

Torbett Design: Contractual

Conditions of Sale

1. Definitions

In these Conditions, the following definitions shall apply:

Buyer means the person or company ordering the Goods or Services

Conditions means the terms and conditions set out in this document plus any special terms and conditions agreed in writing between the Buyer and Seller.

Contract means Sales Contract formed between the buyer and seller to which these Conditions apply.

Designs means any intellectual property generated in the course of the Contract by the Seller, excluding any pre-existing IP that the Seller may use in the course of developing the Designs but not to be supplied as part of them.

Goods means the goods that the Seller has agreed to supply to the Buyer as part of this Contract in accordance with the Conditions.

Order means a written acceptance of a Quotation from the Buyer to the Seller, by means of a Purchase Order from the Seller containing the Quotation reference number or an email referencing the Quotation with wording to the effect of an acceptance.

Seller means Torbett Design Ltd, company number 11280356 whose registered address is 2 Coombe Close, Bristol BS10 7XG.

Services means any services described in the Order, including development of Designs, development, procurement or manufacture of Goods, support, installation and other actions required by the Buyer.

Enquiry means any request by the buyer to the seller to provide goods or services.

Quotation means a quotation provided by the Seller to the Buyer in response to an Enquiry.

2. Ordering

2.1 The Buyer shall send an Enquiry to the Seller for provision of Goods and Services. Once the Buyer has provided the Seller with enough information for the formation of a Quotation, this will be drawn up and issued to the Buyer. A Quotation is provided without commitment and may be superseded or withdrawn at any time. A Quotation is valid only for the period specified therein, and only if any assumptions listed therein are valid and true.

2.2 The Buyer shall issue an Order against the quotation. An Order shall be deemed accepted when confirmed by the Seller in writing. The acceptance of an order forms a sales Contract between Buyer and Seller bound by these Conditions.

2.3 Any reference on the Order to the Buyer's terms and conditions of engagement shall be deemed a variation of the Conditions. 2.4 Any variation to these Conditions must be agreed in writing between the Buyer and Seller before the order can be deemed Accepted.

2.5 Once accepted the Buyer cannot cancel an Order, unless with written agreement from the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit) costs (including the costs of all labour and materials used) damages, charges and expenses incurred by the Seller as a result of cancellation.

3. Payment and Price

3.1 The price for the goods and services shall be the price stated on the Seller's Quotation. Unless specified this is quoted without VAT.

3.2 The Seller shall invoice the Buyer for the price quoted at any time after delivery of the Goods and Services specified in each line item of the invoice. Multiple line items can be combined after their respective deliveries. If the Buyer fails to take delivery of the Goods then the Seller can issue an invoice at any time after notifying the Buyer.

3.3 The buyer shall pay the price for the Goods and Services no later than 30 calendar days after the invoice has been issued. The time of payment shall be of the essence of the Contract. All payments shall be made in full without deduction in respect of any set-off or counterclaim.

3.4 If the Buyer fails to make any payment on the due date then without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to: (a) cancel the Contract or suspend any further deliveries of Goods to the Buyer or further provision of the Services; (b) appropriate any payment made by the Buyer to such of the Goods or Services (or the goods and / or services supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and (c) charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 8% per annum over the Bank of England base rate, "statutory interest", (such interest being deemed to accrue from day to day and being compounded on the last day of each calendar month) until payment is made.

4. Delivery

4.1 Delivery of physical Goods shall be made from the Sellers premises to the Buyers premises or an address of their choosing. Delivery of Designs and Electronic Data pertaining to the Order shall be delivered by a means agreed by Buyer and Seller. The Seller will notify the Buyer when the Goods are ready for electronic delivery.

4.2 The Seller shall endeavour to deliver the Goods by the date quoted for delivery but such date is not guaranteed nor shall the time for delivery be of the essence unless previously agreed by the Seller in writing.

4.3 The date quoted for delivery shall be extended by a reasonable period if there is any delay caused by industrial dispute or by any cause beyond the reasonable control of the Seller. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

5. Ownership and Risk

5.1 Risk of damage or loss of the Goods shall pass from Seller to Buyer at time of delivery, or in the case of the Buyer wrongfully not taking delivery of the Goods, at the time notified by the Seller that the goods have been delivered.

5.2 Notwithstanding this, ownership of the Goods and any other materials purchased or supplied with them remains property of the Seller until such time as the Seller receives cleared funds in full to cover the sale price.

5.2 The conditions in this clause do not affect the Buyer's obligation to purchase the Goods once ordered.

6. Claims for Non-delivery and Defects

6.1 Any claim for non-delivering of any Goods shall be notified in writing by the Buyer to the Seller within 7 days of the date of the Seller's invoice.

6.2 Any claim which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure.

6.3 If delivery is not refused, and the Buyer does not notify the Seller of any claim in accordance with the provisions of this clause, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defects or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

7 Warranties and Liability

7.1 The Seller warrants that it will use reasonable endeavours to provide the Goods and Services in accordance with any specifications and timeframes set out in the Order (any time frames being estimates only and time for performance by the Seller shall not be of the essence of the Contract).

7.2 Unless expressly agreed in a deviation to the standard terms of sale, all Goods shall be treated as prototype or samples for test and provided with absolutely no

expressed or implied warranty.

7.3 The Buyer agrees that the Seller shall not be held liable for any loss, damage, death or injury arising from use or deployment of the Goods or Services except in the case that the Seller can be proved to have been negligent.

8 Compliance and Regulatory Testing

8.1 The Buyer agrees that in the case of incorporation of the Design into a product that is to be sold or placed on the market, it will undertake all regulatory compliance testing and approvals necessary to fully meet the national and international requirements of the markets the product is placed in. The Seller shall in no way be liable or responsible for any costs, delays or legal implications incurred as a result of failure to perform such compliance testing.

8.2 Although the Seller will endeavour to produce Goods that utilise engineering best practices for safety, EMC and Environmental regulations, unless third party compliance testing is included in the Quotation, and allowances made within the Quotation for any possible remedial work required to meet the test requirements, the Seller cannot accept any responsibility for Goods or Designs not meeting the required compliance standards or be liable for the costs of remedial work.

8.2 Where the development process and management of a programme of work is subject to external compliance testing, the Buyer agrees that it will cover any costs in full of management systems, audits and certifications etc required by the Seller to meet these requirements.

9. Indemnity

The Buyer shall indemnify and keep the Seller indemnified against all costs, expenses, damages and demands incurred by the Seller in respect of any alleged infringement of the patents, trade marks, copyright, design or other intellectual property rights used by the Seller at the request of the Buyer and any alleged breach or infringement of any statute or regulation concerning the preparation, marketing and distribution of the Goods and or Services.

10. Intellectual Property

10.1 All Foreground IP, that is, intellectual property that is generated directly in the course of the process of developing the Goods and Services and forming the main part of the Designs, transfers to ownership of the Buyer from the Seller at the point in time when ownership of the physical Goods transfers ownership, subject to the limitations set out in the above clauses.

10.2 Any Background IP, that is, intellectual property derived during the process of developing the Goods and Services but not forming any aspect of the Designs, is subject to retention by the Seller. This includes but is not exclusive to: Project Management Systems, Software Tools not part of any Design, Document Templates and Styles for internal Torbett Design documents and any other process, tool or system developed for the internal use of Torbett Design at its own expense.

11. Governing Law

These Conditions shall be governed and constructed under English law.