



KG Washford Limited
Terms & Conditions of Sale
of Goods and Services



The customer's attention is drawn in particular to the provisions of clause 11.

1. INTERPRETATION

1.1 Definitions.

"Conditions":	the terms and conditions set out in this document as amended from time to time in accordance with clause 13.4.
"Contract":	the contract between the Supplier and the Customer for the sale and purchase of the Goods and/or Services in accordance with these Conditions.
"Customer":	the person or firm who purchases the Goods and/or Services from the Supplier.
"Deliverables":	deliverables set out in the Order produced by the Supplier for the Customer.
"Force Majeure Event":	an event or circumstance beyond a party's reasonable control.
"Goods":	the goods (or any part of them) set out in the Order.
"Goods Specification":	any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Customer and the Supplier.
"Order":	the Customer's order for the Goods, as set out in the Customer's purchase order form, the Customer's written acceptance of the Supplier's quotation, or overleaf, as the case may be.
"Services":	the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Service Specification.
"Service Specification":	the description or specification for the Services, that is agreed in writing by the Customer and the Supplier.
"Supplier":	KG Washford Limited (registered in England and Wales with company number 03758292).



1.2 Interpretation:

1.2.1 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.

1.2.2 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.

1.2.3 a reference to **writing** or **written** includes faxes and emails.

2. BASIS OF CONTRACT

2.1 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.

2.2 The Order constitutes an offer by the Customer to purchase the Goods and/or Services in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.

2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, at which point the Contract shall come into existence (**Commencement Date**).

2.4 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

2.5 Any samples, drawings, descriptive matter or advertising produced by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services referred to in them. They shall not form part of the Contract nor have any contractual force.

2.6 A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 30 days from its date of issue.

3. GOODS

3.1 The Goods are described in the Goods Specification.

3.2 The Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of



profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and other professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.

3.3 The Supplier reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirements.

4. DELIVERY OF GOODS

4.1 The Supplier shall ensure that:

4.1.1 each supply of the Goods is accompanied by a delivery note that shows the date of the Order, the contract number, 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, if the Goods are being supplied by instalments, the outstanding balance of Goods remaining to be supplied; and

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

4.2 Dependent on agreement between the Supplier and the Customer, either:

4.2.1 the Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the Goods are ready; or

4.2.2 the Customer shall collect the Goods from the Supplier's premises at Park Farm Industrial Estate, Redditch B98 7SN or such other location as may be advised by the Supplier prior to delivery (**Delivery Location**) within five days of the Supplier notifying the Customer that the Goods are ready.

4.3 Delivery is completed on the completion:

4.3.1 in the case of delivery, the unloading of or depositing of the Goods at the Delivery Location; or

4.3.2 in the case of collection, the loading of or the collection of the Goods at the Delivery Location.



- 4.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.5 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.6 If the Customer fails to take or accept, as the case may be, delivery of the Goods within five days of the Supplier notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract: in respect of the Goods
- 4.6.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the fifth day after the day on which the Supplier notified the Customer that the Goods were ready for delivery; and
- 4.6.2 the Supplier shall store the Goods until delivery takes place and charge the Customer for all related costs and expenses (including insurance).
- 4.7 If fourteen days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not taken or accepted, as the case may be, delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 4.8 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. QUALITY OF GOODS

- 5.1 The Supplier warrants that on delivery, and for a period of 6 months from the date of delivery (**warranty period**), the Goods shall:
- 5.1.1 conform in all material respects with the Goods Specification;
- 5.1.2 be free from material defects in design, material and workmanship;



- 5.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979);
and
- 5.1.4 be fit for any purpose held out by the Supplier.
- 5.2 Subject to clause 5.3, if:
 - 5.2.1 the Customer gives notice in writing to the Supplier during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
 - 5.2.2 the Supplier is given a reasonable opportunity of examining such Goods; and
 - 5.2.3 the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Supplier's cost,

the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:
 - 5.3.1 the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;
 - 5.3.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
 - 5.3.3 the defect arises as a result of the Supplier following any drawing, design or Goods Specification supplied by the Customer;
 - 5.3.4 the Customer alters or repairs such Goods without the written consent of the Supplier;
 - 5.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
 - 5.3.6 the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.



5.6 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

6. TITLE AND RISK

6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

6.2 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

6.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;

6.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

6.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

6.3.4 notify the Supplier immediately if it becomes subject to any of the events listed in clause 10.1; and

6.3.5 give the Supplier such information relating to the Goods as the Supplier may require from time to time.

6.4 Subject to clause 6.5, the Customer may use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods.

6.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 10.1, then, without limiting any other right or remedy the Supplier may have:

6.5.1 the Customer's right to use them in the ordinary course of its business ceases immediately; and

6.5.2 the Supplier may at any time:

(a) require the Customer to deliver up all Goods in its possession that have not been irrevocably incorporated into another product; and

(b) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.



