURE**

The Supplier reserves the right to defer the date of delivery of Goods or provision of Services, or to cancel the Contract or reduce the amount of Goods or Services ordered, if it is prevented from or delayed in carrying on its business by acts, events, omissions or accidents beyond its reasonable control including without limitation 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, riot, civil commotion, malicious damage, compliance with law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

14. **SEVERANCE**

14.1 If any provision of the Contract (or part of any provision) is found by any court or other authority or competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to part of the Contract, and the validity and enforceability of the other provisions of the Contract shall not be affected.

14.2 If a provision of the Contract (or part of any provision) is found illegal, invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

15. **ENTIRE AGREEMENT**

15.1 The Contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.

15.2 Each party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) (other than for breach of contract) as provided in the Contract.

15.3 Nothing in this condition shall limit or exclude any liability for fraud.

16. **ASSIGNMENT**

16.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, mortgage, subcontract or deal in any manner with all or any of its rights or obligations under the Contract.

16.2 The Supplier may at any time assign, transfer, mortgage, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

17. **NOTICES**

17.1 Any notice required to be given under the Contract shall be in writing and shall be delivered personally, or sent by pre-paid first-class post, recorded delivery or by commercial courier to the other party.

17.2 Any notice shall be deemed to have been duly received if delivered personally, when left at the address and for the other party, or if sent by pre-paid first-class post or recorded delivery by 9.00am on the second business day after posting, or if delivered by commercial

courier on the date and at the time that the courier's delivery receipt is signed.

17.3 This condition 15 shall not apply to the service of any documents in any proceedings or legal action.

17.4 A notice required to be given under the Contract shall not be validly served if sent by e-mail.

18. **GOVERNING LAW AND JURISDICTION**

18.1 The Contract, and any dispute or claim arising out of or in connection with its subject matter, shall be governed by, and construed in accordance with, the law of England and Wales.

18.2 The parties irrevocably agree that the courts of England Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, the Contract or its subject matter.