



General Terms and Conditions for the sale of goods and services

1 Interpretation

1.1 In these Conditions the following definitions apply:

'Acceptance'

means successful conformity to the Compliance Standards or deemed approval of the Goods;

'Business Day'

means any day (other than a Saturday or Sunday) on which banks are generally open in London for non-automated normal business;

'Company'

means **EVOKE CREATIVE LIMITED**, a company duly registered in England under Company number 4665065 whose registered office is at Unit, 6 & 7, Power Station, Thermal Rd, Birkenhead, Bromborough CH62 4YB;

'Compliance Standards'

means the inspection of the Goods in accordance with the Specification;

'Conditions'

means the terms and conditions set out in this document;

'Confidential Information'

means any and all confidential information (whether in oral, written or electronic form) including technical or other information imparted in confidence or disclosed by one Party to the other or otherwise obtained by one Party relating to the other's business, finance or technology, know-how, intellectual property, assets, strategy, products and customers, including information relating to manufacturing or other processes, management, financial, marketing, technical and other arrangements or operations of any associate, person, firm, or organisation associated with that Party;

'Contract'

means the agreement between the Company and the Customer for the sale and purchase of Goods and/or Services incorporating these Conditions and the Quotation;

'Customer'

means the person or firm who purchases Goods and or Services from the Company;

'Customer's Group'

means the Customer and any undertaking which is the ultimate parent undertaking of the Customer and any direct or indirect subsidiary undertaking of such parent undertaking and "parent undertaking" and "subsidiary undertaking" shall have the meanings ascribed to them in section 1162 of the Companies Act 2006;

'Delivery Location'

means the address(es) for delivery of the Goods or the performance of the Services as set out in the Quotation;

'Design'

means the creation of a plan or convention for the production of the Goods;

'Force Majeure'

means an event or sequence of events beyond a Party's reasonable control (after exercise of reasonable care to put in place robust back-up and disaster recovery arrangements) preventing or delaying it from performing its obligations under the Contract including an act of God, fire, flood, lightning, earthquake or other natural disaster; war, riot or civil unrest; interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service; or material

required for performance of the Contract; strike, lockout or boycott or other industrial action except strikes or other industrial disputes involving the Company's or its suppliers workforce;

'Goods'

means the goods and related accessories, spare parts and documentation and other physical material set out in the Quotation or understood by the Parties to be included in the Goods and to be supplied by the Company to the Customer;

'Installation Location'

means the location for the installation of the Goods;

'Intellectual Property Rights'

means copyright, patents, know-how, trade secrets, trademarks, trade names, design rights, rights in get-up, rights in goodwill, rights in confidential information, rights to sue for passing off, domain names and all similar rights and, in each case:

- (i) whether registered or not
- (ii) including any applications to protect or register such rights
- (iii) including all renewals and extensions of such rights or applications
- (iv) whether vested, contingent or future
- (v) to which the Company is or may be entitled, and
- (vi) in whichever part of the world existing;

'Party'

means the Company or the Customer individually or together the 'Parties'

'Prototype'

means a working sample or model of the Goods.

'Purchase Order'

means the Customer's order for the Goods and/or Services from the Company as set out in the Customer's Purchase Order form;

'Services'

means any services including any installation and/or support services set out in the Quotation or which are to be purchased as ancillary to the supply of the Goods;

'Specification'

means the description, any samples, or specification of the Goods and/or Services set out or referred to in the Quotation;

'Quotation'

means a statement setting out the cost for the Goods and/or Services. If more than one such statement has been issued, then the most recent version shall prevail over all previous versions.

'Year'

means each successive period of 12 months beginning on the Commencement Date.

'Value Added Tax or VAT'

means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the sale of the Goods and or Services.

- 1.2 Unless the context otherwise requires:
- 1.2.1 each gender includes the others;
 - 1.2.2 the singular includes the plural and vice versa;
 - 1.2.3 references to the Contract include the Conditions, the Quotation and its schedule (**the Schedule**, if any);
 - 1.2.4 references to persons include individuals, unincorporated bodies, government entities, corporations and other entities;
 - 1.2.5 clause headings do not affect their interpretation;
 - 1.2.6 general words are not limited by example; and
 - 1.2.7 references to any legislation will be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

