



DATED

10th March, 2017

TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

THE DISTRIBUTION SOLUTION LIMITED



THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 7.

1. INTERPRETATION

1.1 Definitions:

Acceptance: means the Supplier's written confirmation of the Order.

Business Day: a day other than a Saturday, Sunday or public or bank holiday in Northern Ireland.

Charges: the charges payable by the Customer for the supply of the Services in accordance with clause 5.

Commencement Date: has the meaning set out in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 11.4.

Contract: the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions.

Customer: the person or firm who purchases Services from the Supplier.

Customer Default : has the meaning set out in clause 4.2.

Deliverables: the deliverables set out in the Acceptance.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), 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.



Order: the Customer's order for Services.

Prohibited Items: include offensive material inciting racial hatred or promoting discrimination based on race, sex, religion, national origin, physical ability, sexual orientation or age, obscene material including pornographic material, living animals, firearms and munitions, stolen goods, items that infringe another's intellectual property rights, illegal or prescription drugs, offensive weapons and any other types of products that the Supplier in its absolute discretion deems prohibited items.

Services: the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Specification.

Specification: the description or specification of the Services provided in writing by the Supplier to the Customer in the Acceptance.

Supplier: The Distribution Solution (NI) Limited registered in Northern Ireland with company number NI068803.

Supplier Materials: means all materials, equipment, documents and other property of the Supplier.

Interpretation:

- (a) A reference to a statute or statutory provision is a reference to it 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.
- (b) 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.
- (c) A reference to **writing** or **written** includes email.



2. BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Supplier issues its Acceptance at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.4 Descriptive particulars of the Services set out in the Acceptance are stated in good faith. Minor deviations therefrom shall not constitute a breach of the Contract or otherwise render the Supplier liable to the Customer.
- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue.
- 2.7 The Acceptance becomes binding on the Customer and the Supplier reserves the right to refuse to accept any attempted cancellation or amendment by the Customer. Should the Supplier accept any cancellation or amendment requested by the Customer, the Customer agrees to fully indemnify the Supplier in respect of all direct and indirect loss and expense incurred by it as a result of any such cancellation or amendment.



3. SUPPLY OF SERVICES

- 3.1 The Supplier shall supply the Services to the Customer in accordance with the Specification in all material respects. The Services shall be limited to those obligations expressly set out in the Acceptance.
- 3.2 The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Acceptance, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 3.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

4. CUSTOMER'S OBLIGATIONS

The Customer shall:

- (a) ensure that the terms of the Order are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Services;
- (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier;
- (d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;



- (e) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;
- (f) comply with any additional obligations as set out in the Specification;
- (g) ensure that the Deliverables do not include any Prohibited Items;
- (h) meet all VAT, customs, import, export and excise duty and other taxes associated with the Deliverables;

4.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

5. CHARGES AND PAYMENT

5.1 The Charges for the Services shall be on a time and materials basis:

- (a) the Charges shall be calculated in accordance with the Supplier's standard daily fee rates, as set out in the Acceptance;
- (b) the Supplier's standard daily fee rates for each individual are calculated on the basis of an eight-hour day from worked on Business Days;



- (c) the Supplier shall be entitled to charge an overtime rate of 150 per cent of the standard daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 5.1(b);
 - (d) the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials;
 - (e) the Supplier shall be entitled to charge the Customer for additional services reasonably undertaken by the Supplier in respect of any mistakes and/or omissions in the Order; and
 - (f) the Supplier shall be entitled to charge the Customer for storage of Deliverables beyond the date of delivery stated in the Acceptance for any reason outside of the control of the Supplier.
- 5.2 The Supplier reserves the right to increase its standard daily fee rates, provided that such charges cannot be increased more than once in any 12 month period. Rates will increase annually based upon the retail price index.
- 5.3 The Supplier may require from the Customer satisfactory trade and banker's references prior to Acceptance. The Supplier in its absolute discretion reserves the right to require payment of the Charges at the time of Acceptance and prior to the provision of the Services.
- 5.4 The Supplier reserves the right to postpone the delivery of Deliverables under this or any other contract if any amounts due on this or any other contract remain unpaid at the due date or dates. The Customer shall be liable for any increased costs incurred as a result of any such postponement.
- 5.5 The Supplier shall invoice the Customer on completion of the Services.

The Customer shall pay each invoice submitted by the Supplier:



- (a) within 14 days of the date of the invoice unless otherwise specified in the Acceptance; and
- (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and

time for payment shall be of the essence of the Contract.

- 5.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.7 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per cent per annum above Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 5.8 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

6. INTELLECTUAL PROPERTY RIGHTS

- 6.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.
- 6.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.
- 6.3 All Supplier Materials are the exclusive property of the Supplier.



7. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 7.1 Nothing in the Contract shall limit or exclude the Supplier's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - (b) fraud or fraudulent misrepresentation; or
 - (c) breach of the terms implied by Section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.
- 7.2 Subject to clause 7.1, the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
- (a) loss of profits;
 - (b) loss of sales or business;
 - (c) loss of agreements or contracts;
 - (d) loss of anticipated savings;
 - (e) loss of use or corruption of software, data or information;
 - (f) loss of damage to goodwill; and
 - (g) any indirect or consequential loss.
- 7.3 Subject to clause 7.1, the Supplier's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to the total Charges paid under the Contract.
- 7.4 The terms implied by Sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 7.5 This clause 7 shall survive termination of the Contract.



