

## **Chromacity Limited Conditions of Sale**

### **1. Application of Terms and Conditions**

- a) The Supplier shall supply and the Customer shall purchase the Goods and Services in accordance with the Accepted Order which shall be subject to these Terms and Conditions; and
- b) the Contract shall be to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Customer.

### **2. Definitions and Interpretation**

- a) In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

<b>"Accepted Order"</b>	has the meaning set out in clause 4.a);
<b>"Business Day"</b>	means any day other than a Saturday, Sunday or bank holiday;
<b>"Commencement Date"</b>	means the commencement date for the Contract as set out in the Accepted Order;
<b>"Contract"</b>	means the contract for the purchase and sale of the Goods and supply of the Services under these Terms and Conditions;
<b>"Customer"</b>	means the person who accepts a quotation or offer of the Supplier for the sale of the Goods and supply of the Services, or whose order for the Goods and Services is accepted by the Supplier;
<b>"Goods"</b>	means the goods as set out in the Accepted Order which the Supplier is to supply in accordance with these Terms and Conditions;
<b>"Intellectual Property"</b>	means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;
<b>"Month"</b>	means a calendar month;
<b>"Services"</b>	means the Services to be provided to the Customer as set out in the Accepted Order; and
<b>"Supplier"</b>	means Chromacity limited, a company registered in Scotland under company number SC442724 having its registered office at Citypoint, 3 <sup>rd</sup> Floor, 65 Haymarket Terrace, Edinburgh EH12 5HD.

- b) Unless the context otherwise requires, each reference in these Terms and Conditions to:
  - i. "writing", and any cognate expression, includes a reference to any communication effected by email;
  - ii. a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
  - iii. "these Terms and Conditions" is a reference to these Terms and Conditions and any Schedules as amended or supplemented at the relevant time;
  - iv. a clause or paragraph is a reference to a clause paragraph of these Terms and Conditions; and
  - v. a "Party" or the "Parties" refer to the parties to these Terms and Conditions.

- c) The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of these Terms and Conditions.
- d) Words imparting the singular number shall include the plural and vice versa.
- e) References to any gender shall include any other gender.

### **3. Basis of Sale and Service**

- a) In entering into the Contract the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not set out in these Terms and Conditions.
- b) No variation to these Terms and Conditions shall be binding unless agreed in writing between the Customer and the Supplier.
- c) Sales literature and other documents issued by the Supplier in relation to the Goods and Services are subject to alteration without notice and do not constitute offers to sell the Goods which are capable of acceptance.
- d) Any accidental errors or omissions in any sales literature, quotation, acceptance of offer, invoice or other document or information available on the Supplier's web site or issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.

### **4. The Goods**

- a) No order submitted by the Customer shall be deemed to be accepted by the Supplier unless and until confirmed in writing by the Supplier (an **"Accepted Order"**).
- b) The specification for the Goods shall be that set out in the Supplier's Accepted Order.
- c) Illustrations, photographs or descriptions whether on a web site, in catalogues, brochures or other documents available on the Supplier's web site or issued by the Supplier are intended as a guide only and shall not be binding on the Supplier.
- d) The Supplier reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory or regulatory requirements.
- e) No Accepted Order may be cancelled by the Customer except with the written agreement of the Supplier. The Customer shall indemnify the Supplier in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Supplier as a result of such cancellation.

### **5. The Services**

- a) The Supplier shall provide the Services set out in the Accepted Order to the Customer and will use reasonable care and skill to perform the Services.
- b) The Supplier shall use its reasonable endeavours to complete its obligations under the Contract in accordance with any timescales specified in the Accepted Order, but time will not be of the essence in the performance of such obligations.

