

# TERMS AND CONDITIONS OF SALE

## 1. Definitions and Interpretation

1.1 In these Conditions, the following definitions apply:

**Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;

**Conditions:** the terms and conditions set out in this document together with any special terms agreed in writing between Customer and Jungle IT;

**Confidential Information:** information in whatever form (including, without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the business, clients, customers, products, affairs and finances of Jungle IT for the time being confidential to Jungle IT and trade secrets including, without limitation, technical data and know-how relating to the business of Jungle IT or any of its suppliers, clients, customers, agents, distributors, shareholders or management, whether or not such information (if in anything other than oral form) is marked confidential;

**Contract:** the contract between Jungle IT and Customer for the sale and purchase of the Goods in accordance with these Conditions;

**Customer:** the person or firm who purchases the Goods from Jungle IT;

**Customer Materials:** all documents, records, reports, papers drawings, designs, transparencies, photos, graphics, logos, typographical arrangements, data, specifications and all other materials in whatever form, (including hard copy and electronic form) provided by Jungle IT in connection with the Goods;

**Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation (EU) 2016/679 (GDPR); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended. For the purposes of these Conditions, controller, processor, data subject, personal data, processing and appropriate technical and organisational measures have the meanings given to them in the Data Protection Legislation;

**Delivery Date:** the date for delivery of Goods as specified in an Order;

**Delivery Location:** has the meaning given to it in clause 4.2;

**Force Majeure Event:** has the meaning given in clause 13.1;

**Goods:** the goods or products (or any part of them) set out in the Order;

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

**Jungle IT:** Jungle I.T Limited (a company registered in England and Wales with company number 05008636);

**Order:** Customer's order for the Goods, as set out in Customer's purchase order form, Customer's written acceptance of Jungle IT's quotation, or overleaf, as the case may be;

**Order Acceptance:** has the meaning given to it in clause 2.3;

**Specification:** any specification for the Goods, including any related plans and drawings, that is agreed in writing by Customer and Jungle IT.

### **Construction**

- 1.2 In these Conditions, the following rules apply:
- 1.2.1 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
  - 1.2.2 a reference to a party includes its personal representatives, successors or permitted assigns;
  - 1.2.3 a reference to a statute or statutory provision is a reference to such statute or 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;
  - 1.2.4 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.

## **2. Basis of contract**

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by Customer to purchase the Goods in accordance with these Conditions. Customer must ensure that the terms of the Order submitted by Customer are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when Jungle IT emails a written acceptance of the Order ("**Order Acceptance**"), at which point the Contract shall come into existence. No Contract will come into existence until an Order Acceptance is issued by Jungle IT.
- 2.4 Once an Order has been accepted by Jungle IT it cannot be cancelled by Customer for any reason.
- 2.5 Jungle IT will inform Customer if Jungle IT are unable to accept the Order, and Jungle IT will not charge Customer for the Goods. This might be because:
- 2.5.1 the Goods are out of stock;
  - 2.5.2 because of unexpected time limits on Jungle IT's resources which Jungle IT could not reasonably plan;
  - 2.5.3 because Jungle IT has identified an error in the price or description of the Goods;
  - 2.5.4 because Jungle IT has been unable to meet a delivery deadline Customer has specified.
- 2.6 Any samples, drawings, descriptive matter, or advertising produced by Jungle IT and any descriptions or illustrations contained in Jungle IT's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force and this is not sale by sample.
- 2.7 A quotation for the Goods given by Jungle IT shall not constitute an offer. A quotation shall only be valid for a period of 7 Business Days from its date of issue.
- 2.8 Jungle IT will assign an order number to Customer's Order and notify Customer of this number when Jungle IT accepts Customer Order under clause 2.3.
- 2.9 Acceptance of delivery of the Goods will be deemed conclusive evidence of Customer's acceptance of these Conditions.

2.10 Customer shall provide Jungle IT with all reasonable information and support requested by Jungle IT to enable Jungle IT to perform its obligations under these Conditions.

### **3. Goods**

3.1 Jungle IT reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements, or to implement minor technical adjustments and improvements if any such amendment would not materially affect the quality or performance of the Goods.

### **4. Delivery**

4.1 Jungle IT shall use its reasonable endeavours to ensure that:

4.1.1 each delivery of the Goods is accompanied by a delivery note which shows 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

4.1.2 if Jungle IT requires Customer to return any packaging materials to Jungle IT, that fact is clearly stated on the delivery note. Customer shall make any such packaging materials available for collection at such times as Jungle IT shall reasonably request. Returns of packaging materials shall be at Jungle IT's expense.

