

TERMS AND CONDITIONS OF PURCHASE

1. Interpretation

- 1.1 'Buyer' means Advertising Constructions Ltd trading as Envisage or Envisage Design Ltd.
- 1.2 'Vendor' means the person, firm or company to whom the Purchase Order is issued.
- 1.3 'Goods' includes all goods and services covered by the Purchase Order.
- 1.4 'Purchase Order' means Buyer's Purchase Order which specifies that these conditions apply to it.
- 1.5 'The Contract' means the contract between Buyer and Vendor consisting of the Purchase Order, these Terms and Conditions of Purchase, any other documents (or parts of them) specified in the Purchase Order and any other terms and conditions agreed in accordance with Clause 2 below.
- 1.6 'Contract Price' means the unit price of items supplied under the Contract.
- 1.7 'Intellectual Property Rights' means the following in any part of the world:
 - (a) patents, trademarks, registered designs and all applications for registration of them;
 - (b) copyrights or design rights;
 - (c) any moral right;
 - (d) any know how;
 - (e) any trade or business name;
 - (f) any right to bring an action for passing off;or any right which is similar or analogous to any of these.
- 1.8 References to the neuter include the masculine and feminine and to the singular include the plural and vice versa.
- 1.9 The headings do not affect the interpretation of these Terms and Conditions.

2. Terms and Conditions

All orders are made on these Terms & Conditions which override and exclude any other terms stipulated, incorporated or referred to by the Vendor, whether in any quotation, any acknowledgement of the Purchase Order or invoice, or in any negotiations or any course of dealing established between the Vendor and the Buyer. All contracts hereafter made between the Vendor and the Buyer shall be deemed to be made subject to these terms.

No modification of these terms or any other Contract provision shall be effective unless made by an express written agreement between the parties. The signing by the Buyer of any of the Vendor's documentation shall not imply any modification of these terms.

3. Quality

All Goods manufactured or supplied shall be of the best quality, material and workmanship, without fault and accord in all respects with the specifications and drawings referred to in the Purchase Order and the patterns or samples (if any) supplied by the Buyer. Services shall be performed with all reasonable skill and care.

Vendor's performance must be maintained at Buyer's 'A' grade standard as measured and advised by the Buyer.

The Buyer reserves the right to visit the Vendor's premises and carry out an appraisal or audit of the Vendor's quality systems to verify the Vendor's ability to conform to actual conformance to its documented quality programme or the requirements of the latest International Standard relating to quality management issued by the International Organization for Standardization, whichever is applicable.

The Vendor may be required to submit a quality plan and/or initial sample inspection report for approval by the Buyer manufacturing the Goods.

Where any government, EU or other regulatory authority prescribes safety or quality regulations with which any Goods supplied must comply, the Vendor shall ensure compliance with such regulations.

4. Delivery Date

- 4.1 The date of delivery of the Goods shall be that specified in the Purchase Order or any revisions or amendments later made by the Buyer to the Purchase Order. The time for delivery is of the essence. Vendor shall provide such programmes of manufacture and delivery as Buyer may reasonably require and Vendor shall give notice to Buyer as soon as practicable if such programmes are or are likely to be delayed. Delivery shall only be deemed to have occurred when Goods have been delivered correctly documented and in good and correct packaging at the address stated in the Purchase Order.
- 4.2 Without prejudice to Clause 4.1 above, if such delivery is delayed through any cause beyond the reasonable control of the Vendor and immediately such cause arises the Vendor notifies the Buyer in writing thereof giving full particulars the Buyer may, at its sole discretion, grant a reasonable extension of time.
- 4.3 If delivery is not made on the due date or within an extension of time granted in accordance with Clause 4.2 above then the Buyer may cancel the Contract in whole or part and refuse to accept any subsequent delivery of Goods without prejudice to any other right or remedy which the Buyer may have.

5. Incorrect Delivery

All Goods must be delivered at the delivery point specified in the Purchase Order. If Goods are incorrectly delivered, Vendor is responsible for any additional expense incurred in delivering them to their correct destination.

6. Passing of Property and Risk

The property and risk in the Goods remain with the Vendor until they are delivered in accordance with Clause 4 above.

7. Price and Terms of Payment

The Contract Price is as stated in the Purchase Order or other written agreement by the Buyer and is fixed.

Claims for price increases must be submitted to the Buyer in writing giving reasonable notice and supported by adequate documentary evidence together with a detailed cost breakdown. No price increases shall apply without Buyer's written agreement.

All prices include delivery to the Buyer. Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.

