

# TERMS AND CONDITIONS OF SALE

## 1. INTERPRETATION

In these Terms and Conditions the following expressions will have the following meanings unless inconsistent with the context:

“Buyer”	the person(s), firm or company (including a consumer) whose order for the Goods is accepted by THE COMPANY
“Consumer”	an individual or entity who enters into a Contract to obtain Goods or Services from THE COMPANY for purposes which are outside its trade, business or profession
“Contract”	any contract between THE COMPANY and the Buyer for the sale and purchase of the Goods or supply of the Services formed in accordance with Condition 2
“Goods”	any Goods which THE COMPANY supplies to the Buyer (including any of them or any part of them) under a Contract
“Services”	any Services which THE COMPANY provides to the Buyer (including any of them or any part of them) under a Contract
“Terms and Conditions”	the standard terms and conditions of sale set out in this document together with any special terms agreed in writing between the Buyer and THE COMPANY and attached to these terms and conditions
“THE COMPANY”	who have their registered office at 12 Downs Road, Hastings, East Sussex, TN34 2DX, and are known as Condisco.

## 2. FORMATION AND INCORPORATION

- 2.1 Subject to any variation under condition 12.1, the contract will be upon these Terms and Conditions, to the exclusion of all other terms and conditions and all previous oral or written representations including any terms and conditions which the buyer purports to apply under any purchase order, confirmation of order or similar document, whether or not such document is referred to in the Contract.
- 2.2 Each order or acceptance of a quotation for Goods and Services will be deemed to be an offer by the Buyer to purchase Goods or Services upon these Terms and Conditions. The contract is formed when the order is accepted by THE COMPANY. No contract will come into existence until the acceptance, either orally or in writing, of an order by THE COMPANY.
- 2.3 Any quotation is valid for a period of 30 days only from its date, provided THE COMPANY has not previously withdrawn it.
- 2.4 Subject to condition 8.1 in relation to Buyers dealing as Consumers, THE COMPANY may cancel the Contract at any time prior to delivery or performance.

## 3. DESCRIPTION

The quantity and description of the Goods and/or Services will be as set out in the order form/specification. All samples, drawings, descriptive matter, specifications and advertising issued by THE COMPANY and any descriptions or illustrations contained in THE COMPANY’s catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods or Services represented by or described in them. They will not form part of the Contract and this is not a sale by sample.

## 4. PRICE AND PAYMENT

- 4.1 The price for the Goods and/or Services will be the price set out in THE COMPANY’s order form current at the date of acceptance of order and is exclusive of any costs of packaging and carriage, VAT and any other applicable sales tax or duty unless otherwise specified.
- 4.2 Subject to Condition 8.4 in respect of Buyers dealing as Consumers THE COMPANY may invoice the Buyer for the Goods on or at any time after delivery, or the services on or at any time after performance commences, and payment is due within 14 days of service of such invoice, or upon termination of the Contract, whichever occurs first. THE COMPANY may, in its absolute discretion, require payment to be made before the provision of any Goods or Services by THE COMPANY.
- 4.3 Subject to Condition 8.2 in relation to Buyers dealing as Consumers, all payments to be made by the Buyer under the contract will be made in full without any set-off, restriction or condition and without any deduction for or on account of any counterclaim.
- 4.4 THE COMPANY may at any time suspend the provision of the Goods or the Services if the Buyer is late in making payment due to THE Company.
- 4.5 If any sum payable under the Contract is not paid when due then, without prejudice to THE COMPANY’s other rights under the Contract, that sum will bear interest from the due date until payment is made in full, both before and after any judgement, at 2% per annum over Bank of England base rate from time to time and THE COMPANY will be entitled to suspend deliveries of the Goods or performance of the Services until the outstanding amount has been received.

## 5. DELIVERY

- 5.1 The Goods shall be delivered to the Buyer’s specified premises. The Services will be performed at the location agreed between the Buyer and THE COMPANY and as specified on the order form or at such location as otherwise agreed in writing between THE GROUP and the Buyer.
- 5.2 Delivery of the Goods will be accepted at any time of the day. If the Buyer fails to take delivery, or provide any necessary documents, the Goods will be deemed to have been delivered and THE COMPANY, without prejudice to its other rights, may at its option:
- 5.2.1 store or arrange for storage of the Goods until actual delivery or sale and charge the Buyer for all related costs and expenses (including, without limitation, storage and insurance); and/or
- 5.2.2 use reasonable endeavours to rearrange delivery but, if unable to rearrange delivery, following written notice to the Buyer, sell any of the Goods at the best price reasonably obtainable in the circumstances and charge the Buyer for any shortfall below the price under the Contract or account to the Buyer for any excess achieved over the price under the Contract, in both cases having taken into account any charges related to the sale.
- 5.3 The COMPANY will use reasonable endeavours to deliver or perform each of the Buyer’s orders for the Goods and/or Services within the time agreed when the Buyer places an order and, if no time is agreed, then within a reasonable time, but the time of delivery or performance will not be of the essence. Subject to Condition 8.1 where the Buyer is dealing as a Consumer, any delay in delivery or performance will not entitle the Buyer to cancel the Contract unless and until the Buyer has given 30 days’ written notice to THE Company requiring the delivery or performance to be made and THE COMPANY has not fulfilled the delivery or performance within that period. If the Buyer cancels the order in accordance with this Condition 5.3 then:
- 5.3.1 THE COMPANY will refund the Buyer any sums which the Buyer has paid to THE COMPANY in respect of that order or part of the order which has been cancelled;
- 5.3.2 The Buyer will be under no liability to make any further payment under Condition 4 in respect of that order or part of the order which has been cancelled; and
- 5.3.3 THE COMPANY will have no other liability to the BUYER in respect of the delay or failure of THE COMPANY