### **6. Price**

- a) The price of the Goods and Services shall be the price stated in the Accepted Order.
- b) The Supplier reserves the right, by giving written notice to the Customer at any time before delivery, to increase the price of the Goods and/or Services to reflect any increase in the cost that is due to any factor beyond the Supplier's control (including, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods and Services which are requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate information or instructions.
- c) The quotation will detail the Supplier's charges for packaging and transport separately to the price for the Goods and Services.
- d) The price is exclusive of any applicable value added tax, excise, sales taxes or levies of a similar nature which are imposed or charged by any competent fiscal authority in respect of the Goods and Services, which the Customer shall be additionally liable to pay to the Supplier.

## 7. Payment

- a) The Supplier shall invoice the Customer for the price of the Goods and Services at the point the Goods are ready to be transported.
- b) The Customer shall pay the invoice, without any deduction, credit or set off, within 30 days of the date of the Supplier's invoice unless otherwise in accordance with such credit terms as may have been agreed in writing between the Customer and the Supplier in respect of the Contract. Payment shall be made on the due date notwithstanding that delivery may not have taken place and/or that the property in the Goods has not passed to the Customer. The time for the payment of the invoice shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- c) All payments shall be made to the Supplier in pounds Sterling and as indicated on the invoice issued by the Supplier.

## 8. Delivery

- a) Delivery of the Goods shall be to the place specified in the Accepted Order.
- b) Any date for delivery is approximate only and time for delivery shall not be of the essence. The Supplier shall not be liable to Customer for any delay in delivery of the Goods caused by reasons out with the Supplier's control.
- c) If the Customer fails to take delivery of the Goods or any part of them and/or fails to provide any instructions, documents, licences, consents or authorisations required to enable the Goods to be delivered, the Supplier shall be entitled upon giving written notice to the Customer to store or arrange for the storage of the Goods and then notwithstanding the provisions of sub-Clause 9.a) risk in the Goods shall pass to the Customer, delivery shall be deemed to have taken place and the Customer shall pay to the Supplier all costs and expenses including storage and insurance charges arising from such failure.
- d) The Supplier shall not be liable for any non-delivery of Goods unless the Customer gives written notice to the Supplier of the non-delivery within 7 days of the specified delivery date, or if unspecified, within 7 days of the receipt of the relevant invoice specific to the Contract.
- e) Notwithstanding any other condition, any liability of the Supplier for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note for the amount of the invoice raised for such Goods.

## 9. Risk and Retention of Title

- a) Risk of damage to or loss of the Goods shall pass to the Customer at:
  - i. in the case of Goods to be delivered to the Customer or any third party premises nominated by the Customer, the time of delivery or, if the Customer or its nominated third party fails to take delivery of the Goods, the time when the Supplier has tendered delivery of the Goods;
  - ii. in the case of Goods to be collected by the Customer at the Supplier's premises, from the time of collection; or
  - iii. in the case of Goods being installed by the Supplier, the time that the Supplier notifies the Customer that the installation is complete.
- b) Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms and Conditions, legal and beneficial title to the Goods shall not pass to the Customer until the Supplier has received in cleared funds payment in full of the price of the Goods as set out in the relevant invoice.
- c) Until title in the Goods has passed to the Customer, the Customer shall hold the Goods for and on behalf of the Supplier and the Customer shall store the Goods in an appropriate environment, shall ensure that they are identifiable as being supplied by the Supplier and shall insure the Goods against all reasonable risks to their full reinstatement value.
- d) The Customer shall not be entitled to charge by way of security for any indebtedness any of the Goods which remain the property of the Supplier, but if the Customer does so all money owing by the Customer to the Supplier shall (without prejudice to any other right or remedy of the Supplier) forthwith become due and payable.
- e) The Supplier reserves the right to repossess any Goods in which the Supplier retains title without notice and the Customer irrevocably authorises the Supplier to enter the Customer's premises during normal business hours for the purpose of repossessing the Goods in which the Supplier retains title.