2 Application of these terms and conditions

- 2.1 These terms and conditions apply and form part of the Contract between the Company and the Customer. They supersede any previously issued terms and conditions of supply.
- 2.2 No variation of these Conditions or to the Quotation from the Company will be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of the Company.
- 2.3 Each Purchase Order by the Customer to the Company will be deemed to be an offer to purchase Goods and/or Services and subject to the Conditions.
- 2.4 The Company reserves the right at all times to reject any Purchase Order, in whole or in part, at its sole discretion.
- 2.5 Any Quotation by the Company for the provision of Goods and/or Services will be deemed to be:
- 2.5.1 an invitation to treat (and shall not be an offer) by the Company to produce Goods and/or perform Services on and subject to the Conditions; and
 - 2.5.2 will be valid for 30 days only from the date of issue.
- 2.6 A Contract will be formed upon the earlier to occur of:
- 2.6.1 written acceptance by the Company of the Customer's Purchase Order; and
 - 2.6.2 the execution of a specific written agreement by both the Company and the Customer.
- 2.7 The Contract is divisible. Each delivery made hereunder:
- 2.7.1 shall be deemed to arise from a separate contract;
 - 2.7.2 shall be invoiced separately and any invoice for a delivery shall be payable in full in accordance with the terms of payment provided for herein without reference to and notwithstanding any defect of default in delivery of any other instalment.

3 Price

- 3.1 The price for the Goods and/or Services will be as set out in the Quotation or in default of such provision will be calculated in accordance with the Company's standard scale of charges in force on the date of formation of the Contract.
- 3.2 The price for the Goods:
- 3.2.1 is Ex-Works and therefore the Customer shall be required to also pay the costs of shipping, insurance, handling, postage and delivery of the Goods, unless otherwise agreed and expressed in writing by the Company.
 - 3.2.2 does not include Value Added Tax which will be charged in addition at the then applicable rate.

- 3.3 The Company reserves the right to request that the Customer pay a deposit of a minimum of 30% of the price for producing the Goods.
- 3.4 The Company reserves the right to request that the Customer pay a non-refundable deposit, for producing the Designs.
- 3.5 The Company reserves the right to charge the Customer a non-refundable deposit for producing the Prototypes.
- 3.6 The Customer shall reimburse the Company for any reasonable and demonstrable expenses incurred in the course of providing the Services provided those expenses have been approved in advance by the Customer in writing.
- 3.7 The Company reserves the right to increase the Price or withdraw any discount for any undelivered Goods and/or Services:
- 3.7.1 by giving 45 day's written notice to the Customer, such increase to take effect in respect of any relevant Goods and/or Services delivered after the expiry of such notice; or
 - 3.7.2 with immediate effect by written notice to the Customer, where such increase arises as a consequence of any increase in the direct cost to the Company of supplying the relevant Goods and/or Services which is due to any factor beyond the control of the Company.
- 3.8 If the Customer does not agree with any increase in the price notified in accordance with clause 3.7 then the Customer may terminate the Contract in respect of any undelivered Goods and/or Services by giving the Company 30 days' notice, such notice to expire no earlier than the date on which the price increase was due to take effect provided always that the Customer shall accept delivery (and shall, where applicable pay the increased price for) any Goods and/or Services referred to in clause 3.7.2 in respect of which the Company had (at or prior to the time of receiving such notice) entered into an irrevocable commitment to purchase or subcontract from any third party).

4 Payment

- 4.1 The Company shall issue its invoice for the Goods and/or Services according to the payment terms provided in the Quotation.
- 4.2 The Customer will pay all invoices:
- 4.2.1 in full, without deduction or set-off other than as required by law, in cleared funds within 30 days of date of invoice, and
 - 4.2.2 to the Company's nominated bank account specified in the Quotation.
- 4.3 Time of payment is of the essence. Where sums due hereunder are not paid in full by the due date:
- 4.3.1 the Company may, without limiting its other rights, charge interest on such sums at the rate set out under the Late Payment of Commercial Debts (Interest) Act 1998, and
 - 4.3.2 interest will accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment.
 - 4.3.3 The Company reserves the right to suspend the provision of the Goods and/or Services to the Customer until all overdue amounts have been paid.

5 Credit limit

- 5.1 The Company may set and vary credit limits from time to time and withhold all further supplies if the Customer exceeds such credit limit.

6 Cancellation

- 6.1 The Customer may cancel the Purchase Order in respect of all or any part of the Goods and/or Services at any time upon giving written notice to the Company and upon paying to the Company the following sums as agreed liquidated cancellation charges, where relevant:
- 6.1.1 a sum equal to the full cost of producing the Designs and/or Prototypes of the cancelled Goods if cancellation takes place after such Designs and/or Prototypes have been produced.
 - 6.1.2 a sum equal to the full cost of producing the Goods produced and delivered prior to cancellation.
 - 6.1.3 a sum equal to the price of purchasing all remaining stock of the Goods, produced but not yet delivered to the Customer at the time of the cancellation.
 - 6.1.4 a sum equal to 10% of any cancellation charges due for administration of the cancellation.
- 6.2 The Customer's notice of cancellation shall be of no effect until the Company has received the cancellation charges due under this Condition 6.

