

## TERMS AND CONDITIONS OF PURCHASE

### 1 DEFINITIONS AND INTERPRETATION

1.1 In these terms and conditions unless the context otherwise requires, reference to the plural includes reference to the singular and vice versa, reference to any particular gender includes reference to the other genders, reference to a clause is to a clause of these terms and conditions and:-

**“Agreement”**

means the binding contract, created by the Supplier's acceptance of a Purchase Order in accordance with Clause 2 below, comprising these written terms and conditions and the Purchase Order;

**“Price”**

means the price payable for the Products and/or Services, as set out in the Purchase Order;

**“Products”**

means the products (if any) to be provided by the Supplier pursuant to the Purchase Order, including any product(s) arising out of the provision of the Services;

**“Purchase Order”**

means any purchase order incorporating these terms and conditions;

**“Services”**

means the services (if any) to be provided by the Supplier pursuant to the Purchase Order;

**“AddingValue”**

means AddingValue Business Limited and/or AddingValue Live Limited whose principle place of business is The Hub, 57 Holly Road, Twickenham, Middlesex TW1 4HW; and

**“Supplier”**

means the supplier named on the Purchase Order.

### 2 AGREEMENT

2.1 AddingValue's Purchase Order or email Purchase Order constitutes an offer by AddingValue to purchase the Products and/or Services specified on the Purchase Order. A binding contract shall only be formed when the Supplier indicates its acceptance of the Purchase Order, either expressly by issuing a written notice of acceptance to AddingValue, or impliedly by starting to supply the Products and/or Services ordered.

2.2 By accepting AddingValue's Purchase Order for Products and/or Services, the Supplier shall be deemed to have accepted the terms and conditions of this Agreement, which shall govern the purchase of the Products and Services to the exclusion of any other

terms and conditions (including without limitation any terms and conditions of the Supplier).

2.3 This Agreement may be amended or varied by written agreement between the Supplier and AddingValue. The Supplier acknowledges that it has had the opportunity to negotiate the terms of this Agreement.

### 3 SUPPLY OF GOODS AND SERVICES

3.1 The Supplier shall provide the Products and Services to AddingValue in accordance with the terms and conditions of this Agreement.

3.2 The Supplier shall apply such time, attention, resources, trained personnel and skill as may be necessary or appropriate for the supply of the Products and Services ordered.

3.3 AddingValue may require any variations and/or additions to the Purchase Order, subject to the parties agreeing an appropriate adjustment to the Price.

3.4 The Supplier shall deliver the Products to AddingValue, at the Supplier's risk and cost, by the date(s) and to the delivery address(es) specified by AddingValue. Risk and title in the Products shall pass to AddingValue upon delivery. If AddingValue rejects any Products for failure to conform to the warranty contained in Clause 6.1.4, risk in the rejected Products shall revert to the Supplier.

3.5 The Supplier shall perform all Services within the timescales specified by AddingValue.

3.6 Time shall be of the essence with respect to the delivery of Products and the supply of Services unless otherwise agreed by AddingValue in writing.

3.7 If requested by AddingValue, representatives of the Supplier will attend progress and review meetings with AddingValue and, if appropriate, AddingValue's clients for whom the Products and/or Services have been ordered, to review the status and progress of the protection of the Products and/or provision of the Services, discuss developments, consider proposals, agree actions and seek to resolve any issues arising.

### 4 PAYMENT

4.1 The Supplier may invoice AddingValue for the Price in the amount(s) and on the date(s) set out in the

Purchase Order or if no dates are set out then on the date of delivery of the relevant Goods and/or Services.

4.2 Unless otherwise agreed in writing, the Supplier's undisputed invoices shall be payable within 60 days of the date upon which AddingValue receives the relevant invoice. If any part of an invoice is disputed AddingValue shall notify the Supplier as soon as reasonably practicable and pay the undisputed part of the invoice (if any) in accordance with this clause 4.2. The parties will then discuss the dispute in good faith with a view to resolving it. When a disputed invoice is agreed the agreed amount will

become due and payable 14 days after such dispute is resolved or, if later, 60 days after the date of receipt of the original invoice by AddingValue. If a reduction to the invoiced amount is agreed the Supplier will issue AddingValue with a corresponding credit note. If AddingValue has not paid any invoice by its due date, the Supplier may charge interest on the outstanding amount from the due date until the date of payment at the annual rate of 2% above Bank of England's base lending rate from time to time. The parties agree that this is a "substantial remedy" for the purposes of the Late Payment of Commercial Debts Act 1998.

4.3 If the Supplier has provided AddingValue with an estimate or budget for any element of the Products and/or Services to be supplied by it, and later has reason to believe that the Price will or may exceed such estimate or budget, the Supplier shall immediately advise AddingValue, and AddingValue shall not be obliged to pay the Supplier any excess above such quote, estimate or budget which is not so advised to and agreed by AddingValue.

4.4 Where the Price for Services is payable on a daily, hourly or other timespent basis, all invoices shall be accompanied by adequate records and supporting documentation in relation to the time spent by the Supplier's personnel in performing the Services.

