

1. INTERPRETATION

1.1 Definitions:

"Business Day"	a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;
"Conditions"	the terms and conditions set out in this document as amended from time to time in accordance with clause 12.3;
"Contract"	the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions;
"Customer"	the person or firm who purchases the Goods from the Supplier;
"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;
"Intellectual Property Rights"	patents, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, and all other intellectual property rights, in each case whether registered or unregistered, 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 in or associated with the Goods;
"Order"	the Customer's order for the Goods, as set out in the order form overleaf;
"Reserved Territories"	All countries outside of European economic community;
"Supplier"	Accapi Limited (CRN: 08828475) whose registered office is at Tanfield Lea Business Centre, Tanfield Lea, Stanley DH9 9DB;
"Third Party Licensors"	the manufacturer and licensor of the branded Goods as set out in the Order.

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 Each Order constitutes a separate offer by the Customer to purchase the Goods in accordance with these Conditions, which the Supplier shall be free to accept or decline in its absolute discretion. The Customer is responsible for ensuring that the terms of the Order are complete and accurate.
- 2.3 A Contract is formed each time an Order received by the Supplier in the agreed form is accepted by the Supplier. Acceptance of an Order shall take place on written confirmation of acceptance of the Order by the Supplier or upon delivery of the Goods to the Customer, whichever is the earliest.
- 2.4 Any samples, drawings, descriptive matter or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's or manufacturer's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.
- 2.5 The Customer shall not without the Supplier's prior written consent make any promises or guarantees about the Goods beyond those contained in the promotional material supplied by the Supplier or its Third Party Licensors.
- 2.6 Minimum order levels are set out in the account opening form or as indicated by the Supplier to the Customer in writing.

3. DELIVERY

- 3.1 Each delivery of the Goods will be accompanied by a delivery note that shows the customer order number, the type and quantity of the Goods (including the code number of the Goods, where applicable).
- 3.2 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.
- 3.3 Delivery is completed on the completion of unloading of the Goods at the Delivery Location.

- 3.4 The Customer is responsible for obtaining, at its own cost, such import licences and other consents in relation to the Goods as are required from time to time.
- 3.5 Any dates quoted for delivery 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.
- 3.6 If the Customer fails to accept delivery of the Goods supplied in accordance with the Contract the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting a re-stocking fee of 20% and any storage, carriage 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.
- 3.7 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.
- 3.8 Goods may not be returned or exchanged without the prior written approval of the Supplier or in accordance with clause 3.9.
- 3.9 If on delivery any of the Goods are defective or damaged in any material respect, the Customer must give written notice of such defect or damage to the Supplier within three Business Days of such delivery with evidence of such defects or damage (ie photographs). The Customer shall be responsible for returning the Goods at its own cost. On receipt of the returned Goods, the Supplier shall at its option:-
 - 3.9.1 replace the defective Goods within 30 days of receiving the returned Goods; or
 - 3.9.2 refund to the Customer the price for the Goods which are defective or damaged; but the Supplier shall have no further liability to the Customer in respect thereof.
- 3.10 If the Customer fails to give notice as specified in Clause 3.9 then the Goods shall conclusively be deemed to be accepted and the Supplier shall have no liability to the Customer with respect to that delivery.
- 3.11 The Supplier's decision as to whether the Goods are defective, damaged or not shall be final.

3.12 The Customer shall, within three Business Days of the arrival of each delivery of the Goods at the Delivery Location, give written notice to the Supplier of any shortages. Goods which are out of stock will be placed on back order on request and will be dispatched as soon as the stock becomes available. Standard carriage costs may apply.

4. TITLE AND RISK

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

4.2 Subject to Clause 4.4, ownership of the Goods shall not pass to the Customer until the Supplier has received payment in full of all monies owed by the Customer to the Supplier.

4.3 Until ownership of the Goods passes to the Customer, the Customer shall hold the Goods on the following terms:

4.3.1 the Goods shall be stored separately from other goods held by the Customer and shall be clearly identifiable as the property of the Supplier;

4.3.2 the Goods shall not be mixed with other goods or altered in any way;

4.3.3 the Goods shall be adequately stored and maintained in a satisfactory condition and insured against all risks for their full price from the date of delivery;

4.4 The Customer may resell (but may not deal in any other way with) the Products to a third party in accordance with clause 6 and pass good title to that third party on the following terms:

4.4.1 the sale is in the ordinary course of the Customer's business; and

4.4.2 the Customer holds the proceeds of any resale on trust for the Supplier in a separate account in the joint names of the Supplier and the Customer and does not mix them with any other money or pay the proceeds into an overdrawn bank account.

4.5 The Customer shall account to the Supplier for the proceeds accordingly and shall make good any shortfall in the amount due to the Supplier.

4.6 The Customer shall lose its rights to possession and resale of the Products if the

Customer becomes subject to any of the events in Clause 8.1.

4.7 The Customer grants to the Supplier an irrevocable licence for the Supplier, its agents and employees to enter any premises where the goods of the Customer are stored to ascertain whether any Goods are stored there and to inspect, count and recover them.

5. PRICE AND PAYMENT

5.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of delivery.

5.2 The Supplier may, by giving notice to the Customer at any time up to twenty Business Days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

5.2.1 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);

5.2.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered; or

5.2.3 any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.

5.3 The price of the Goods:

5.3.1 excludes amounts in respect of value added tax (**VAT**), any similar sales tax or any tax that replaces such sales taxes which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate; and

5.3.2 excludes the costs and charges of insurance and transport of the Goods, which shall be set out in the Order and invoiced to the Customer.

