

credit account application form



OFFICE USE ONLY	Account number:	Account accepted:
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Registered Name:	
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Registered No:	
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Trading Name:	
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Year commenced trading:	
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Sole trader <input type="checkbox"/>	Partnership <input type="checkbox"/>	Plc <input type="checkbox"/>	Limited company <input type="checkbox"/>
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If trading as a Sole Trader or Partner, details are required. Provide full name/s of owners, their home address and details of any other business interests they have on company letterhead paper and send back with this form.

Invoice Address		Delivery Address	
Address		Address	
Post Code		Post Code	
Telephone No.		Telephone No.	
Fax Number		Fax Number	
Account Contact		Trade Contact	
email address		email address	

Trade References (2 required)			
Name		Name	
Address		Address	
Post Code		Post Code	
Telephone No.		Telephone No.	
Fax Number		Fax Number	

Bank & Credit Details		*Payment by direct debit increases credit terms to 45 days.	
Bank Name		Sort Code	
Branch		Account No.	
Account Name		No. of years/months held	
Payment by direct debit required*	<input type="checkbox"/>	Amount of monthly credit required	

Disclaimer: Completion of this application does not imply or confer credit facilities. The Company reserves the right to make further enquiries in connection with the application. The Company reserves the right to refuse credit or trading facilities.

I agree to abide by your terms and conditions overleaf in particular your payment terms of 30 days end of month unless amended in writing. I understand that failure to comply with these terms may lead to the account being placed on hold and/or credit limits being withdrawn without prior notice.

Signed		Print Name	
Date		Position	

standard terms and conditions (1)



This document sets forth the Terms and Conditions upon which Colormagic Ltd (hereinafter "Company") has based any quotations to Customer and are an integral part of such quotations and the sole basis of agreement between the Company and Customer for any orders placed by Customer with Company.

The Customer's attention is particularly drawn to the provisions of clause 13.

1. INTERPRETATION

- 1.1 Definitions. In these Conditions, the following definitions apply:
- "**Business Day**"; a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business
 - "**Commencement Date**"; has the meaning set out in clause 2.2.
 - "**Conditions**"; these terms and conditions as amended from time to time in accordance with clause 15.8.
 - "**Confirmation of Order**"; the confirmation of order sent in writing to the Customer by the Supplier confirming the terms of the Order.
 - "**Contract**"; the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions.
 - "**Customer**"; the person or firm who purchases the Goods and/or Services from the Supplier.
 - "**Deliverables**"; the deliverables set out in the Order.
 - "**Deliverable Location**"; has the meaning set out in clause 4.2.
 - "**Force Majeure Event**"; has the meaning given to it in clause 15.1(a).
 - "**Goods**"; the goods (or any part of them) set out in the Order.
 - "**Goods Specification**"; any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and the Supplier.
 - "**Intellectual Property Rights**"; all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
 - "**Order**"; the Customer's order for the supply of Goods and/or Services, as set out in the Confirmation of Order.
 - "**Services**"; the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Service Specification.
 - "**Service Specification**"; the description or specification for the Services provided in writing by the Supplier to the Customer.
 - "**Supplier**"; Colormagic Ltd (registered in England and Wales with company number 04215664).
 - "**Supplier Materials**"; has the meaning set out in clause 8.1(g).
- 1.2 Construction. In these Conditions, the following rules apply :
- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
 - (b) a reference to a party includes its personal representatives, successors or permitted assigns;
 - (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
 - (d) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
 - (e) a reference to **writing** or **written** includes faxes and e-mails.

2. BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Supplier issues a Confirmation of Order and the Customer passes or complies with any credit checks or requirements carried out by the Supplier in its sole discretion at which point and on which date the Contract shall come into existence ("**Commencement Date**"). Save as is specified in this clause the Supplier shall have no liability to fulfil any Order.
- 2.3 The Order may not be cancelled by the Customer without the prior written agreement of the Supplier and on terms that the Customer indemnifies the Supplier for all losses costs and expenses (including all labour and materials costs) suffered or incurred by the Supplier as a direct or indirect result of the said cancellation. Furthermore the Supplier reserves the right to make an additional charge of 25% of the Order price by way of lost profit cancellation unless the Supplier agrees to waive that charge in writing.
- 2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.5 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.