Unless stated in the Purchase Order or otherwise agreed in writing the Vendor may not submit its invoice for the Goods until delivery has been validly made.

Unless otherwise stated in the Purchase Order, payment is due within 60 days of receipt of a valid and undisputed invoice by Buyer. Time of payment is not of the essence.

The Vendor shall not withhold supplies for any reason without the Buyer's written agreement.

If either party fails to make any payment under the Contract on or before the due date, the party entitled to payment may charge interest at the rate of 3 per cent per annum above the base rate from time to time of Lloyds TSB Bank plc on the outstanding amount from the due date until the date of payment (both before and after judgment). Such interest shall accrue from day to day and the parties agree that it is in substitution for any statutory interest and compensation arising out of late payment that may be applicable to this Contract.

Without prejudice to any other right or remedy, Buyer may set off any amount owing from Vendor to Buyer against any amount payable by Buyer to Vendor whether under this Contract or any other contract between them.

8. Acceptance

If Goods delivered by Vendor do not conform in every respect with the Contract (whether because of a different quality or quantity measurement to that required by the Contract or because they are not of satisfactory quality or are unfit for the purpose for which they are required) Buyer shall have the right to reject such Goods within a reasonable time of their delivery and to purchase replacements elsewhere but without prejudice to any other right which Buyer may have against Vendor. The making of payment shall not prejudice Buyer's right of rejection. However, rejected Goods must be credited immediately in full and repaired or replacement Goods may be invoiced upon redelivery. Before exercising the said right to purchase elsewhere, Buyer shall give Vendor a reasonable opportunity to replace rejected Goods with Goods which conform to the Contract.

The Vendor shall ensure that all advice or delivery notes clearly state the Buyer's: -

- a. Part number.
- b. Order number.
- c. Line number.

The Buyer is not liable for any additional costs as a result of the Vendor's failure to deliver to agreed due dates or failure to meet the specification in the Purchase Order.

9. Variations

Vendor shall not alter any of the Goods, except as directed in writing by Buyer, but Buyer shall have the right, from time to time during the Contract, by notice in writing to direct Vendor to add or to omit, or otherwise vary, the Goods and Vendor shall carry out such variations and be bound by the same terms and conditions, so far as applicable, as though the said variations were stated in the Contract.

Where Vendor receives any such direction from Buyer which requires an amendment to the Contract Price, Vendor shall promptly advise Buyer in writing to that effect giving the amount of any such amendment and applying the same level of pricing as that contained in Vendor's tender or quotation (as the case may be).

If, in the opinion of Vendor, any such direction is likely to prevent Vendor from fulfilling any of its obligations under the Contract Vendor shall so notify Buyer and Buyer shall decide as soon as possible whether or not the same shall be carried out and shall confirm its instructions in writing and modify the said obligations to such an extent as may be justified. Until Buyer confirms its instructions they shall be deemed not to have been given.

10. Indemnity

Vendor shall indemnify Buyer against any costs (including legal costs on a full indemnity basis), charges, damages, interest and claims in relation to:

- (a) defective workmanship, quality or materials;
- (b) any actual or alleged infringement of Intellectual Property Rights by the use or supply of any Goods (except where the infringement is directly due to Vendor having followed a design or instruction provided to Vendor by Buyer or to the use of such article or material in a manner or for a purpose prohibited by Vendor, or which is due to the use of such article or material in association or combination with any other article or material not supplied by Vendor (unless Vendor is aware of such use); or
- (c) any claim made against Buyer for any liability, loss damage, injury, cost or expense sustained by Buyer's employees, agents or customers or any third party to the extent that this was caused by or arises from the Goods.

11. Ownership of Intellectual Property Rights

All Intellectual Property Rights created by Vendor specifically for the purposes of the Contract shall belong to Buyer and Vendor assigns absolutely to Buyer all such Intellectual Property Rights and shall do all such things and execute all such documents as may be reasonably required by Buyer to ensure that the Intellectual Property Rights are effectively assigned to Buyer.

12. Progress and Inspection

Buyer's representatives shall have the right to progress and inspect all Goods at Vendor's works and the works of permitted sub-contractors at all reasonable times and to reject Goods that do not comply with the terms of the Contract. However, any inspection, checking, approval or acceptance given on behalf of Buyer shall not relieve Vendor or its sub-contractors from any obligation under the Contract.