7 Delivery

- 7.1 The Goods and/or Services will be delivered or performed by the Company to or at the Delivery Location on the date(s) specified in the Quotation.
- 7.2 The Customer shall take delivery of the Goods within 5 Business Days of the Company giving notice that the Goods are ready for delivery.
- 7.3 The Customer is solely responsible for loading and/or unloading the Goods at the point of delivery and shall provide (at its expense) adequate and appropriate equipment and labour for loading and/or unloading the Goods.
- 7.4 The Customer shall indemnify the Company against each loss, liability and cost arising as a result of the Company or its subcontractors assisting the Customer in the loading, unloading or other removal of the Goods from the point of delivery and/or for any damage to the Company's property caused whilst loading the Goods at the Company's premises.
- 7.5 If for any reason the Customer refuses or fails to take delivery of any of the Goods when they are ready for delivery or fails to take any action necessary on its part for delivery of the Goods, the Company is entitled to terminate the Contract with immediate effect, to dispose of the Goods as the Company may determine and to recover from the Customer any loss or additional costs incurred as a result of such refusal or failure (including storage costs from the due date of delivery).
- 7.6 The Company shall deliver the Goods in the consignment(s) as detailed in the Quotation.
- 7.7 The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's premises shall be conclusive evidence of the quantity received by the Customer on delivery.
- 7.8 The Customer shall be solely responsible for the disposal of all packaging in accordance with all relevant regulations.
- 7.9 The Company shall perform the Services to the Customer as set out in the Quotation or any other agreed separate agreement.

8 Inspection, Acceptance and Rejection

- 8.1 The Customer may request tests to be performed or to be carried out on the Goods, at the Company's premises, unless otherwise agreed, subject to agreeing that the Company will apply additional charges, payable by the Customer, for such tests.
- 8.2 In the event of any delay on the part of the Customer in attending such tests after seven days' notice that the Company is ready, the tests shall proceed in the Customer's absence and shall be deemed to have been made in the presence of the Customer.
- 8.3 Any inspection or testing of the Goods shall not be deemed to be acceptance of the Goods or a waiver of any of the Customer's rights and remedies, including its right to reject.
- 8.4 If the Goods fail to meet the Compliance Standards, the Customer shall, within 5 Business Days of delivery of the Goods, notify the Company in writing in what respects the Goods failed to meet the Compliance Standards.
- 8.5 If the Customer fails to provide the notice in Condition 8.4, then the Goods shall be conclusively presumed to meet the Compliance Standards, and accordingly the Customer shall be deemed to have accepted the Goods, and the Company will have no liability to rectify any perceived failure of the Goods, other than in accordance with the terms outlined in Condition 13.
- 8.6 If the Company is unable to remedy any failure of the Goods, properly notified to the Company, so that they conform with the Compliance Standards within a further period agreed by the Company and the Customer, then the Customer shall be entitled forthwith to reject the Goods without incurring any further liability to the Company, provided that, in the case of a minor non-conformity with the Compliance Standards, the Customer shall not unreasonably delay in its Acceptance of the Goods so long as the Company uses its reasonable endeavours in accordance with Good Industry Practice to rectify such non-conformity as soon as possible.

9 Installation

- 9.1 If included in the Customer's Purchase Order, the Company shall install the Goods at the Installation Location at the cost and suitable time arranged with the Customer as detailed in the Quotation.
- 9.2 The Customer shall give full access to the Installation Location to the Company for the purpose of installing the Goods, shall undertake any previously agreed preparatory work and shall compensate the Company for any additional costs incurred by reason of the Customer's failure to properly undertake any such preparatory work.
- 9.3 The Company shall procure that its employees who install the Goods comply with all reasonable health and safety, security and other regulations which are in force or apply at the delivery address and the Customer shall indemnify and hold the Company harmless against any loss, damage, cost and/or expense which the Company may suffer or incur as a result of any injury to its employees or damage to or loss of its property whilst at the Installation Location resulting from anything other than the negligence of the Company or its employees.

