

**STANDARD TERMS AND CONDITIONS FOR SUPPLY OF GOODS AND SERVICES
BY**

Makersmith, a trading name of Davies and Begbie Ltd,
of Scarborough, North Yorkshire

INTERPRETATION

In this document the following words shall have the following meanings:

"Consumer"	shall have the meaning ascribed in <i>Section 12 of the Unfair Contract Terms Act 1977</i> .
"Client"	means any person or business that purchases Services or Products from the Supplier.
"Proposal"	means a statement of work, quotation or other similar document describing the services to be provided by the Supplier.
"Services"	means the services specified in the Proposal.
"Contract"	means the contract for the purchase and sale of the services and/or products subject to these conditions.
"Supplier", "We", "Our", "Us"	Means Makersmith: Makersmith is a trading name of Davies and Begbie Ltd, a private limited company registered in England and Wales. Company No. 5612299 and is VAT Registered, No. 875489755 Registered Office: 67 Falsgrave Road, Scarborough, YO12 5EA.
"Terms and Conditions"	means the terms and conditions of supply set out in this document and any special terms and conditions agreed in writing by the Supplier.
"Intellectual Property Rights"	means any patent, knowledge, trademark, service name, trade name, registered design, copyright, moral right, design right, database right or any other industrial or commercial right including any application for registration or protection of any of these anywhere in the world.
"Event outside our control"	is defined in clause 9.1
"Writing" or "Written"	When We use the words "writing" or "written" in these Terms, this will include e-mail unless We say otherwise.
"Product", "Products" or "Goods"	means any physical product, goods or equipment supplied to the Client in the course of the Contract

1 GENERAL

- 1.1 These Terms and Conditions shall apply to all contracts for the supply of Services by the Supplier to the Client and shall prevail over any other documentation or communication from the Client.
- 1.2 Any variation to these Terms and Conditions shall be inapplicable unless agreed in writing by the Supplier.
- 1.3 Nothing in these Terms and Conditions shall prejudice any condition or warranty, express or implied, or any legal remedy to which the Supplier may be entitled in relation to the Services, by virtue of any statute, law or regulation.
- 1.4 Nothing in these Terms and Conditions shall affect the Client's statutory rights if dealing as a Consumer.

2 THE ORDER

- 2.1 Any Proposal shall remain valid for a period of 30 days unless otherwise stated by us in any quotation or communication.,
- 2.2 The Client shall be deemed to have accepted the Proposal by placing an order with the Supplier ("the Order") within the period specified in Clause 2.1.
- 2.3 All Orders for the Services shall be deemed to be acceptance of the Proposal pursuant to these Terms and conditions.

3 PRICE AND PAYMENT

- 3.1 The price for the Services is as specified in the Proposal and is subject to VAT and any other applicable charges outlined in the Proposal.
- 3.2 Payment of the price shall be in the manner specified in the Proposal.
- 3.3 If the Client fails to make any payment within 14 days of it becoming due, the Supplier shall be entitled to:
 - 3.3.1 Cancel the Contract or suspend any further provision of Services.
 - 3.3.2 Charge interest at the rate of 5% above National Westminster Bank Plc base rate on the outstanding amounts. This shall accrue and be calculated on a daily basis from the first day after the payment period has elapsed until payment is received.
 - 3.3.3 Claim interest and compensation for debt recovery costs under the Late Payment of Commercial Debts (Interest) Act 1998 and the Late Payment of Commercial Debts Regulations 2002.
- 3.4 Time of Payment is of the essence.
- 3.5 For the purposes of these Conditions payment is received when received by the supplier in cleared funds.

4 EXPENSES

- 4.1 The Supplier retains the right to charge reasonable expenses when carrying out work for the Client, should those expenses be incurred outside the remit of the Proposal, either stated or implied.

5 CLIENT'S OBLIGATIONS

- 5.1 To enable the Supplier to perform its obligations the Client shall:
 - 5.1.1 co-operate with the Supplier.
 - 5.1.2 provide the Supplier with any information reasonably required by the Supplier.
 - 5.1.3 allow the Supplier reasonable access to premises where such access is necessary for the execution of the Contract.
 - 5.1.4 obtain all necessary permissions, licences and consents which may be required before the commencement of the services, the cost of which shall be the sole responsibility of the Client; and
 - 5.1.5 comply with such other requirements as may be set out in the Proposal or otherwise agreed between the parties.

