

CHECKMATE AUDITOR LIMITED

TERMS AND CONDITIONS

1. **Interpretation**
- 1.1 The definitions and rules of interpretation in this condition apply in these conditions.

"Buyer" the person, firm or company who purchases the Goods or Services from the Company;
"Company" Checkmate Auditor Limited of 44F1 Europa Business Park, Bird Hall Lane, Cheadle Heath, SK3 0XA;
"Company's Premises" 44F1 Europa Business Park, Bird Hall Lane, Cheadle Heath, SK3 0XA
"Contract" any contract between the Company and the Buyer for the sale and purchase of the Goods or Services, incorporating these conditions;
"Delivery Point" the place where delivery of the Goods is to take place under condition 4;
"Goods" any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them);
"Intellectual Property" means any and all patents (including rights in or to inventions), trade marks, service marks, rights in designs, trade, business or domain names, goodwill associated with the foregoing, copyright including rights in computer software and databases, topography rights (in each case whether registered or not and any applications for registration of any of the foregoing), database rights, rights in know how, trade secrets, and other confidential information, and any similar or analogous rights in any jurisdiction which may now or in the future subsist in any part of the world, and Intellectual Property Rights shall be construed accordingly;
"Services" any services agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them).
- 1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.3 Words in the singular include the plural and in the plural include the singular.
- 1.4 A reference to one gender includes a reference to the other gender.
- 1.5 Conditions do not affect the interpretation of these conditions.
2. **Application of Terms**
- 2.1 Subject to any variation under condition 2.3 the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).
- 2.2 No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.3 These conditions apply to the Company's sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by two directors of the Company. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.
- 2.4 Each order or acceptance of a quotation for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Goods and / or Services subject to these conditions.
- 2.5 No order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer and / or the Services are commenced by the Company.
- 2.6 The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.
- 2.7 Any quotation given on the basis that no Contract shall come into existence until the Company despatches an acknowledgement of order to the Buyer. Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.
3. **Description of Goods and / or Services**
- 3.1 The quantity and description of the Goods and / or Services shall be as set out in the Company's quotation or acknowledgement of order.
- 3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and / or Services described in them. They shall not form part of the Contract and this is not a sale by sample.
4. **Delivery**
- 4.1 Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place at the Company's Premises.
- 4.2 The Buyer shall take delivery of the Goods within 7 days of the Company giving it notice that the Goods are ready for delivery.
- 4.3 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.
- 4.4 Subject to the other provisions of these conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 90 days.
- 4.5 If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:
 - 4.5.1 risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence);
 - 4.5.2 the Goods shall be deemed to have been delivered; and
 - 4.5.3 the Company may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 4.6 The Buyer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for loading the Goods.
- 4.7 If the Company delivers to the Buyer a quantity of Goods of up to 10% more or less than the quantity accepted by the Company, the Buyer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such goods at the pro rata Contract rate.
- 4.8 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.
- 4.9 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.
5. **Non Delivery**
- 5.1 The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 5.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Buyer gives written notice to the Company of the non-delivery within 7 days of the date when the Goods would in the ordinary course of events have been received.
- 5.3 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.
6. **Risk / Title**
- 6.1 The Goods are at the risk of the Buyer from the time of delivery.
- 6.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
 - 6.2.1 the Goods;
 - 6.2.2 all other sums which are or which become due to the Company from the Buyer on any account.
- 6.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:
 - 6.3.1 hold the Goods on a fiduciary basis as the Company's bailee;
 - 6.3.2 store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
 - 6.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
 - 6.3.4 maintain the Goods in satisfactory condition and at the Buyer's expense keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company.
- 6.4 The Buyer's right to possession of the Goods shall terminate immediately if:
 - 6.4.1 the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and / or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 of the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
 - 6.4.2 the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his / its property or obtained against him / it, or fails to observe or perform any of his / its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
 - 6.4.4 the Buyer encumbers or in any way charges any of the Goods.
- 6.5 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- 6.6 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.
- 6.7 Where the Company is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.
- 6.8 On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this condition 6 shall remain in effect.
7. **Intellectual Property**
- 7.1 The Buyer acknowledges and agrees that all Intellectual Property in the Goods and Services shall remain the property of the Company (or its relevant licensors) and nothing in these terms shall operate to transfer or vest any such rights to the Buyer.
8. **Company's Obligations - Services**
- 8.1 Completion of the Services shall take place at the Company's Premises or such other premises nominated by the Company from time to time.
- 8.2 The Company shall use reasonable endeavours to provide the Services to the Buyer and to meet any performance dates specified in the written acknowledgement of the order but any such dates shall be estimates only and time shall not be of the essence.
9. **Buyer's Obligations - Services**
- 9.1 The Buyer shall:
 - 9.1.1 co-operate with the Company in all matters relating to the Services;
 - 9.1.2 provide if necessary, for the Company, its agents, sub-contractors and employees, in a timely manner and at no charge, access to the Buyer's premises, office accommodation, data and other facilities as requested by the Company;