4.5 If the Supplier has provided AddingValue with a fixed quote for any element of the Products and/or Services to be supplied by it then the Supplier may not charge more than this fixed quote for the relevant element of the Products and/or Services.

4.6 All sums referred to in this Agreement are exclusive of value added tax and any other duty or tax, which shall (if and to the extent applicable) be payable by AddingValue.

## **5 CONFIDENTIALITY**

5.1 The Supplier acknowledges that, in the course of supplying the Products and/or Services hereunder, it may receive or otherwise become aware of confidential information relating to AddingValue and/or its clients ("Confidential Information"). The Supplier agrees to keep all Confidential Information confidential at all times and undertakes not to use or disclose such Confidential Information other than for the sole purpose of performing its obligations hereunder.

5.2 Confidential Information shall exclude information which:

5.2.1 at the time of receipt by the Supplier is publicly available;

5.2.2 subsequently becomes publicly available through no fault of the Supplier, its officers, employees or agents;

5.2.3 is lawfully received by the Supplier from a third party on an unrestricted basis; and/or

5.2.4 is already known to the Supplier before receipt hereunder.

5.3 The Supplier shall not be in breach of its obligations under this Clause 5 if it discloses AddingValue's Confidential Information in circumstances where such

disclosure is required by law, regulation or order of a competent authority, provided that where permissible AddingValue is given reasonable advance notice of the intended disclosure and a reasonable opportunity to challenge the same.

5.4 Upon a written request from AddingValue or the termination of this Agreement for any reason, the Supplier shall return any and all Confidential Information of AddingValue or its clients then in the Supplier's possession or control and will not retain any copies of the same.

## **6 WARRANTIES**

6.1 The Supplier warrants that:

6.1.1 the personnel who perform the Services hereunder are and shall be competent and suitable in every respect, whether as to qualifications, experience or otherwise, to provide the Services;

6.1.2 the Services will be carried out in a competent and professional manner and with reasonable skill and care, strictly in accordance with the terms of this Agreement and all specifications, requirements and quality standards specified by AddingValue. If the Supplier's performance of the Services is inadequate, then without prejudice to AddingValue's other remedies hereunder, the Supplier shall (if AddingValue requests) perform the Services again at no extra charge;

6.1.3 it shall comply with all applicable laws, regulatory requirements and codes of practice;

6.1.4 the Products will be of a high standard of design and shall be free from defects in material and workmanship, shall be of satisfactory quality, fit for the purpose for which they are intended to be used, and shall comply with all specifications, requirements and quality standards supplied or communicated by AddingValue to the Supplier. If any Products fail to comply with this warranty, AddingValue shall notify the Supplier in writing and the Supplier shall (without prejudice to AddingValue's other rights and remedies) collect the defective Products at a time and place convenient to AddingValue and shall promptly (i) repair or replace the Products or, at AddingValue's option, (ii) refund to AddingValue the full Price paid for the relevant Products.

6.1.5 it shall not make any statement, orally or in writing, publicly or privately, or do any act or otherwise conduct itself in such a manner as will or may in the reasonable opinion of AddingValue disparage AddingValue, its clients, its or their businesses, products or services.

## **7 LIABILITY AND INSURANCE**

7.1 The Supplier shall be liable for and shall indemnify AddingValue against any and all claims, actions, liabilities, losses, damages or expenses (including legal expenses) incurred by AddingValue which arise out of or in connection with, directly or indirectly, the Supplier's performance of, or failure to perform, or delay in performing this Agreement, including without limitation any losses, damages or expenses arising out of or in connection with: 7.1.1 any infringement or alleged infringement of any intellectual property rights caused by the use of any Products and/or Services; and

7.1.2 any claim made against AddingValue in respect of death or personal injury sustained by any third party to the extent that such death or personal injury was caused by, relates to or arises from the Products and/or the Supplier's performance of, or failure to perform, or delay in performing the Services.

7.2 The Supplier shall effect and maintain insurance policies with levels of cover reasonably adequate in all the circumstances in respect of the Supplier's obligations and liabilities under this Agreement. The Supplier shall provide written evidence of such insurance to AddingValue on AddingValue's request.

## **8 TERM AND TERMINATION**

8.1 AddingValue may at any time and for any reason cancel the Purchase Order in whole or in part on written notice to the Supplier. Upon receipt of such a notice, the Supplier will immediately cease all work on the cancelled part(s) of the Purchase Order and AddingValue shall pay the Supplier for the Products delivered and/or Services performed in accordance with this Agreement up to and including the date of cancellation.

8.2 AddingValue may terminate this Agreement with immediate effect upon written notice to the Supplier in the event of:

8.2.1 any material or persistent breach of this Agreement by the Supplier which breach is either irreparable or, if remediable, is not remedied within 14 days after AddingValue has served a written notice on the Supplier specifying the nature of the breach and requiring that the same be remedied; or

8.2.2 the Supplier ceasing or threatening to cease to carry on its business or becoming insolvent, entering into liquidation, whether voluntary or compulsory, passing a resolution for its winding up, having a receiver or administrator appointed over the whole or any part of its assets, making any composition or arrangement with its creditors or taking or suffering any similar action in consequence of its debt.