8. INSURANCE & THE COMPANY'S LIABILITY

- 8.1 Unless expressly agreed, the Supplier does not insure the Deliverables.
- 8.2 The Customer agrees to insure the Deliverables against all insurable risks to their full insurable value (including all duties and taxes) from the date of Acceptance.
- 8.3 Subject to Condition 8.4, the Supplier shall have no liability for any loss which the Customer sustains, however arising ("Loss").
- 8.4 If and to the extent that Loss is directly caused by negligence or wilful act or default of, or breach of duty by, the Supplier, its employees (acting in furtherance of their duties as employees) or sub-contractors or agents (acting in furtherance of their duties as subcontractors or agents) and subject to Conditions 8.5, 8.8 and 8.9, the Supplier will accept liability for Loss assessed on normal legal principles but not exceeding the Limit fixed by Condition 8.6. Any quantification of amount or value includes duties and taxes.
- 8.5 In no case shall the Supplier be liable for any lost profit, income or savings, wasted expenditure, liquidated damages payable by the Customer or on its behalf, or indirect or consequential loss.
- 8.6 In no case shall any liability of the Supplier (including inter alia any liability in respect of duties and taxes) exceed the Limit, fixed as follows :
- (a) The Customer may specify the Limit as an amount (in Sterling, US Dollars or Euros) per tonne weight of the Deliverables by notice in writing stating the Limit and the nature and maximum value of the Deliverables, including duty and taxes. The Limit nominated by the Customer shall apply in respect of any cause of action arising after the date of nomination for so long as the nomination remains in effect. It is a condition of the contract that the Customer pays within 7 days of receipt the Supplier's invoices for its costs in insuring against its potential liability up to the Limit, and/or to the extent that the Supplier elects to carry the risk itself, its extra charge equivalent to the estimated or likely cost of such insurance.



- (b) If the Supplier having made reasonable efforts is unable to obtain insurance on reasonable terms to cover its liability up to the Limit nominated by the Customer, or if the Customer has not yet paid any invoice issued under Condition 8.6(a), the Supplier may give 3 working days' written notice, and the Limit for causes of action arising after expiry of the notice shall be £100 sterling per tonne weight of the Deliverables.
 - (c) Unless and until a higher Limit has been fixed under Condition 8.6(a) and continues in effect, the Limit shall be £100 sterling per tonne weight of the Deliverables.
- 8.7 Without prejudice to the Supplier's rights under clause 5.9 to be paid free from deduction or set-off, any limitation of liability on the part of the Supplier shall be applied to any claim by the Customer before any set off or counterclaim is asserted against money due to the Supplier.
- 8.8 The Supplier shall not be liable for any claim unless it has received written notice of it within 10 days of the event giving rise to the claim coming to the knowledge of the Customer or consignee; and it has received, within 21 days of the event giving rise to the claim coming to the knowledge of the Customer or consignee, sufficient detail in writing to enable investigation. In the case of failure to deliver, time shall run from the first working day after the expected date of delivery.
- 8.9 No legal proceedings (including any counterclaim) may be brought against the Supplier unless they are issued and served within 9 months of the event giving rise to the claim.
- 8.10 The Supplier shall not be liable for any Loss to the extent that it is caused or contributed to by a breach of any of the Customer's obligations, or by a person for whom the Supplier is not responsible, or by any of the circumstances by virtue of which the Company is relieved of its obligations under clause 8.
- 9. TERMINATION**
- 9.1 Without limiting its other rights or remedies, either party may terminate the Contract by giving the other party one months' written notice.
- 9.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:



- (a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of the Customer being notified in writing to do so;
 - (b) the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - (c) the Customer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (d) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 9.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the 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.
- 9.4 Without limiting its other rights or remedies, the Supplier may suspend provision of the Services under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 9.2(b) to clause 9.2(d) or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

10. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason:



- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (c) clauses which expressly or by implication survive termination shall continue in full force and effect.

11. GENERAL

11.1 **Force majeure.** Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

11.2 Assignment and other dealings.

- (a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- (b) The Customer shall not, without the prior written consent of the Supplier, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

11.3 Confidentiality.

- (a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.3(b).
- (b) Each party may disclose the other party's confidential information:



- (i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11.3; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

11.4 Entire agreement.

- (a) This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

11.4 **Variation.** No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

11.5 **Waiver.** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:

- (a) waive that or any other right or remedy; or
- (b) prevent or restrict the further exercise of that or any other right or remedy.



11.6 Severance.

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract

11.7 Frustration

The Supplier shall be released from all liability under the Contract between it and the Customer whenever and to the extent that the fulfilment thereof is frustrated, prevented or delayed for a period of more than 3 months by reason of:

- (a) the effect of any statute, rule, regulation, order, directive or recommendation issued by any Government, Government Department or other competent authority.
- (b) The inability of the Company to obtain or renew any requisite authorisation or licence.
- (c) The non-availability of suitable material or labour or of necessary power or other services.



11.8 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier or email.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.8(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

11.9 Third parties.

No one other than a party to the Contract shall have any right to enforce any of its terms.

11.10 Governing law.

The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of Northern Ireland.

11.11 Jurisdiction.

Each party irrevocably agrees that the courts of Northern Ireland shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.