13. Buyer's Rights in Specifications, Plans, Drawings, Patterns etc. and Confidentiality

Any specifications, plans, drawings, patterns or designs supplied by Buyer to Vendor in connection with the Contract shall remain the property of Buyer, and any information derived therefrom or otherwise communicated in connection with the Contract shall be regarded by Vendor as secret and confidential and shall not, without the consent in writing of Buyer, be published or disclosed to any third party, or made use of by Vendor except for the purpose of implementing the Contract.

14. Responsibility for Information

Vendor shall be responsible for any errors or omissions in any drawings, calculations, packing details or other particulars supplied by it, whether such information has been approved by Buyer or not, provided that such errors or omissions are not due to inaccurate information provided in writing by Buyer.

15. Assignment and Sub-Contracting

Vendor shall not assign or sub-contract any of its rights or obligations under the Contract, nor shall it assign or charge the benefit of any debt owed by Buyer to Vendor without Buyer's written consent. Vendor shall be responsible for all work done and goods supplied by sub-contractors.

16. Copies of Sub-Contracts

Upon request, copies of sub-contract purchase orders shall be made available to the Buyer.

17. Deterioration

The Vendor shall protect all Goods supplied against the Purchase Order that might deteriorate during transportation or storage. The Vendor shall notify the Buyer of the most appropriate storage conditions for the Goods supplied.

18. Free Issue Materials

Where Buyer for the purposes of the Contract issues materials free of charge to Vendor such materials shall be and remain the property of Buyer. The materials shall be at Vendor's own risk. Vendor shall keep them in safe custody and separately identified from its own or third party materials. Vendor shall maintain all such materials in good order and condition subject, in the case of tooling, patterns and the like, to fair wear and tear. Vendor shall use such materials solely in connection with the Contract. Any surplus materials shall be disposed of at Buyer's discretion. Waste of such materials arising from bad workmanship or negligence of Vendor shall be made good at Vendor's expense, without prejudice to any other of the rights of the Buyer. Vendor shall deliver up such materials whether further processed or not, to the Buyer on demand.

19. Warranty

Vendor shall as soon as reasonably practicable and at the Buyer's option, repair or replace all Goods which are or become defective during the period of 12 months from putting into service or 18 months from delivery, whichever shall be the shorter including without limitation, defects which occur due to Vendor's incorrect instructions as to use, incorrect use of data, inadequate or faulty materials or workmanship, any other breach of Vendor's obligations, express or implied or any failure to conform with the Contract. Repaired and replacement Goods shall themselves be subject to the foregoing warranty for a period of 12 months from the date of delivery, reinstallation or passing of tests (if any) whichever is appropriate after repair or replacement. This warranty is given by the Vendor without prejudice to any right or remedy which shall have accrued or shall thereafter accrue to the Buyer.

20. Termination

The Buyer may at any time by notice in writing immediately terminate the Contract in whole or in part without compensation to the Vendor if any of the following events occur: -

- (a) the Vendor commits a breach of any of the terms of the Contract;
- (b) if the Vendor being an individual or, where the Vendor is a firm, any partner of that firm shall become bankrupt or shall have a receiving order or administration order made against him or shall make any arrangement with or for the benefit of his creditors or shall purport to do so;
- (c) if the Vendor being a company shall pass a resolution for winding-up, or a petition shall be presented to the court either for the appointment of an administrator or for the winding-up of the Vendor, or if a receiver or manager or administrative receiver shall be appointed, or if circumstances shall arise which entitle the court or a creditor to appoint a receiver or manager or which entitle the court to make a winding-up order or appoint an administrator;
- (d) the Vendor ceases or threatens to cease to carry on its business; or
- (e) control of more than 50% of the voting rights in the Vendor is transferred.

Any termination of the Contract by the Buyer under this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Buyer. Any provisions which are expressly or impliedly intended to be enforceable after termination (including without limitation Clauses 10, 11, 13, 15 and 19) shall continue to be enforceable.

21. General

- 21.1 No conditions submitted or referred to by Vendor when tendering shall form part of the Contract unless otherwise agreed to in writing by Buyer.
- 21.2 If any term or provision in the Contract is held to be illegal or unenforceable, in whole or in part, under any enactment or rule of law, such term or provision or part shall to that extent be deemed not to form part of the Contract but the enforceability of the remainder of the Contract shall not be affected.
- 21.3 The Buyer's failure to insist upon strict performance of any provision of the Contract shall not be deemed to be a waiver thereof or of any right or remedy for breach of a like or different nature.
- 21.4 Any waiver by Buyer of a breach or default by Vendor will not be deemed a waiver of any subsequent breach or default.

22. Law and Jurisdiction

This Contract shall be governed by and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the English courts.