7. SUPPLY OF SERVICES

- 7.1 The Supplier shall supply the Services to the Customer in accordance with the Service Specification in all material respects.
- 7.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.3 The Supplier reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 7.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

8. CUSTOMER'S OBLIGATIONS

- 8.1 The Customer shall:
 - 8.1.1 ensure that the terms of the order, the Service Specification and the Goods Specification are complete and accurate;
 - 8.1.2 co-operate with the Supplier in all matters relating to the Services;
 - 8.1.3 provide the Supplier, its employees, agents, consultants and sub-contractors with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
 - 8.1.4 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 complete and accurate in all material respects;
 - 8.1.5 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
 - 8.1.6 comply with all applicable laws, including health and safety laws;
 - 8.1.7 keep all material, equipment, dividends and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisations; and



8.1.8 comply with any additional obligations as set out in the Service Specification and the Goods Specification.

8.2 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**):

8.2.1 without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Company remedies the Customer Default, and to rely on the Customer Default to release it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's Performance of any of its obligations;

8.2.2 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 8.2; and

8.2.3 the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or from the Customer Default.

9. CHARGES AND PAYMENT

9.1 The price of the Goods shall be the price set out in the Order.

9.2 The charges for the Services shall be calculated on a time and materials basis:

9.2.1 the charges shall be calculated in accordance with the Supplier's daily fee rates as set out in the Order;

9.2.2 the Supplier's daily fee rates for each individual person are calculated on the basis of an eight-hour day between 8.00 am and 5.00 pm worked Monday to Friday other than public or bank holidays;

9.2.3 the Supplier shall be entitled to charge an overtime rate of 150% of the 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 clause 9.2.2; and

9.2.4 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 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.



9.3 The Supplier reserves the right to:

9.3.1 increase the charges for the Services on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index in the preceding 12 month period and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be based upon latest available figure for the percentage increase in the Retail Prices Index;

9.3.2 increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods that is due to:

- (a) any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
- (c) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.

9.4 The price of the Goods:

9.4.1 excludes amounts in respect of value added tax (**VAT**), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice; and

9.4.2 excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.

9.5 The Supplier may invoice the Customer for the Goods or Services as agreed in the Order, or if no such agreement, in relation to Goods on or at the time of delivery and in relation to Services monthly in arrears.

9.6 The Customer shall pay the invoice in full and in cleared funds within 30 days of the date of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier. Time for payment is of the essence.

9.7 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then, without limiting the Supplier's remedies under clause 10, the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Nat West Bank'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.



9.8 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 any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

10. TERMINATION

10.1 Without limiting its other rights or remedies, the Supplier may terminate this Contract with immediate effect by giving written notice to the Customer if:

10.1.1 the Customer fails to pay any amount due under the Contract on the due dates for payment;

10.1.2 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 fourteen days of that party being notified in writing to do so;

10.1.3 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;

10.1.4 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or

10.1.5 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.

10.2 Without limiting its other rights or remedies, the Supplier may suspend the supply of the Services and provision of the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 10.1.1 to clause 10.1.5, 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.

10.3 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest.



- 10.4 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.
- 10.5 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.
- 11. LIMITATION OF LIABILITY**
- 11.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- 11.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - 11.1.2 fraud or fraudulent misrepresentation;
 - 11.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982;
 - 11.1.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979;
 - 11.1.5 defective products under the Consumer Protection Act 1987; or
 - 11.1.6 any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- 11.2 Subject to clause 11.1:
- 11.2.1 the Supplier shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of sales or business, loss of agreements or contracts, loss of any anticipated savings, loss of use or any corruption of software data or information, loss or damage to goodwill or any indirect or consequential loss arising under or in connection with the Contract; and
 - 11.2.2 the Supplier's total liability to the 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 of the Goods.
- 11.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and 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.



11.4 This clause 11 shall survive the termination of the Contract.

12. FORCE MAJEURE

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 a Force Majeure Event. If the period of delay or non-performance continues for eight weeks, the party not affected may terminate this Contract by giving two weeks written notice to the affected party.

13. GENERAL

13.1 Assignment and other dealings.

13.1.1 The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

13.1.2 The Customer may not 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 without the prior written consent of the Supplier.

13.2 Confidentiality.

13.2.1 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 or of any member of the group to which the other party belongs, except as permitted by clause 13.2.2. For the purposes of this clause, **group** means, in relation to a party, that party, any subsidiary or holding company from time to time of that party, and any subsidiary from time to time of a holding company of that party.

13.2.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 13.2; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.



- 13.2.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.
- 13.3 **Entire agreement.**
- 13.3.1 This Contract 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.
- 13.3.2 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.
- 13.4 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 13.5 **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:
- 13.5.1 waive that or any other right or remedy; nor
- 13.5.2 prevent or restrict the further exercise of that or any other right or remedy.
- 13.6 **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.
- 13.7 **Notices.**
- 13.7.1 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 (if it is a company) or its principal place of business (in any other case) 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, sent by pre-paid first class post or other next working day delivery service, commercial courier, or fax or email.



- 13.7.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 13.7.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the fourth 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 fax or email, two days after transmission.
- 13.7.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 13.8 **Third party rights.** No one other than a party to this Contract and their permitted assignees shall have any right to enforce any of its terms.
- 13.9 **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 England and Wales.
- 13.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.