

CREATIVE TECHNOLOGY LIMITED : TERMS OF PURCHASE

1 Interpretation

1.1 In these Terms unless the context otherwise requires: "CT" means Creative Technology Limited; "Goods" mean the goods (including any instalment or parts) which Supplier is to supply in accordance with this Order; "IPR" means all industrial and intellectual property rights including, without limitation, patents, trade marks, service marks, design rights, copyright, lending and rental rights, technical knowledge, know-how, trade secrets, confidential information and any other commercial monopoly rights, and any applications and rights to apply for any of the foregoing in any part of the world; "Order" means collectively this purchase order and the Terms; "Services" means services or any of them (including provision of any necessary or ancillary equipment) which Supplier is to supply in accordance with this Order; "Supplier" means the person, firm or company identified as such in this Order; "Supply" means the provision of the Goods and/or Services; "Terms" means the terms and conditions set out in and to which this Order is subject and any amendments expressly agreed in writing between CT and Supplier.

1.2 Headings are for convenience only and shall not affect interpretation.

1.3 Any typographical or clerical error or omission in documents issued by CT shall be subject to correction without liability on the part of CT.

2 Basis of Order

2.1 CT engages Supplier to provide and Supplier agrees to provide the Services and/or Supplier agrees to sell or hire and CT to purchase or take on hire, as case may be, the Goods, subject to these Terms, which shall govern the Order to the exclusion of any other terms and conditions contained in any document or implied by course of dealing and shall not be varied except in writing signed by CT and Supplier.

2.2 Description, specification and quantity of Supply shall be as set out or referred to in this Order and no variation shall be made except for non-material changes to meet safety or legal requirements.

3 Delivery and Cancellation

3.1 Supplier shall deliver Supply at the address(es) and on date(s), if any, specified in this Order or otherwise as directed by CT in writing.

3.2 Time for delivery, installation, testing, operation and removal of Goods and for commencement, performance and completion of Services and each stage thereof by Supplier shall be of the essence. Supplier shall be responsible for properly labelling, addressing, packing and securing Supply so as to be delivered in the normal course of transit in an undamaged condition.

3.4 Claims by CT based on shortage or damage in transit will be notified to Supplier within reasonable time of discovery.

3.5 CT may without liability to Supplier cancel Supply in whole or part before scheduled delivery date:

3.5.1 in the case of a hire, on giving at least three days' notice; or

3.5.2 in the case of a purchase, on giving at least 7 days' notice (or, if on less than 7 days' notice) subject to reimbursement of Supplier's reasonable costs incurred (not to exceed price of the Supply), in which case, if CT requires, Supplier shall deliver to CT Supply and other materials (complete or incomplete) for which costs are paid.

4 Price and Payment

4.1 In consideration of the Supply and the obligations of Supplier in this Order, CT will subject to these Terms pay Supplier the price (and any VAT thereon) as set out in this Order. This price shall be the only price which CT has to pay for the Supply and shall be fixed for the duration of this Order and inclusive of all fees, customs, import and export duties, insurance, salaries, employment-related expenses and all other out-of-pocket expenses incurred in the performance of the Services.

4.2 Unless otherwise agreed in writing, CT shall make payment at the end of the month following the later of delivery and acceptance of Goods or completion of the Services and receipt of Supplier's valid invoice. Supplier's invoice must specify CT's order number, description of Supply and, if applicable, quantity of Supply, unit price and delivery date and fully itemise all expenses claimed.

4.3 The person(s) through whom the Services are provided by the Supplier shall remain the employees or contractors of the Supplier and CT shall have no liability for their salary, fees, holiday pay, overtime pay, retirement benefits, tax and other payments and entitlements whatsoever which these employees or contractors may have in law or under their contract of employment or engagement with the Supplier. Supplier shall be responsible for the provision, administration and payment of all such amounts, benefits and taxes in respect of its employees and contractors so entitled. If the Supplier is an individual supplying Services, the price is inclusive of provision for holiday pay (for which an allowance of 8% of the basic labour rate has been made), pension and other social benefits to which the Supplier may be entitled in law.

4.4 Supplier shall keep and CT shall be entitled on notice to inspect and take copies of all books and records evidencing the cost of the Supply.

4.5 CT shall be entitled to set-off against the price any amounts due by Supplier to CT under this or any other agreement.

5 Supplier's Obligations and Warranties

5.1 Without prejudice to any warranty implied by law, Supplier warrants and represents that:

5.1.1 the Supply will correspond to the requirements of this Order and to specification and any sample and will comply with all applicable laws and standards;

5.1.2 all Goods for sale will be new and all Goods sold or hired will be of satisfactory quality, fit for their intended purpose, comply with manufacturer's specification and be free from defects in design, material and workmanship for 12 months from later of delivery or first use (or for the duration of their hire, if shorter);

5.1.3 all Services will be carried out in a proper, timely, safe, workmanlike and cost efficient manner to the highest standard reasonably expected and with reasonable care and skill by persons of appropriate training and experience acting without supervision and any product of such Services will be of satisfactory quality and fit for its intended purpose;

5.1.4 all Services will be performed without risk to health and safety in accordance with good practice and in compliance with all relevant health and safety laws (and Supplier shall at its cost conduct all necessary risk assessments and provide all personal protective equipment). Supplier shall familiarise itself with all health and safety documentation relating to the Services and, on request, shall provide CT with copies of all such documents prepared by the Supplier;

5.1.5 in the case of communications, computer or other equipment hardware or software, all Goods will be licensed for their intended use, secure and free of viruses and malicious software;

5.1.6 Supplier is skilled and knowledgeable in provision of the Supply and acknowledges that CT relies on Supplier's skill and judgment and all recommendations or advice given by Supplier in negotiation of this Order concerning Supply, its fitness for purpose, functionality, use or storage of any Goods and the performance and product of any Services.