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standard terms and conditions (2)



- 2.6 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.7 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue.
- 2.8 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3. GOODS

- 3.1 The Goods are described in the Goods Specification.
- 3.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3 The Supplier reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirements.

4. DELIVERY OF GOODS

- 4.1 The Supplier shall ensure that:
 - (a) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the date of despatch, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered. Copies of this documentation can be supplied by the Supplier subject to a handling charge; and
 - (b) if the Supplier requires the Customer to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.
- 4.2 The Supplier shall select the carrier and deliver the Goods to the location set out in the Order or such other location as the parties may agree or the Customer specifies otherwise ("**Delivery Location**") at any time after the Supplier notifies the Customer that the Goods are ready. The Supplier may levy additional charges where the Customer requires delivery to be effected express or out of hours.
- 4.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 4.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. Furthermore the Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.5 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 4.6 If the Customer fails to accept or take delivery of the Goods within 14 Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:
 - (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the 21st Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and
 - (b) the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.7 If 28 Business Days after the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted or taken delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods.
- 4.8 The Customer shall not be entitled to reject the Goods if the Supplier delivers up to and including 5 per cent more or less than the quantity of Goods ordered, but a pro-rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.
- 4.9 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. ACCEPTANCE OF GOODS AND RETURNS PROCEDURE

- 5.1 The Supplier shall not be liable in respect of any damage to the Goods, discrepancy in the Customer's order, shortage in the Goods delivered, loss of the Goods in transit or any claim that the Goods delivered or collected do not otherwise comply with the Order other than in accordance with this clause 5 and clause 6 below.
- 5.2 Damage, discrepancies, shortages and invoice queries:
 - (i) On delivery the Customer shall be responsible for inspecting the boxed / parcel contents containing the Goods and to check the Goods for damages, discrepancies and shortages.

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- (ii) The contents of the Supplier's invoice ("the Invoice") including the price for the Goods, Goods description, delivery charge or any other invoice related query (with the exception of those referred to in (iii) below), shall in the absence of a manifest error, be deemed to have been accepted by the Customer as correct unless the Customer notifies the Supplier in writing within 14 days of the date of the Invoice.
- (iii) Within 48 hours of delivery the Customer shall notify the Supplier in writing of any short delivery of Goods, any damaged Goods delivered or any non shipment of Goods detailed on the proof of Delivery.

Save for the receipt by the Supplier of the Customers' notification under (ii) and (iii) above, the Supplier shall have no liability whatsoever to the Customer in respect of any discrepancies on the Invoice or any claims for short Delivery or damaged Goods and any "deliveries" or "arrivals" note signed by the Customer, or its customer, or agent indicating that the Goods are in good order on arrival shall be conclusive proof of the same and shall be binding upon the Customer.

5.3 Goods that fail on installation ("DOA's"):

The Supplier operates a returns procedure for DOA's. Further details of the DOA returns procedure are available on written request. The DOA returns procedure may vary depending on the manufacturer of the Goods and will be notified to the Customer upon the Customer notifying the Supplier that the Goods have apparently failed on installation.

5.4 Goods that fail after installation ("Faulty Goods"):

In no circumstances may Faulty Goods be returned to the Supplier by the Customer without the prior written consent of the Supplier. Where Goods are returned a handling charge reasonably specified by the Supplier will be either deducted from any credit allowed by or be payable to the Supplier by the Customer upon demand. The Customer must notify the Supplier of the fault becoming apparent and follow the instructions notified to it by the Supplier in relation to the fault.

5.5 General provisions relating to DOA's and Faulty Goods:

- (1) The Customer shall pay all the Supplier's reasonable costs and expenses if the Goods suspected to be DOA or Faulty Goods prove not to be DOA or Faulty Goods.
- (2) The Customer shall be responsible for all transportation and insurance costs relating to returned Goods.
- (3) The Supplier shall not be responsible for installation of returned Goods after repair or exchange.
- (4) Any labour costs and expenses incurred in extracting defective parts and/or components shall be borne by the Customer and if incurred by the Supplier shall be paid for by the Customer at the Supplier's then standard applicable rate.
- (5) The Customer shall also be responsible for all of the Supplier's costs if the Supplier agrees to collect the Goods for return and such Goods are not ready for collection at the agreed time.

5.6 Where approved in writing by the Supplier, the Goods or part of the Goods to be returned must be delivered to the Supplier's premises in its original packaging together with supporting documentation showing a full description of the alleged fault and quoting the relevant returns number. In the event that the Customer fails to comply with this requirement then the Supplier will be entitled to charge a 15% minimum handling fee upon authorised return of the Goods.