8.3 Upon termination of this Agreement for any reason, the Supplier shall (as directed by AddingValue) immediately deliver to, or otherwise dispose of, any and all materials and property in its possession, custody or control belonging or relating to AddingValue or its clients, including without limitation all partially completed Products on which the Supplier has already started work and all materials and information reasonably required by AddingValue to complete such partially completed Products.

8.4 The terms of and obligations imposed by Clauses 5, 8.3 and 9 shall survive the variation or termination of this Agreement for any reason.

## **9 INTELLECTUAL PROPERTY RIGHTS**

9.1 Subject to Clause 9.2, the Supplier hereby irrevocably and unconditionally assigns to AddingValue (by present assignment of future copyright) and, in the case of moral rights, waives in favour of AddingValue (and shall procure that its officers and employees assign to and waive in favour of AddingValue) all property, copyright, rights in data and design rights (both registered and unregistered) in the Products.

9.2 If and to the extent that any of the Products and/or Services comprise or include any copyright work or design rights (whether registered or unregistered) or rights in data belonging to any third party ("Third Party Materials"), the Supplier shall procure that AddingValue and any client of AddingValue for whom the relevant Products and/or Services were purchased shall be licensed (free of charge and for such period as may be necessary or desirable to enable AddingValue or such client to exploit the Products and/or Services for the purposes contemplated hereunder) to use for any purpose, implement, duplicate by any means, represent, display, translate, adapt and distribute to any person all or part of such Third Party Materials.

9.3 The Supplier agrees, at AddingValue's request, to take all such actions and execute all such documents as may in AddingValue's opinion be necessary to enable AddingValue to obtain, defend or enforce its rights in the Products and/or Services and/or to assign or license such rights to the client for whom the relevant Products and/or Services were purchased, and shall not do or fail to do any act which would or might prejudice AddingValue's rights under this Clause 9.

9.4 If the performance of the Services or the use of or dealing with any Products by AddingValue or its client for whom such Services and/or Products were ordered infringes or in AddingValue's opinion is likely to be held to infringe any intellectual property right belonging to a third party, the Supplier shall at AddingValue's option: (i) procure for AddingValue and/or its client the right to continue to receive the Services and use the Products in question, free of any liability for such infringement; (ii) modify the Services and/or Products in question so that they become non-infringing while otherwise complying with the requirements of this Agreement; or (iii) substitute the Services and/or Products in question with suitable noninfringing replacement(s).

9.5 Each of AddingValue and the Supplier undertake to comply with the provisions of the Data Protection Act 1998 in relation to the provisions of the Products and/or Services.

## **10 NOTICES**

10.1 Unless otherwise expressly stated in this Agreement, all notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed duly served if delivered by hand or sent by fax or post to the intended recipient at the address specified in this Agreement or such other address as either party may notify to the other for this purpose from time to time.

10.2 Any notice shall be deemed to have been duly served:-

10.2.1 if delivered by hand, on delivery;

10.2.2 if sent by post, two working days after posting;

10.2.3 if sent by fax:

10.2.3.1 during normal business hours, immediately on transmission;

10.2.3.2 outside normal business hours, on the following working day, provided that, in each case, (i) a confirmatory transaction report is obtained and retained by the sender and (ii) a confirmatory copy is sent by first class pre-paid post or by hand by the end of the next working day.

## **11 THIRD PARTY RIGHTS**

11.1 Any client of AddingValue for whose benefit any Products and/or Services are purchased by AddingValue shall have the right to enforce the terms of this Agreement subject to and in accordance with the Contracts (Rights of Third Parties) Act 1999 (the "Third Party Rights Act").

11.2 Except as provided in Clause 12.1 above, a person who is not a party to this Agreement shall have no rights under the Third Party Rights Act to enforce any term of this Agreement.

## **12 GENERAL**

12.1 The Supplier may not assign, transfer, charge, or otherwise dispose of this Agreement or any of its rights or obligations arising under this Agreement without the prior written consent of AddingValue.

12.2 The Supplier may not sub-contract its obligations under this Agreement without the prior written consent

of AddingValue (such consent not to be unreasonably withheld or delayed).

12.3 AddingValue may assign this Agreement in whole or in part, upon written notice to the Supplier, to any third party to whom AddingValue's business or part thereof is transferred pursuant to the sale of all or part of the assets of and/or shares of AddingValue.

12.4 The failure of either party to enforce or to exercise at any time or for any period of time any term of or any right pursuant to this Agreement does not constitute, and shall not be construed as, a waiver of such term or right and shall in no way affect that party's right later to enforce or to exercise it.

12.5 This Agreement contains all the terms agreed between the parties regarding its subject matter and supersedes any prior agreement, understanding or arrangement between the parties, whether oral or in writing.

12.6 The construction, validity and performance of this Agreement shall be governed by the laws of England and Wales and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales to resolve any dispute between them.

12.7 Any valid alteration to or variation of this Agreement must be in writing and signed on behalf of both AddingValue and the Supplier.