5.4 The Supplier may invoice the Customer for the Goods on or at any time after the date of the Order.

5.5 Payment of an Order must be made by the Customer:

5.5.1 where a credit facility is in place, within 30 days of the date of the invoice for the Order, unless otherwise agreed in writing by the Supplier, or

5.5.2 where there is no credit facility in place, immediately on submission of an Order in cleared funds.

Payment shall be made to the bank account nominated in writing by the Supplier in Euros or Sterling as required by the Supplier. Time for payment is of the essence.

5.6 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 annum above the 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.

5.7 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.

5.8 Any credit terms extended to the Customer are subject to review by the Supplier from time to time and the Supplier can at any time and without notice suspend or vary any credit terms given to the Customer.

6. RESALE

6.1 The Customer undertakes not to sell the Goods to any other retailer or wholesaler. The Goods are sold to the Customer for retail purposes only.

6.2 The Customer undertakes not to advertise, market and/or sell the Goods:

6.2.1 from a retail outlet not approved by the Supplier;

6.2.2 from an URL not owned by the Customer and advised to the Supplier in writing;

6.2.3 to customers who visit the Customer's website through a site carrying the name or logo of a third party platform,

without prior written consent from the Supplier, which the Supplier may withhold or condition in its sole and absolute discretion.

6.3 The Customer shall refrain from making active sales of the Goods to customers in the Reserved Territories. For these purposes, active sales shall be understood to mean actively approaching or soliciting customers.

7. INTELLECTUAL PROPERTY RIGHTS

7.1 The Customer acknowledges that:

7.1.1 the Intellectual Property Rights are the Third Party Licensors' property;

7.1.2 nothing in this Contract shall be construed as conferring any licence or granting any rights in favour of the Customer in relation to the Intellectual Property Rights; and

7.1.3 any reputation in any trade marks affixed or applied to the Goods ("Trade Marks") shall accrue to the sole benefit of the Third Party Licensors or any other owner of the Trade Marks from time to time.

7.2 The Customer shall advertise, market and sell the Goods only under the Trade Marks, and not in association with any other trade mark, brand or trade name, and only as permitted in any branding manual issued by the Supplier and/or the Third Party Licensor.

7.3 The Customer shall not, without the prior written consent of the Supplier, alter or make any addition to the labelling or packaging of the Goods displaying the Trade Marks and/or remove any copyright notices, confidential or proprietary legends or identification from the Goods.

7.4 The Customer shall not use or seek to register any trade mark or trade name (including any company name) or domain name which is identical to, confusingly similar to or incorporates any trade mark or trade name which the Supplier or its Third Party Licensors owns or claims rights in anywhere in the world.

8. TERMINATION

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

8.1.1 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 [3] days of that party being notified in writing to do so;
- 8.1.2 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;
- 8.1.3 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- 8.1.4 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.
- 8.2 Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods 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 8.1.1 to clause 8.1.4, 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.
- 8.3 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.
- 8.4 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.
- 8.5 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.
- 8.6 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.
- 8.7 The Customer may cancel the Order prior to dispatch of the Goods. Once the Goods have been dispatched any cancellations will result in a restocking fee of 20% of the total value of the Order excluding VAT which shall become immediately due and payable to the Supplier. The Customer shall be liable to ensure that the Goods are returned to the Supplier in good condition at its own cost.
- 9. LIMITATION OF LIABILITY**
- 9.1 The Supplier's total liability in contract, tort (including negligence), misrepresentation or otherwise in relation to this Contract shall be limited to the amounts paid by the Customer for the Goods under this Contract.
- 9.2 The Supplier shall not be liable to the Customer for:
- 9.2.1 any indirect, special or consequential loss or damage; or
- 9.2.2 loss of data or other equipment or property; or
- 9.2.3 economic loss or damage; or
- 9.2.4 any loss of actual or anticipated profit, interest, revenue, anticipated savings or business or damage to goodwill,
- even if the Supplier is advised in advance of the possibility of any such losses or damages.
- 9.3 Except as expressly provided in the Contract the Supplier excludes all representations, warranties, conditions and other terms implied by statute, common law, or otherwise to the fullest extent permitted by law. The Supplier will pass on to the Customer and its customers the benefit of any guarantees or indemnity is given to it or them by its suppliers.
- 9.4 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- 9.4.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable); or
- 9.4.2 fraud or fraudulent misrepresentation.
- 9.5 The Supplier is not the manufacturer of the Goods but shall endeavour to transfer to the

Customer the benefit of any warranty or guarantee by the manufacturer.

9.6 In the event of any product recall the Customer agrees to cooperate fully with the Supplier in taking all necessary steps to remove the relevant Goods from the marketplace.

10. FORCE MAJEURE

The Supplier shall not 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. The Suppliers performance under any Contract is deemed to be suspended for the period that the Force Mature Event continues, and the Supply will have an extension of time for performance for the duration of that period.

11. ANTI-BRIBERY

the Customer shall comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010.

12. GENERAL

12.1 Assignment and other dealings.

12.1.1 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.

12.1.2 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.

12.2 Entire agreement.

12.2.1 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.

12.2.2 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.

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

12.4 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

12.5 **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.

12.6 Notices.

12.6.1 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.

12.6.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.6.1; 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 fax or email, one Business Day after transmission.

- 12.6.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 12.7 **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.
- 12.8 **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.
- 12.9 **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.