- f) The Customer's right to possession of the Goods in which the Supplier maintains legal and beneficial title shall terminate if the Customer:
  - i. commits or permits any material breach of its obligations under these Terms and Conditions;
  - ii. is unable to discharge its debts or financial liabilities;
  - iii. enters into or becomes the subject of any form of debt management procedure;
  - iv. arranges a meeting or enters into a voluntary arrangement with its creditors with the intention of deferring or avoiding repayment of all or any of its debts or any interest thereon;
 or the Supplier reasonably believes that any of the above matters may occur in relation to the Customer.

## 10. Assignment

- a) The Supplier may assign the Contract or any part of it to any person, firm or company without the prior consent of the Customer.
- b) The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Supplier.

## 11. Defective Goods

- a) If, on or within 12 months of delivery:
  - i. the Customer gives notice in writing to the Supplier within a reasonable time of discovery that the Goods are materially defective; and
  - ii. the Supplier is given a reasonable opportunity to examine the Goods; and
  - iii. the Customer, if asked to do so by the Supplier, returns the Goods to the Supplier,
 the Supplier shall, at its option, repair or replace the defective Goods, or refund to the Customer the price for those Goods (or parts thereof, as appropriate) which are defective.
- b) Chromacity holds a separate warranty policy which is held on the Chromacity website and applies to Chromacity designed and manufactured Goods.
- c) Subject as expressly provided in these Terms and Conditions, and except where the Goods are sold under a consumer sale, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- d) The Supplier shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, subjection to abnormal conditions, failure to follow the Supplier's instructions (whether given orally or in writing), misuse or alteration of the Goods, use of software not supplied by the Supplier in conjunction with the Goods, or any other act or omission on the part of the Customer, its employees or agents or any third party.
- e) The Customer shall be responsible for ensuring that any use of the Goods by the Customer or its employees is in compliance with any instructions provided by the Supplier or, if none supplied, the applicable statutory requirements and that handling of the Goods by the Customer is carried out in accordance with directions given by the Supplier and any competent governmental or regulatory authority and the Customer will indemnify the Supplier against any liability loss or damage which the Supplier might suffer as a result of the Customer's failure to comply with this condition.
- f) In the case of any component or part of the Goods that is not manufactured by the Supplier, but incorporated into the Goods by the Supplier or any third party contracted by the Supplier, the Customer will be entitled to the benefit of any guarantee or warranty given to the Supplier by the makers of such components or parts as far as it is possible for the company to pass on such warranty or guarantee to the Customer.
- g) No warranty is made or implied as to the suitability of the Goods for the Customer's intended purpose beyond such performance specifications that form part of the Contract.
- h) The Supplier does not recommend the use of the Goods in life support applications where a failure or malfunction may directly threaten life or injury. The use of the Goods in life support applications is strictly prohibited. The Customer agrees to indemnify the Supplier for any claims, losses or damages as a result of any unauthorised usage as set out in this clause 11(g).

## 12. Customer's Default

- a) If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Supplier, the Supplier shall be entitled to:
- i. cancel the order or suspend any further deliveries or provision of Goods and Services to the Customer;
  - ii. appropriate any payment made by the Customer to such of the Goods and/or Services (or the goods and/or services supplied under any other contract between the Customer and the Supplier) as the Supplier may think fit (notwithstanding any purported appropriation by the Customer); and
  - iii. charge the Customer interest (both before and after any judgement) on the amount unpaid, at the rate of 4% per annum above Bank of Scotland base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
- b) This condition applies if:
- i. the Customer fails to perform or observe any of its obligations hereunder or is otherwise in breach of the Contract;
  - ii. the Customer becomes subject to an administration order or enters into a voluntary arrangement under Parts I or VIII of the Insolvency Act 1986 or the Insolvent Partnerships Order 1994 (as amended) or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation;
  - iii. an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer;
  - iv. the Customer ceases, or threatens to cease, to carry on business; or
  - v. the Supplier reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.
- c) If sub-Clause 12.b applies then, without prejudice to any other right or remedy available to the Supplier, the Supplier shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer, and if the Goods have been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## 13. Liability