5.7 The Supplier shall be under no obligation to accept return of any Goods other than as provided in clause 6 below.

6. QUALITY OF GOODS

6.1 The Supplier warrants that on delivery, and for a period of 3 months from the date of delivery ("**Warranty Period**"), the Goods shall:

- (a) conform in all material respects with their description and the Goods Specification;
- (b) be free from material defects in design, material and workmanship;
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
- (d) be fit for any purpose held out by the Supplier.

6.2 Subject to clause 6.3, if:

- (a) the Customer gives notice in writing during the Warranty Period that some or all of the Goods do not comply with the warranty set out in clause 5.1;
- (b) the Supplier is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost, the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

6.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 6.1 if:

- (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 6.2;
- (b) the Customer fails to use the Goods in accordance with any environmental storage or shelf life specifications issued or published by the Supplier;
- (c) 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 (if there are none) good trade practice;
- (d) the defect arises as a result of the Supplier following any drawing, design or Goods Specification supplied by the Customer;
- (e) the Customer alters or repairs such Goods without the written consent of the Supplier;
- (f) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
- (g) the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

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- 6.4 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Supplier under clause 6.2. In addition to the warranty contained in this clause 6, if the Goods are manufactured by a third party (a "Third Party Manufacturer") and, following the Contract, remain covered by a guarantee issued by a Third Party Manufacturer (a "Third Party Manufacturer's Guarantee") then subject to compliance by the Customer with its terms the Supplier shall use its reasonable endeavours to ensure the Customer obtains the full benefit of that Third Party Manufacturer's Guarantee.
- 6.4 The Third Party Manufacturer's Guarantee shall operate as follows:
- 6.4.1 The Supplier will (at its option) either (i) refund the price (ii) make good by repair; or (iii) exchange the Goods which are shown to the Supplier's reasonable satisfaction to have proved defective in materials or workmanship within the manufacturer's specified warranty period. The Supplier shall at its sole discretion decide whether such making good shall be effected at the premises of the Supplier or the Customer.
- 6.4.2 The Third Party Manufacturer's Guarantee shall only operate where the Supplier is able to obtain a refund credit in respect of the defective Goods. For example and without limitation, if the Third Party Manufacturer requires that Goods are to be returned direct to it or a nominated service provider the Supplier cannot and shall have no obligation to accept a return of and/or grant a credit for such Goods.
- 6.5 The warranties contained in this clause 6 shall also not apply if:
- (i) the repair or replacement is required due to an accident, neglect, misuse, or failure on the part of the Customer to maintain the Goods
 - (ii) there is interference with the Goods by persons other than the Supplier's or manufacturer's engineers
 - (iii) the Customer uses equipment, spares or software products in the Goods which are approved neither by the Supplier or the manufacturer or has installed any software for which the Customer has not obtained a license if one is required to operate the software or which damages the Goods or causes them to malfunction.
 - (iv) any sum owing to the Supplier by the Customer has not been paid by the due date and all such matters shall be the entire responsibility of the Customer for all purposes.
- 6.6 Except as provided in this clause 6, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranties set out in this clause..

7. TITLE AND RISK

- 7.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 7.2 Title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for:
- (a) the Goods; and
 - (b) any other goods that the Supplier has supplied to the Customer in respect of which payment has become due.
- 7.3 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) hold the Goods on a fiduciary basis as the Supplier's bailee;
 - (b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
 - (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
 - (e) notify the Supplier immediately if it becomes subject to any of the events listed in clause 13.1(b) to clause 13.1(l); and
 - (f) give the Supplier such information relating to the Goods as the Supplier may require from time to time, but the Customer may resell or use the Goods in the ordinary course of its business.
- 7.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 13.1(b) to clause 13.1(l), or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

8. SUPPLY OF SERVICES

- 8.1 The Supplier shall provide the Services to the Customer in accordance with the Service Specification in all material respects.
- 8.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 8.3 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 8.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

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9. CUSTOMER'S OBLIGATIONS

- 9.1 The Customer shall:
- (a) ensure that the terms of the Order and (if submitted by the Customer) the Goods Specification are complete and accurate;
 - (b) co-operate with the Supplier in all matters relating to the Services;
 - (c) provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
 - (d) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start; and
 - (e) keep and maintain any materials, equipment, documents and other property of the Supplier ("**Supplier Materials**") at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation.
- 9.2 If the Supplier's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**"):
- (a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the 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;
 - (b) 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 8.2; and
 - (c) 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.