6 SUPPLIER'S OBLIGATIONS

- 6.1 The Supplier shall perform the Services with reasonable skill and care and to a reasonable standard in accordance with recognised standards, regulations and codes of practice.
- 6.2 The Supplier reserves the right to make any changes in the specification of the Product or Services (where applicable) which are required to ensure the Product or Services conform with any applicable health, safety or other statutory or European Union requirements or, where the Product or Services are to be provided to the specification of the Customer, the Supplier reserves the right to make any changes to the specification which do not materially affect the quality or performance of the Product.

7 LIMITATION OF LIABILITY

- 7.1 Nothing in these Terms and Conditions shall exclude or limit the liability of the Supplier for death or personal injury, however the Supplier shall not be liable for any direct loss or damage suffered by the Client howsoever caused, as a result of any negligence, breach of contract or otherwise in excess of the price of the Services.
- 7.2 The Supplier shall not be liable under any circumstances to the Client or any third party for any indirect or consequential loss of profit, consequential or other economic loss suffered by the Client howsoever caused, as a result of any negligence, breach of contract, misrepresentation or otherwise.
- 7.3 The Client agrees to indemnify the Supplier and its directors, officers, employees, and agents against any damages, losses, costs, claims or expenses incurred by the Supplier towards a third party arising out of or in connection with the Services, Work Product, designs, prototypes, documents and incidental goods supplied or to be supplied to the Client by the Supplier whether arising by reason of the Supplier's negligence or otherwise.
- 7.4 The Supplier will not accept responsibility for any unintentional infringement of existing patents, registered designs or copyrights unless specifically commissioned to undertake searches or to undertake the employment of an agent for those purposes.
- 7.5 All efforts will be made to comply with relevant standards and legislation as detailed in the Proposal however the Client is solely responsible to test the designs and any prototypes and to validate documents that the Supplier may provide. The Client is solely responsible to ensure that any resulting products are tested, manufactured, packaged, labelled (including adequate warnings), sold, and used in a safe and careful manner and in compliance with all applicable laws, regulations, and appropriate industry standards. Unless otherwise specifically stated in these Terms & Conditions, the Client is solely responsible for obtaining any applicable or necessary approvals. The Client assumes all responsibility for any information and/or specifications it provides to the Supplier and agrees that, unless specifically stated in these Terms & Conditions, the Supplier may rely on such information and/or specifications without independent verification.
- 7.6 For the avoidance of doubt, time shall not be of the essence and the Supplier shall incur no liability to the Client in respect of any failure to complete the Services or supply Products by any agreed completion date.

8 VARIATION

- 8.1 If either party requests a change to the scope or execution of the Services, We shall, within a reasonable time, provide a written estimate to the Customer of the likely time required to implement the change, any necessary variations to the Contract Price arising from the change and any other impact of the change on the Contract.
- 8.2 If the Customer wishes Us to proceed with the change, We have no obligation to do so until the parties have agreed the necessary variations to the Contract Price.
- 8.3 We may charge for the time we spend assessing a request for change from the Customer in accordance with their normal hourly rates.
- 8.4 Once We receive authorisation from the Customer for the additional cost an invoice will be raised and issued for the change in contract price. Payment terms for this invoice will be seven working days from date of invoice.

9 CANCELLATIONS

- 9.1 The Client may cancel an Order by notifying the Supplier in writing at the address above within 5 days of placing an Order and any deposit paid will be refunded in full, subject the provisions of Clause 8.2.
- 9.2 Contracts, design works, or any undertaking that is rescheduled, delayed or cancelled within 28 days of the agreed start date will be charged at full rate or subject to charge based on the loss of earning or cost incurred, related to the cancellation.
- 9.3 If the Client fails to cancel the order within the time specified in Clause 8.2 any fee paid may not be returnable.

10 Risk and property

- 10.1 The risk in Products delivered to the Customer shall pass to the Customer on delivery.
- 10.2 Title in Products delivered to the Customer remains with Us until:
- 10.2.1 the full Contract Price has been received by Us in cleared funds; and
 - 10.2.2 any and all other sums, which are, or which become due from the Customer to Us on any account with Us, have been received by Us.