## 6. RISK/TITLE

- 6.1 All Goods will remain the property of THE COMPANY until the price of such Goods has been paid in full (in cash or cleared funds).
- 6.2 Risk in the Goods will pass to the Buyer from the date of delivery unless the Buyer is dealing as a Consumer, in which case the Goods shall remain at THE COMPANY’s risk until they are delivered to the Consumer or deemed to be delivered in accordance with condition 5.2.
- 6.3 The Buyer’s right to possession will terminate immediately upon the occurrence of an event which would allow THE COMPANY to terminate the Contract under Condition 11.1.
- 6.4 The Buyer grants THE COMPANY, its agents and employees an irrevocable licence at any 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. LIABILITY OF THE COMPANY

- 7.1 This Condition 7 is in addition to and does not affect a Consumer’s rights in relation to defective Goods or Services given to consumers by law.
- 7.2 THE COMPANY will, free of charge, within a period of 12 months from the date of delivery of Goods which are proved to the reasonable satisfaction of THE COMPANY to be damaged or defective due to defects in material, workmanship or design (other than a design made, furnished or specified by the Buyer), replace such Goods. This obligation will not apply where:
- 7.2.1 any instructions as to the use or storage of the Goods have not been complied with in all respects; or

- 7.2.2 the Buyer has failed to notify THE COMPANY of any defect or suspected defect within 14 days of delivery or performance where the defect should be apparent on reasonable inspection, or within 14 days of the same coming to the knowledge of the Buyer where the defect is not one which should be apparent on reasonable inspection, and in any event no later than 6 months from the date of delivery.
- 7.3 THE COMPANY will refund to the Buyer the cost of carriage on the return of any such defective or damaged Goods, and will deliver any repaired or replacement Goods to the Buyer at THE COMPANY's own expense.
- 7.4 Any Goods which have been replaced will belong to THE COMPANY. Any repaired or replacement Goods will be liable to repair or replacement under the terms specified in Condition 7.2 for the unexpired portion of the 12 month period from the original date of delivery of the replaced Goods.
- 7.5 THE COMPANY does not exclude its liability (if any) to the Buyer for any matter which it would be illegal for THE COMPANY to exclude (or to attempt to exclude) its liability including those matters referred to in Condition 8.4 where the Buyer is dealing as a Consumer.
- 7.6 Except as provided in Conditions 7.1 to 7.5 and 8.4, THE COMPANY will be under no liability to the Buyer whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any injury, death, damage or direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) howsoever caused arising out of or in connection with any Contract including the provision of any Goods or Services.
- 7.7 Except as set out in Conditions 5.3, 7.1 to 7.5 and 8.4, THE COMPANY hereby excludes to the fullest extent permissible in law, all conditions, warranties and stipulations, express (other than those set out in the Contract) or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of the Buyer.
- 7.8 Save where the Buyer is dealing as a Consumer, the Buyer agrees to indemnify, keep indemnified and hold harmless THE COMPANY from and against all costs (including the costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings or legal costs (on a full indemnity basis) and judgments which THE COMPANY incurs or suffers as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance by the Buyer of the terms of the Contract.
- 8. ADDITIONAL TERMS ONLY RELATING TO BUYERS DEALING AS CONSUMERS**
- 8.1 Once a Contract has come into existence between THE COMPANY and a Consumer, THE COMPANY shall only be entitled to cancel the Contract in accordance with Condition 11. If THE COMPANY has not delivered Goods to a Buyer dealing as a Consumer within 45 days of the Consumer's order, the Consumer may cancel the Contract and THE COMPANY will refund any money paid.
- 8.2 Following delivery, Buyers dealing as Consumers have the right to cancel a Contract (other than for personalised or perishable products, video, audio or software products which have been unsealed by the Consumer, or other products which THE COMPANY has specified as non-returnable) and receive a refund. The Consumer must inform THE COMPANY within 7 working days, commencing on the day after the Goods are delivered to the Consumer. If the Consumer chooses to cancel, the Goods must be returned at the Consumer's cost and Consumers must take reasonable care of the Goods. If the Consumer does not return the Goods within 14 days of cancellation, or when requested to do so by THE COMPANY, whichever occurs first, THE COMPANY can collect the Goods at the Consumer's cost.
- 8.3 Buyers dealing as Consumers are required to inspect the Goods for the purpose of ascertaining whether or not at the time of delivery they are damaged or defective. Buyers acting as Consumers are required to notify THE COMPANY as soon as is reasonably practical in the event that the Goods are found on inspection to be defective or damaged. THE COMPANY will then arrange for the return of the Goods to THE COMPANY at no cost to the Consumer. If the Goods are found to be damaged prior to delivery to the Consumer, or defective, THE COMPANY will repair or replace the Goods or refund the price paid by the Consumer.