10 Title and risk

- 10.1 Title in the Goods shall pass from the Company to the Customer upon actual delivery of the Goods to the Customer and payment by the Customer in full (together with any accrued interest) of all payment which is then due; and

- 10.2 Risk in the Goods shall pass from the Company to the Customer upon delivery of the Goods to the Delivery Location and accordingly the Customer shall be responsible for insuring the Goods against all normal risks with effect from the time risk passes.
- 10.3 For the avoidance of doubt, delivery of the Goods shall be deemed completed:
- 10.3.1 in the case of the Delivery Location being at the Company's premises, 5 Business Days after the time when the Company notifies the Customer that the Goods are available for collection;
 - 10.3.2 in the case of the Delivery Location being otherwise than at the Company's premises, at the time of delivery (before unloading) at the designated place for delivery;
 - 10.3.3 if the Customer wrongfully fails to take delivery of the Goods, at the time when the Company has tendered delivery of the Goods.
- 10.4 The Company reserves the right to repossess and resell any of the Goods to which it has retained title.
- 10.5 Until such time as the Title in the Goods passes to the Customer:
- 10.5.1 the Customer shall hold the Goods as the Company's fiduciary agent and bailee, and shall keep the Goods separate from other goods and properly stored, protected and insured and identified as the Company's property, but the Customer shall not be entitled to resell or use the Goods in the ordinary course of its business; and
 - 10.5.2 the Company shall be entitled at any time to require the Customer to deliver up the Goods to the Company or to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods.
- 10.6 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the Company's property.

11 Support

- 11.1 If included in the Customer's Purchase Order, The Company shall provide Support for the Goods as detailed in the Quotation or any other separate agreement.

12 Customer Warranties

- 12.1 The Customer warrants and represents that:
- 12.1.1 The Customer has the right, power and authority to enter into this Contract and grant to the Company the rights contemplated herein;
- 12.2 All other warranties and representations, whether statutory or implied, are hereby expressly excluded to the fullest extent permitted by law.

13 Company Warranties

- 13.1 The Company warrants and represents that:
- 13.1.1 The Company has the right, power and authority to enter into this Contract and grant to the Customer the rights (if any) contemplated herein and supply the Goods and/or Services free from all third party rights and encumbrances;
 - 13.1.2 the Goods and/or Services will be free from defects in workmanship and materials, and on delivery and for a period of twelve months (or such other period as may be otherwise agreed, written and signed by both the Company and the Customer) will comply with the Quotation in all material respects;
 - 13.1.3 any production and delivery of the Goods and supply of the Services will be performed:
 - (a) by suitably qualified and competent personnel who shall exercise all due skill and care and all due diligence in the execution thereof;
 - (b) in accordance with Good Industry Practice;

- (c) so as to conform with all statutory requirements and applicable regulations relating to the Goods and/or Services;

- 13.2 Subject to the provisions in clause 13.1 the Company undertakes (at its own cost) to make good by replacing or at its option by repairing at its premises, defects which under proper use and/or storage appear and arise from faulty design material or workmanship within a period of 1 Year (or such other period as may be agreed and stated in the Quotation) after the original Goods and/or Services have been delivered or performed.
- 13.3 All other warranties and representations, whether statutory or implied, are hereby expressly excluded to the fullest extent permitted by law.

14 Indemnities

- 14.1 The Customer shall indemnify and keep indemnified and hold harmless the Company from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by the Company as a result of or in connection with any:
 - 14.1.1 failure by the Customer to perform of any of its obligations under the Contract;
 - 14.1.2 breach by the Customer of any of the warranties given by it in the Contract;
- 14.2 The Company shall indemnify and keep indemnified and hold harmless the Customer from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by the Customer as a result of or in connection with any:
 - 14.2.1 failure by The Company to perform of any of its obligations under the Contract; or
 - 14.2.2 breach by The Company of any of the warranties given by it in the Contract.
- 14.3 The indemnities given under Condition 14.1 and 14.2 above by each Party (the **'Indemnifier'**) are conditional upon the other Party (the **'Indemnitee'**):
 - 14.3.1 promptly notifying the Indemnifier in writing setting out full details of any relevant claim of which it has notice;
 - 14.3.2 making no admission of liability or not agreeing to any settlement or compromise of the relevant claim without the prior written consent of Indemnifier (which shall not be unreasonably withheld or delayed);
 - 14.3.3 giving the Indemnifier, at its request and expense, the conduct of all settlement negotiations and litigation arising from the relevant claim; or
 - 14.3.4 co-operating fully with the Indemnifier and providing the Indemnifier with all reasonable assistance in the defence or settlement of such a claim or action.
- 14.4 The Indemnifier will consult fully with the Indemnitee in relation to any such claim, but the decision as to any terms of settlement or compromise thereof will be that of Indemnifier alone.