4.2 Subject to payment by Customer of the relevant invoice, Jungle IT shall deliver the Goods to the location set out in the Order or such other location as the parties may agree ("**Delivery Location**") and use reasonable endeavours to deliver on the Delivery Date, at any time after Jungle IT notifies Customer that the Goods are ready. Customer shall prepare Customer's premises for delivery of the Goods. Delivery of the Goods will be made during Customer's usual business hours if possible. Customer may also collect the Goods from Jungle IT's premises.

4.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location unless the Goods are collected from Jungle IT in which case delivery of the Goods shall be completed on collection from Jungle IT. Customer will provide, at its expense at the Delivery Location, adequate and appropriate equipment and manual labour for off-loading the Goods.

4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Jungle IT shall not be liable for any delay in delivery of the Goods or failure to deliver the Goods if such delay is as a result of:

4.4.1 a Force Majeure Event; or

4.4.2 Customer's failure to provide Jungle IT with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.5 If Customer fails to take delivery of the Goods within 3 Business Days of Jungle IT notifying Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or Jungle IT's failure to comply with its obligations under the Contract:

4.5.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which Jungle IT notified Customer that the Goods were ready; and

4.5.2 Jungle IT shall store the Goods until actual delivery takes place, and charge Customer for all related costs and expenses (including insurance).

4.6 If 10 Business Days after the day on which Jungle IT notified Customer that the Goods were ready for delivery Customer has not taken delivery of them, Jungle IT may:

4.6.1 store or arrange for storage of the Goods until actual delivery or sale in accordance with clause 4.6.2 and charge Customer for all related costs and expenses (including without limitation, storage and insurance); and/or

- 4.6.2 following written notice to the Customer, resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to Customer for any excess over the price of the Goods or charge Customer for any shortfall below the price of the Goods.
- 4.7 Customer shall not be entitled to reject the Goods if Jungle IT delivers up to and including 5 per cent less than the quantity of Goods ordered and the quantity delivered will be deemed to be quantity ordered.
- 4.8 Jungle IT may deliver the Goods by instalments, which shall be invoiced and paid for separately in accordance with these Terms. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle Customer to cancel any other instalment.

## **5. Manufacturer's Warranties**

- 5.1 To the extent that the benefit of any warranties made by the manufacturer or previous seller of the Goods to Jungle IT can be assigned to Customer, Jungle IT shall, if requested by Customer and at the cost of Customer, assign them to Customer.
- 5.2 Until such assignment, Jungle IT will co-operate with Customer in any reasonable arrangements to provide Customer with the benefit of such warranties or like condition including enforcement at the cost of and for the benefit of Customer.
- 5.3 Jungle IT makes no representations and gives no warranties as to the quality, condition, state or description of the Goods, or their fitness or suitability for any purpose. All implied statutory or common law terms, conditions and warranties as to such Goods are excluded to the fullest extent permitted by law.
- 5.4 These Conditions shall apply to any repaired or replacement Goods supplied by Jungle IT.

## **6. Title and risk**

- 6.1 Risk in Goods shall pass to Customer on completion of delivery (as described in clause 4).
- 6.2 Title to Goods shall pass to Customer, on receipt by Jungle IT of payment for the relevant Goods, in full and cleared funds.
- 6.3 Until title to the Goods has passed to Customer, Customer shall:
- 6.3.1 hold the Goods on a fiduciary basis as Jungle IT's bailee;
  - 6.3.2 store the Goods (at no cost to Jungle IT) separately from all other goods held by Customer so that they remain readily identifiable as Jungle IT property;
  - 6.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - 6.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the Delivery Date;
  - 6.3.5 notify Jungle IT immediately if it becomes subject to any of the events listed in clause 9.2.2; and
  - 6.3.6 give Jungle IT such information relating to the Goods as Jungle IT may require from time to time,
- 6.4 Notwithstanding the terms of clause 6.3, Customer may resell or use the Goods in the ordinary course of its business before ownership has passed to it provided that:
- 6.4.1 any sale will be at full market value and Customer will account to Jungle IT accordingly;

- 6.4.2 any such sale will be a sale of Jungle IT's property on Customer's own behalf and Customer will deal as principal when making such a sale; and/or
- 6.4.3 if before title to the Goods passes to Customer, Customer becomes subject to any of the events listed in clause 9.2.2, or Jungle IT reasonably believes that any such event is about to happen and notifies Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy Jungle IT may have, Jungle IT may at any time require Customer to deliver up the Goods and, if Customer fails to do so promptly, enter any premises of Customer or of any third party where the Goods are stored in order to recover them. Jungle IT will be entitled to recover payment for the Goods notwithstanding that title in any of the Goods has not passed from Jungle IT.
- 6.5 Where Jungle IT is unable to determine whether any goods are the Goods in respect of which Jungle IT's right to possession has terminated, Jungle IT will be deemed to have sold all goods of the kind sold by Jungle IT to Customer in the order in which they were invoiced to Customer.