11 FORCE MAJEURE

- 11.1 An Event Outside Our Control means any act or event beyond Our reasonable control, including without limitation, strikes, lockouts or other industrial action by third parties, breakdown of plant or machinery or shortage or unavailability of raw materials from a natural source of supply, civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war, fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster, or failure of public or private telecommunications networks.
- 11.2 Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its control as defined but not limited to events detailed in Clause 9 and either party shall be entitled to a reasonable extension of its obligations.

12 Intellectual property rights

- 12.1 All Intellectual Property Rights in or arising out of the design or manufacture of the Product, the performance of the Services and all documents, information and materials provided by Us relating to the Products and Services which existed prior to the commencement of the Contract shall be owned absolutely by Us.
- 12.2 Insofar as any Intellectual Property Rights in and to the Product or the Services do not automatically vest in Us on their creation, the Customer hereby irrevocably and unconditionally assigns any and all such Intellectual Property Rights to Us and undertakes to execute any documents and do all things required to ensure that We obtain the full benefit of this clause.
- 12.3 The Customer shall not, at any time, whether on its own behalf or on the behalf of or in conjunction with any other person or firm, utilise any Intellectual Property Rights arising out of the Product or Services, or any document or design produced by or on behalf of Us, for the purposes of designing or manufacturing any product, which is the same as or comprises a substantial copy of all or any part of the Product (contravening product).
- 12.4 The Customer hereby grants the Supplier an irrevocable right to enter onto any of the Customer's premises on which the Supplier has any reason to believe a contravening product is being manufactured in order to inspect the suspected contravening product.

13 Health and safety

- 13.1 The Customer agrees to:
- 13.1.1 pay due regard to all information provided by Us relating to the installation and use of the Product necessary to ensure the Product will be safe and without risk to health at all times when the Product is being set, used, cleaned or maintained by any person.

- 13.1.2 comply with the General Product Safety Regulations 1994 if and to the extent that they are applicable to the Product.
- 13.1.3 indemnify Us in respect of any and all claims arising from the Product being unsafe as a result of the activities of the Customer or any of their employees, agents and subcontractors or any person under the actual or apparent authority of the Customer; and
- 13.1.4 monitor the safety of the Product, to pass on to us information as to the risks of the Product and to co-operate in any action We may decide to take to avoid those risks.

14 Lien

- 14.1 We shall have a general lien (together with a power of sale) on all property owned by the Customer in Our possession in satisfaction of any payment due or owing to Us by the Customer on any account.

15 SEVERANCE

If any term or provision of these Terms and Conditions is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Terms and Conditions had been agreed with the invalid, illegal or unenforceable provision eliminated.

16 OTHER IMPORTANT TERMS

- 16.1 We may transfer Our rights and obligations under these Terms to another organisation, and We will always notify you in writing if this happens, but this will not affect your rights or Our obligations under these Terms.
- 16.2 This contract is between you and Us. No other person shall have any rights to enforce any of its terms.
- 16.3 Each of the paragraphs of these Terms operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining paragraphs will remain in full force and effect.
- 16.4 If We fail to insist that you perform any of your obligations under these Terms, or if We do not enforce Our rights against you, or if We delay in doing so, that will not mean that We have waived Our rights against you and will not mean that you do not have to comply with those obligations. If We do waive a default by you, We will only do so in writing, and that will not mean that We will automatically waive any later default by you.
- 16.5 These Terms are governed by English law. You and We both agree to submit to the non-exclusive jurisdiction of the English courts. However, if you are a resident of Northern Ireland, you may also bring proceedings in Northern Ireland, and if you are a resident of Scotland, you may also bring proceedings in Scotland.

17 HOW WE MAY USE YOUR PERSONAL INFORMATION

We will use the personal information you provide to Us to:

- 17.1 provide the Goods and/or Services.
- 17.2 process your payment for such Goods and/or Services; and
- 17.3 inform you about similar products or services that We provide, but you may stop receiving these at any time by contacting Us.
- 17.4 We will not give your personal data to any third party.

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