15 Confidentiality

- 15.1 Each Party shall keep confidential all Confidential Information of the other Party and will only use the other's Confidential Information as required to perform the Contract. The provisions of this clause will not apply to:
 - 15.1.1 any information which was in the public domain at the date of this Contract;
 - 15.1.2 any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;
 - 15.1.3 any information which is independently developed by the other Party without using information supplied by the first Party; or
 - 15.1.4 any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.
- 15.2 This Condition 15 will remain in force for a period of two Years after termination of the Contract.

16 Force Majeure

- 16.1 A Party will not be liable if delayed in or prevented from performing its obligations under this Agreement due to Force Majeure, provided that it promptly notifies the other of the Force Majeure event and its expected duration, and uses reasonable endeavours to minimise the effects of that event.
- 16.2 If, due to Force Majeure, a Party is unable to perform a material obligation, or is delayed in or prevented from performing its obligations for a continuous period of more than 90 days, the other Party may, within a further 10 days terminate this Agreement on notice, otherwise this Agreement shall continue in full force and effect. For the avoidance of doubt, 'Days' under this clause shall be any day including Saturday and Sunday.

17 Termination

- 17.1 Either Party may, without prejudice to its other rights and remedies, by notice in writing to the other Party immediately terminate the Contract if the other:
- 17.1.1 is in material or persistent breach of any of its obligations under the Contract and if that breach is capable of remedy and the other has failed to remedy that breach within 30 days after receiving written notice requiring it to remedy that breach, or
 - 17.1.2 is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986) or becomes insolvent or an order is made or a resolution passed for the administration, winding-up or dissolution of the other (otherwise than for the purposes of a solvent amalgamation or reconstruction) or an administrative or other receiver, manager, liquidator, administrator, trustee or similar officer is appointed over all or any substantial part of the assets of the other or the other enters into or proposes any composition or arrangement with its creditors generally or any analogous event occurs in any applicable jurisdiction
- 17.2 The Customer may without prejudice to its other rights and remedies by notice in writing to the Company immediately terminate the Contract if the Company ceases or threatens to cease carrying on business in the United Kingdom, or if the Company or any of its Associates undergo a change of Control that is in the Customer's reasonable opinion likely to have a material adverse effect on the Customer.
- 17.3 In the event of termination of this Contract for any reason each Party shall within 30 days return or destroy (at the other Party's option) all the other Party's Confidential Information (as defined in clause 15 above) in its possession or under its control and all copies of such information

18 General

18.1 Time

Unless stated otherwise, time is not of the essence of any date or period specified in these Conditions or in the Contract.

18.2 No set-off

All payments by the Customer will be made without set-off or counterclaim, free and clear of and without deduction for any tax, levy, duty, charge, or withholdings of any kind now or in the future, imposed in any jurisdiction unless a Party is compelled by law to deduct or withhold any such amounts, in which case it will pay to the other such additional amount as will ensure that the other is paid the full amount it would have received but for such deduction or withholding.

18.3 Relationship

The Parties are independent businesses and not principal and agent, partners, or employer and employee.

18.4 Severability

If any part of these Conditions is found by a court, tribunal or other administrative body of competent jurisdiction to be unenforceable or invalid for any reason, that provision is to be severed from the Conditions and the remaining provisions of the Conditions will otherwise remain in full force.

18.5 Notices

Notices under the Contract will be in writing and sent to the persons and addresses set out in the Quotation (if for the Company) and the Purchase Order (if for the Customer). They may be given, and will be deemed received:

18.5.1 by first-class post: two Business Days after posting;

18.5.2 by airmail: seven Business Day after posting;

18.5.3 by hand: on delivery;

18.5.4 by facsimile: on receipt of a successful transmission report from the correct number, and

18.5.5 by e-mail: on receipt of a delivery or read receipt mail from the correct address.

18.6 Waiver

No delay, act or omission by either Party in exercising any right or remedy will be deemed a waiver of that, or any other, right or remedy.

18.7 Rights of Third Parties

This Contract is not enforceable by any third party under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

18.8 Priority

The terms of the Conditions prevail over those of the Purchase Order or Schedule (if any).

18.9 Entire Agreement

The Contract constitutes the entire agreement between the Parties in relation to its subject matter. No other terms apply.

18.10 Succession

The Contract will bind and benefit each Party's successors and personal representatives.

18.11 Governing Law & Jurisdiction

The Contract will be governed by the law and exclusive jurisdiction of England and Wales.