- 8.4 BUYERS DEALING AS CONSUMERS HAVE OTHER RIGHTS GRANTED BY LAW IN ADDITION TO THOSE SET OUT IN THESE TERMS AND CONDITIONS WHICH THE COMPANY CANNOT EXCLUDE. THESE TERMS AND CONDITIONS DO NOT AFFECT THOSE OTHER RIGHTS GRANTED BY LAW.
- 9. FORCE MAJEURE**
- THE COMPANY will not be liable to the Buyer for any failure or delay or for the consequences of any failure or delay in performance of the Contract, if it is due to any event beyond the reasonable control and contemplation of THE COMPANY including, without limitation, acts of God, war, industrial disputes, protests, fire, tempest, explosion, an act of terrorism and national emergencies and THE COMPANY will be entitled to a reasonable extension of time for performing such obligations.
- 10. INTELLECTUAL PROPERTY**
- 10.1 All intellectual property rights in the Goods belong to THE COMPANY or its licensors absolutely. All intellectual property rights created, developed or discovered by THE COMPANY (whether alone or with any other person including the Buyer) in the provision of the Goods or Services shall belong to THE COMPANY absolutely.
- 10.2 The Buyer may not make or distribute copies of the Goods or Services;
- 10.2.1 sell, sub-licence or transfer the Goods or Services to any third party;
- 10.2.2 make any public presentation using the Goods or Services or any printed copy of the same without the prior written consent of THE COMPANY save that DVDs sold by THE COMPANY to the Buyer may be used in public presentations, for example, training courses, provided that the Buyer purchases from THE COMPANY one copy of the DVD for each individual attending the presentation.
- 10.3 The Buyer shall notify THE COMPANY immediately if the Buyer becomes aware of any claim made against the Buyer that normal use or possession of the Goods or Services infringes or is alleged to infringe the intellectual property rights of any third party.
- 10.4 If at any time in connection with any Contract the Buyer (whether alone or with any other person) creates any intellectual property related to the subject matter of the Contract, the Buyer shall treat such intellectual property and all information relating to it as confidential to THE COMPANY and shall promptly disclose to THE COMPANY full details of such work. The property, including all intellectual property rights in such work shall vest in THE COMPANY absolutely and the Buyer agrees to assign the same to THE COMPANY and the provisions of Condition 10.6 shall apply.
- 10.5 The Buyer hereby irrevocably and unconditionally waives in favour of THE COMPANY any and all moral rights conferred on the Buyer by virtue of the Copyright Designs and Patents Act 1988 for any design or copyright work referred to in Condition 10.4.
- 10.6 Notwithstanding any prior termination of a Contract, at the request of THE COMPANY, the Buyer shall do all things necessary or desirable to enable THE COMPANY or its nominee to confer absolute title to and ownership of and to obtain the benefit of the rights including the intellectual property referred to in Condition 10.4 and to secure patent or other appropriate forms of protection for it throughout the world.
- 11. TERMINATION**
- 11.1 THE COMPANY may by written notice terminate the Contract immediately if the Buyer is in material breach of the Contract or enters into insolvency, bankruptcy, any arrangement with its creditors or any other arrangement or situation which has a like effect. Failure to pay any sums due in accordance with Condition 4.2 is a material breach of the terms of the Contract which is not capable of remedy.
- 11.2 The termination of the Contract howsoever arising is without prejudice to the rights, duties and liability of either the Buyer or THE COMPANY accrued prior to termination. The conditions which expressly or impliedly have effect after termination will continue to be in force notwithstanding termination.
- 12. GENERAL**
- 12.1 Save as set out in the Contract, these Terms and Conditions may only be varied or amended in writing and signed by a director of each member of THE COMPANY.
- 12.2 The Contract is personal to the Buyer who may not assign, delegate, license, hold on trust or sub-contract all or any of its rights or obligations under the Contract without THE COMPANY's prior written consent.
- 12.3 The Contract contains all the terms which THE COMPANY and the Buyer have agreed in relation to the Goods and/or Services and supersedes any prior written or oral agreements, representations or understandings between the parties relating to such Goods and/or Services. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of THE COMPANY which is not set out in the Contract. Nothing in this Condition 12.3 will exclude any liability which one party would otherwise have to the other party in respect of any statements made fraudulently.
- 12.4 The parties to the Contract do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.
- 12.5 For the avoidance of doubt should there be any conflict between the terms and conditions of sale set out in this document and any special terms attached to them, then the special terms shall prevail.
- 12.6 The formation, existence, construction, performance, validity and all aspects whatsoever of the Contract or of any term of the Contract will be governed by English law. The English courts will have exclusive jurisdiction to settle any dispute which may arise out of, or in connection with the Contract. The parties agree to submit to that jurisdiction.