 - 9.1.3 provide in a timely manner, such information as the Company may request and ensure that it is accurate in all material respects;
 - 9.1.4 obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services in all cases before the date on which the Services are to start;
- 9.2 If the Company's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Buyer, its agents, sub-contractors or employees, the Company shall not be liable for any costs, charges or losses sustained or incurred by the Buyer arising directly or indirectly from such prevention or delay.
- 9.3 The Buyer shall be liable to pay to the Company, on demand, all reasonable costs, charges or losses sustained or incurred by the Company (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property or loss arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Buyer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to the Company confirming such costs, charges and losses to the Buyer in writing.
10. **Lien**
- 10.1 The Company shall be entitled to exercise a lien over the property of the Buyer in the Company's possession until payment is made in full in accordance with the Contract.
11. **Price**
- 11.1 Unless otherwise agreed by the Company in writing, the price for the Goods and / or Services shall be as per the Company's written quotation or the Company's price list at the time of placing the order.
- 11.2 The price for the Goods and / or Services shall be exclusive of any value added tax and carriage, such amounts the Buyer shall pay in addition when it is due to pay for the Goods.
12. **Payment**
- 12.1 Subject to condition 12.5 unless otherwise agreed by the Company that credit facilities apply, payment of the Goods and Services is due on or prior to collection / delivery of the said Goods or Services.
- 12.2 Subject to condition 12.5, where credit facilities have been granted payment of the price for the Goods or Services is due in pounds sterling within 30 days of the date of the invoice raised by the Company.
- 12.3 The Buyer shall have 7 days from the date of the invoice to raise a query in respect of the invoice.
- 12.4 Time for payment shall be of the essence.
- 12.5 No payment shall be made until the Company has received cleared funds.
- 12.6 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.
- 12.7 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.
- 12.8 If the Buyer fails to pay the Company any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 8% above the base lending rate from time to time of the Bank of England, accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
13. **Quality**
- 13.1 Where the Company is not the manufacturer of the Goods, the Company shall endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Company.
- 13.2 The Company warrants that (subject to the other provisions of these conditions) upon delivery the Goods shall:
 - 13.2.1 be of satisfactory quality within the meaning of the Sale of Goods Act 1979;
 - 13.2.2 be reasonably fit for purpose; and
 - 13.2.3 be reasonably fit for any particular purpose for which the Goods are being bought if the Buyer had made known that purpose to the Company in writing and the Company has confirmed in writing that it is reasonable for the Buyer to rely on the skill and judgement of the Company.
- 13.3 The Company shall not be liable for a breach of any of the warranties in condition 13.2 unless:
 - 13.3.1 the Buyer gives written notice of the defect to the Company, and, if the defect is as a result of damage in transit to the carrier, within 7 days of the time when the Buyer discovers or ought to have discovered the defect; and
 - 13.3.2 the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Buyer's cost for the examination to take place there.
- 13.4 The Company shall not be liable for a breach of any of the warranties in condition 13.2 if:
 - 13.4.1 the Buyer makes any further use of such Goods after giving such notice; or
 - 13.4.2 the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or
 - 13.4.3 the Buyer alters or repairs such Goods without the written consent of the Company.
- 13.5 Subject to condition 13.3 and condition 13.4, if any of the Goods do not conform with any of the warranties in condition 13.2 the Company shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if the Company so requests, the Buyer shall, at its own expense, return the Goods or the part of such Goods which is defective to the Company.
- 13.6 If the Company complies with condition 13.5 it shall have no further liability for a breach of any of the warranties in condition 13.2 in respect of such Goods.
14. **Limitation on Liability**
- 14.1 **The Buyer's attention is specifically drawn to the provisions of this condition.**
 - 14.1.1 The following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
 - 14.1.1 any breach of these conditions;
 - 14.1.2 any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and
 - 14.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
 - 14.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
 - 14.3 Nothing in these conditions excludes or limits the liability of the Company:
 - 14.3.1 for death or personal injury caused by the Company's negligence; or
 - 14.3.2 under section 2(3), Consumer Protection Act 1987; or
 - 14.3.3 for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
 - 14.3.4 for fraud or fraudulent misrepresentation.
 - 14.5 Subject to condition 14.2 and condition 14.3:
 - 14.5.1 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and
 - 14.5.2 the Company shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.
15. **Assignment**
- 15.1 The Company may assign the Contract or any part of it to any person, firm or company.
- 15.2 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.
16. **Force Majeure**
- 16.1 The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 56 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.
17. **General**
- 17.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 17.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 17.3 Failure of or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 17.4 Any waiver by the Company of a breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 17.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 17.6 Nothing in the Contract is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 17.7 No variation of the Contract or these conditions shall be valid unless it is in writing and signed by or on behalf of each of the parties.
- 17.8 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.
18. **Communications**
- 18.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by email:
 - 18.1.1 (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company; or
 - 18.1.2 (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Buyer.
- 18.2 Communications shall be deemed to have been received:
 - 18.2.1 if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
 - 18.2.2 if delivered by hand, on the day of delivery; or
 - 18.2.3 if sent by email on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.
- 18.3 Communications addressed to the Company shall be marked for the attention of the Directors.