## **7. Price and payment**

- 7.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in Jungle IT's published price list in force as at the date of delivery.
- 7.2 Jungle IT reserves the right to vary the price of the Goods if there are any unforeseen circumstances that would affect the price of the Goods after the Contract is entered into.
- 7.3 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to Customer.
- 7.4 The price of the Goods is exclusive of amounts in respect of value added tax (VAT) which shall be payable by Customer to Jungle IT at the rate prescribed by law. If the rate of VAT changes between the Order Acceptance and the Delivery Date, Jungle IT will amend the rate of VAT, unless Customer has already paid for the Goods in full and cleared funds before the rate of VAT takes effect.
- 7.5 Jungle IT shall invoice Customer for the price of the Goods after Order Acknowledgment.
- 7.6 Customer shall pay invoices in full and cleared funds to Jungle IT within 30 days of the date of invoice in pounds sterling by credit or debit card to the bank account nominated in writing by Jungle IT from time to time. Time of payment is of the essence.
- 7.7 Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and Customer shall not be entitled to assert any credit, set-off or counterclaim against Jungle IT in order to justify withholding payment of any such amount in whole or in part.

## **8. Suspension**

- 8.1 Jungle IT may suspend supply of the Goods to Customer:
  - 8.1.1 if Customer fails to pay any undisputed amount due under this Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
  - 8.1.2 to deal with technical problems or make minor technical changes;
  - 8.1.3 to update the Goods to reflect changes in relevant laws and regulatory requirements;
  - 8.1.4 to make changes to the Goods as requested by Customer or notified by Jungle IT to Customer.
- 8.2 Jungle IT will contact Customer in advance to inform Customer that Jungle IT will be suspending supply of the Goods, unless the problem is urgent or an emergency.

**9. Termination**

- 9.1 Notwithstanding clause 9, Jungle IT may terminate this Contract if Customer:
- 9.1.1 fails to pay any undisputed amount due under this Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
  - 9.1.2 fails to provide Jungle IT with such information and materials as Jungle IT may reasonably require in order to supply the Goods; or
  - 9.1.3 fails to allow Jungle IT to deliver the Goods to Customer, or Customer fails to collect the Goods from Jungle IT.
- 9.2 Either party may terminate this Contract if the other party:
- 9.2.1 commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within a period of thirty (30) Business Days after receipt of notice in writing requiring it to do so; or
  - 9.2.2 enters into an Insolvency Event or either party reasonably believes that an Insolvency Event is about to occur in relation to the other party.
- 9.3 Jungle IT may terminate this Contract upon giving 1 month's prior written notice to Customer.
- 9.4 On termination of the Contract, Customer shall immediately pay to Jungle IT all of Jungle IT's outstanding unpaid invoices and interest and. In respect of Goods supplied but for which no invoice has been submitted, Jungle IT shall submit an invoice, which shall be payable by Customer immediately on receipt.
- 9.5 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

**10. Limitation of liability**

- 10.1 Nothing in these Conditions shall limit or exclude Jungle IT's liability for:
- 10.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
  - 10.1.2 fraud or fraudulent misrepresentation;
  - 10.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Sale and Supply of Goods and Services Act 1982;
  - 10.1.4 defective products under the Consumer Protection Act 1987; or
  - 10.1.5 any matter in respect of which it would be unlawful for Jungle IT to exclude or restrict liability.
- 10.2 Subject to clause 10.1:
- 10.2.1 Jungle IT shall under no circumstances whatever be liable to Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss (including at all times, without limitation, economic loss, loss of business, depletion of goodwill or similar) howsoever caused arising under or in connection with the Contract.
  - 10.2.2 Jungle IT's total liability to 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 price paid for the Goods in the Order under which the liability has arisen.

- 10.3 Jungle IT hereby excludes to the fullest extent permitted in law, all conditions and warranties, whether express (other than as set out in these Conditions) or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of Customer.
- 10.4 Jungle IT acknowledges that the above provisions of this clause 10 are reasonable and reflected in the price which would be higher without those provisions, and Customer will accept such risk accordingly.