10. CHARGES AND PAYMENT

- 10.1 The price for Goods and Services shall be the price set out in the Order or, if no price is quoted, the price set out in the Supplier's published price list as at the date of delivery. The price of the Goods is exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall unless specified otherwise by the Supplier be paid by the Customer when it pays for the Goods.
- 10.2 The Supplier reserves the right to:
- (a) increase the price of the Goods and Services, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:
 - (i) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (ii) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
 - (iii) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.
- 10.3 The Supplier shall invoice the Customer before or at any time after completion of delivery.
- 10.4 The Customer shall pay each invoice submitted by the Supplier:
- (a) prior to dispatch in the case where the Supplier so specifies (such as for printers or other hardware);
 - (b) in any other case within 30 days of the date of the invoice; and
 - (c) in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.
- 10.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time ("**VAT**"). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.
- 10.6 Without limiting any other right or remedy of the Supplier, if 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 8% per cent per annum above the then current Lloyds TSB Bank's base 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 quarterly.
- 10.7 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.

11. INTELLECTUAL PROPERTY RIGHTS

- 11.1 All Intellectual Property Rights in or arising out of or in connection with the Goods and Services shall be owned by or reserved by the Supplier.
- 11.2 The Customer acknowledges and agrees that, in respect of any third party Intellectual Property Rights in the Goods and Services, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.
- 11.3 All Supplier Materials are the exclusive property of the Supplier.

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11.4 The Customer shall indemnify and hold the Supplier harmless from and against all claims, demands and costs (including legal costs) suffered or incurred as a result of any use by the Customer, its servants and agents of Intellectual Property Rights reserved or owned by the Supplier or any third party.

12. CONFIDENTIALITY

A party ("**Receiving Party**") 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 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 11 shall survive termination of the Contract.

13. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

13.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
- (e) defective products under the Consumer Protection Act 1987.

13.2 Subject to clause 13.1:

- (a) the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) 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 in no circumstances exceed the amount of the Order excluding VAT and only where the Customer has given the Supplier the first opportunity to remedy any breach by giving written notice of the particulars of any breach and a reasonable time to rectify the same.

13.3 Except as set out in these 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.

13.4 This clause 3 shall survive termination of the Contract.

14. TERMINATION

14.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 30 days after receipt of notice in writing of the breach;
- (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors [other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party];
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
- (e) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (f) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- (h) a floating charge holder over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;

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standard terms and conditions (7)



- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.1(b) to clause 13.1(i) (inclusive);
- (k) the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or
- (l) the other party (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.

14.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract:

- (a) by giving the Customer one month's written notice;
- (b) with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.

14.3 Without limiting its other rights or remedies, the Supplier shall have the right to suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if:

- (a) the Customer fails to make pay any amount due under this Contract on the due date for payment; or
- (b) the Customer becomes subject to any of the events listed in clause 13.1(b) to clause 13.1(l), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

15. CONSEQUENCES OF TERMINATION

15.1 On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of the Supplier Materials and any Deliverables 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 them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

16. GENERAL

16.1 Force majeure:

- (a) 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 party or any other party), failure of a utility service or transport network, act of God, war, 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.
- (b) 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.
- (c) If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Goods for more than 4 weeks, 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.

16.2 Assignment and subcontracting:

- (a) The Supplier may at any time assign, transfer, charge, 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.
- (b) The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

16.3 Notices:

- (a) 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, or sent by fax to the other party's main fax number.
- (b) Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such addressor, if sent by prepaid first-class post or recorded delivery, at [9.00 am] 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, or if sent by fax, on the next Business Day after transmission.

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- (c) This clause 15.3 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.
- 16.4 Waiver and cumulative remedies:
 - (a) A waiver of any right under the Contract is only 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 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.
 - (b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and to not exclude rights provided by law.
- 16.5 Severance:
 - (a) If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
 - (b) If any invalid, unenforceable or illegal provision of the Contract 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.
- 16.6 No partnership: 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.
- 16.7 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 16.8 Variation: Except as set out in these Conditions, 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.
- 16.9 Governing law and 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 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.

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