- a) The Supplier will not by reason of any representation, implied warranty, condition or other term, or any duty at common law or under express terms of the Contract (or these Terms and Conditions), be liable for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by the Supplier's servants or agents or otherwise) which arise out of or in connection with the supply of the Goods and Services.
- b) 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.
- c) The Supplier shall not be liable to the Customer or be deemed to be in breach of these Terms and Conditions by reason of any delay in performing, or any failure to perform, any of the Supplier's obligations if the delay or failure was due to any cause beyond the Supplier's reasonable control.
- d) Nothing in these Terms and Conditions excludes or limits the liability of either party:
- i. for death or personal injury caused by that party's negligence;
  - ii. for any matter which it would be illegal for that party to exclude or attempt to exclude its liability; or
  - iii. for fraud or fraudulent misrepresentation.
- e) Subject to the remaining provisions of this Clause 13:
- i. the Supplier's total liability in contract, delict (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall in no circumstances exceed the lesser of (i) £1,000,000 and; (ii) the total amount due to the Supplier by the Customer for the Products in:
    - (1) the Accepted Order relating to the event giving rise to the liability; or
    - (2) where the event giving rise to the liability does not relate to any one Accepted Order, the Accepted Order immediately preceding such event; and

- ii. the Supplier shall not be liable to the Customer 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.

## 14. Confidentiality

A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 14 shall survive termination of the Contract.

## 15. Intellectual Property Rights

- a) All Intellectual Property Rights in or arising out of or in connection with the Goods or Services shall be owned by the Supplier.
- b) Insofar as any software is included in the Goods or Services supplied, the Supplier grants the Customer a licence to use the software by copying it into the permanent memory of a single computer or device and confirms it has the authority to grant the same.
- c) Except as expressly stated in the Accepted Order, the Customer is granted no right whatsoever to copy (save, in respect of software, strictly as permitted by clause 15.b), modify, amend, adapt, reverse engineer, disassemble, decompile or make error corrections to the software, Services or Goods supplied.
- d) The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Goods or Services, 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.

## 16. Communications

- a) All notices under these Terms and Conditions and under the Contract shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.
- b) Notices shall be deemed to have been duly given:
- i. when delivered, if delivered by courier or other messenger (including registered mail) during the normal business hours of the recipient; or
  - ii. when sent, if transmitted by e-mail and a successful return receipt is generated; or
  - iii. on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or
  - iv. on the tenth business day following mailing, if mailed by airmail, postage prepaid.
- c) All notices under this Agreement shall be addressed to the most recent address or e-mail address notified to the other Party.

## 17. Force Majeure

Neither Party shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, internet service provider failure, failure by a courier to deliver on time, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

## 18. Waiver

The Parties agree that no failure by either Party to enforce the performance of any provision in these Terms and Conditions or under the Contract shall constitute a waiver of the right to subsequently enforce that provision or any other provision. Such failure shall not be deemed to be a waiver of any preceding or subsequent breach and shall not constitute a continuing waiver.

**19. Severance**

The Parties agree that, in the event that one or more of the provisions of these Terms and Conditions or the Contract are found to be unlawful, invalid or otherwise unenforceable, that / those provisions shall be deemed severed from the remainder of these Terms and Conditions (and, by extension, the Contract). The remainder of these and the Contract shall be valid and enforceable.

**20. Third Party Rights**

A person who is not a party to the Contract shall have no rights under the Contract pursuant to the Contract (Third Party Rights) Scotland Act 2017.

**21. Law and Jurisdiction**

- a) These Terms and Conditions and the Contract (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of Scotland.
- b) Any dispute, controversy, proceedings or claim between the Parties relating to these Terms and Conditions or to the Contract (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the exclusive jurisdiction of the courts of Scotland.

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