## **11. Data Protection**

- 11.1 Each party collects and processes personal data concerning the other party's employees for the purposes of contract and relationship management in its capacity as a controller and in relation to such personal data that party will comply with all of its obligations under the Data Protection Legislation.
- 11.2 If Jungle IT processes any Personal data on Customer's behalf when performing its obligations under these Conditions, the parties record their intention that Customer shall be the data controller and Jungle IT shall be a data processor and in any such case shall:
- 11.2.1 process personal data only on written instructions of Customer and Customer agrees that these Conditions shall constitute Customer's written instructions. If Jungle IT is required by any applicable laws to process personal data it shall, to the extent legally permitted, notify Customer before doing so;
  - 11.2.2 have in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of, accidental loss or destruction of or damage to personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected;
  - 11.2.3 not engage another processor without prior specific or general written authorisation of Customer and without ensuring that the same data protection obligations as set out in these Conditions are imposed on that other processor and Jungle IT shall remain fully liable to Customer for performance of the other processor's obligations to the extent the other processor fails to fulfil their data protection obligations;
  - 11.2.4 ensure that personnel who have access to or process personal data are under contractual or statutory obligations to keep the personal data confidential;
  - 11.2.5 at Customer's cost, assist Customer to respond to any request from a data subject;
  - 11.2.6 notify Customer without undue delay of a personal data breach (which has the meaning given to it in the Data Protection Legislation) and, at Customer's cost, provide reasonable assistance to Customer complying with its obligations pursuant to Articles 32 to 36 of GDPR;
  - 11.2.7 at the written direction of Customer, delete or return personal data to Customer on termination of these Condition unless Customer is required by law to store the personal data; and
  - 11.2.8 make available to Customer all information necessary to demonstrate compliance with this clause 11.2.8 and, at Customer's cost, allow for audits conducted by Customer or its designated auditor.

## **12. Intellectual Property Rights**

- 12.1 All Intellectual Property Rights belonging to a party prior to the Contract will remain vested in that party.

12.2 No right or licence is granted to Customer in respect of the Intellectual Property Rights of Jungle IT, except the right to use, or re-sell the Goods in Customer's ordinary course of business.

12.3 Customer shall indemnify Jungle IT from and against all claims and all direct, indirect or consequential liabilities (including loss of profits, loss of business, depletion of goodwill and similar losses) costs, proceedings, damages and expenses) suffered or incurred by Jungle IT as a result of or in connection with any claim that Jungle IT's use of Customer Materials infringe the Intellectual Property Rights of a third party.

### **13. Force Majeure**

13.1 Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including but not limited to strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, extremes of weather, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

### **14. Variation and Waiver**

14.1 Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by Jungle IT.

14.2 No failure to exercise or delay in exercising any right or remedy provided under these Conditions or by law constitutes a waiver of such right or remedy, nor shall it prevent or restrict any future exercise or enforcement of such right or remedy.

14.3 No single or partial exercise of any right or remedy under these Conditions shall prevent or restrict the further exercise of that or any other right or remedy.

### **15. Anti-Bribery and Modern Slavery**

15.1 Each party shall comply with the Bribery Act 2010 and the Modern Slavery Act 2015, and not do, or omit to do, any act that will cause the other to be in breach of the Bribery Act or the Modern Slavery Act 2015.

### **16. Notices**

16.1 Any notice shall only be effective if it is in writing, sent to a party at its registered address (or such other address as that party may notify the other in writing from time to time) and is given in accordance with clause 16.2 below.

16.2 Notices shall be deemed to have been duly received:

16.2.1 if delivered personally, when left at the registered address of the other party or otherwise the address for correspondence notified by the recipient to the other in writing;

16.2.2 if sent by pre-paid first class post or recorded delivery, at 9.00am on the second Business Day after posting;

16.2.3 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or

16.2.4 if sent by email, at 9.00 am on the following Business Day after transmission.

**17. Entire Agreement**

17.1 This Contract constitutes the whole agreement and understanding of the parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter of this Contract. Each party acknowledges that it has not relied upon any warranty, representation, statement or understanding other than those expressly set out in this Contract.

17.2 Nothing in this clause shall limit or exclude any liability for fraudulent misrepresentation.

**18. Rights of Third Parties**

18.1 No term of these Conditions shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to the Contract.

**19. Assignment**

19.1 Jungle IT may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

19.2 Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of Jungle IT.

**20. Confidentiality**

20.1 A party ("**receiving party**") shall keep in strict confidence, and shall not use any and all technical or commercial know-how, processes or initiatives which are 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, its products or services which the receiving party may obtain. The receiving party shall only disclose such Confidential Information as required by law or to those of its employees, agents or subcontractors who need to know the same for the purpose of discharging the receiving party's obligations under these Conditions, and shall ensure that such employees, agents or subcontractors shall keep such information confidential.

**21. Severance**

21.1 If any court or 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 to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected and the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

**22. Governing Law and Jurisdiction**

22.1 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.