5.2 Supplier shall be liable in full for the acts and omissions of its employees, agents or permitted sub-contractors and undertakes to ensure the proper and safe performance and discharge of the Services by such persons in accordance with this Order; and that such persons are aware of and agree to be bound by this Order.

5.3 Supplier shall and shall procure that its personnel comply with all rules regulations and procedures in force at any venue where Services are to be provided and with any code of conduct (including dress code) notified to it. Supplier will ensure that its personnel at all times behave in a proper and respectful manner and do not attempt to carry out the Services while under the influence of alcohol or non-prescribed drugs or similar substances.

5.4 Supplier shall co-operate with all reasonable requests made by CT in relation to the Supply including attending meetings and supplying information. CT has right, with its client and on notice, to inspect any part of the Supply at Supplier's premises or elsewhere

5.5 If the Services are to be performed (whether alone or jointly) by any person other than as identified in this Order, the identity of such person shall be notified to CT in writing as soon as practicable prior to commencement of Services and such person shall be subject to the prior approval of CT (not to be unreasonably withheld). CT may withhold approval if CT has concerns regarding competence, training, conflict of interest or if CT's client objects for any reason. If approval is withheld, Supplier at its expense shall procure performance of Services by person(s) reasonably acceptable to CT.

6 Risk and Title

6.1 Goods for sale shall be sold by Supplier as beneficial owner free of any lien, charge or encumbrance except that third party software shall be supplied with all licences consents and authorities (fully paid-up) required for its intended or normal use. Risk and title in such Goods shall pass to CT on delivery (except that any Supply rejected by CT is returned to Supplier at Supplier's risk and expense).

6.2 Risk in Goods on hire remains with Supplier at all times unless otherwise agreed in writing. If CT accepts risk, CT's liability shall be limited to the market value of the Goods in their condition immediately prior to loss or damage or to the reasonable cost of their repair, whichever is the lesser, provided that CT shall not be liable for:

6.2.1 loss or damage due to act of terrorism (or to take out terrorism insurance); or

6.2.2 electrical or mechanical breakdown, wear and tear or existing damage.

6.3 IPR in the product, if any, of Services commissioned by or specifically produced for CT shall be the exclusive property of CT and Supplier shall assign to CT (or as CT may direct) for no additional consideration all such IPR with full title guarantee and waives all moral rights in relation to the IPR and undertakes to sign all documents and do all things to assign such IPR to CT.

6.4 Risk in Supplier's equipment and materials provided in course of Services remains with Supplier at all times.

6.5 All equipment and materials provided by CT to Supplier in connection with this Order (including all IPR in such materials) remain property of CT or its legal owner and shall be returned to CT forthwith on request. Supplier shall take all reasonable care of such items to ensure their safety and security and shall not use or permit their use except for purposes of this Order. Such items shall be at risk of Supplier until return to CT and Supplier shall indemnify CT against any loss or damage thereto. Supplier shall upon request submit stock returns of such items to CT.

7 Confidentiality and Marketing

7.1 All details of the project to which this Order relates (including the end-client, project content and purpose, participants, attendees, funding, venue, date, time and value of this Order) are strictly confidential. Except with the written consent of CT or as may be required in the performance of the Order, Supplier shall not refer to the project (any details of it, CT's or the Supplier's involvement) in any press or marketing materials or media, or on any Internet site nor make, transmit, post, upload or download or otherwise publish or disclose any text, still image, audio or video recording of or relating to the project.

7.2 Materials and other information supplied by CT may be proprietary or confidential to CT or its client. Unless already in the public domain (other than by reason of Supplier's breach), Supplier agrees without limit of time to keep confidential and secure all such information and materials, which may come into Supplier's possession in the performance of this Order and Supplier shall not use or disclose the same other than for the purposes of this Order without CT's written consent.

8 Liability of Supplier and Insurance

8.1 If on delivery the Supply is defective or does not materially conform with this Order, CT may without prejudice to any other right or remedy reject the Supply in whole or part (and may do so notwithstanding commercial use by CT in order to meet pre-existing obligations, which use shall not constitute acceptance). On rejection CT may at its discretion require Supplier:

8.1.1 at its cost forthwith to repair or replace defective Supply; or

8.1.2 to reimburse CT the price paid and to pay CT all additional costs over and above the Price reasonably incurred by CT in obtaining a replacement.

8.2 Except as provided in clause 8.1, if Supply fails during the warranty period, Supplier shall at its cost forthwith repair or replace defective Supply. Repair or replacement shall have benefit of remainder of initial warranty period or, if longer, an extended 3 months warranty from its delivery to CT.

8.3 Supplier shall indemnify CT in full against all liability loss damages costs and expenses (including loss of profit, additional costs of working, legal costs and expenses) incurred or awarded against or paid by CT as a result of or arising from breach of the Order or Terms by or negligent act, omission or misconduct of Supplier (or any person for whom Supplier is responsible) or any claim that the Supply infringes any IPR of any other person (except to extent claim arises from material supplied by CT).

8.4 Supplier shall have and maintain adequate public and product liability insurance (providing cover of not less than £2,000,000 per claim), employer's liability or workers' compensation insurance and, if applicable, travel, medical and motor insurance in respect of the Supply and all Supplier personnel performing this Order (and shall provide such evidence of insurance as CT reasonably requires).

9 Contractor Status and Taxation

9.1 Status of Supplier is of an independent contractor and, if an individual, a self employed person. Nothing in this Order shall create or be deemed to create an agency, partnership or employment relationship between the parties.

9.2 Unless CT notifies Supplier in writing to the contrary, Supplier shall be responsible for all tax on income or profits, national insurance, mandatory provident fund contributions and similar liabilities in respect of sums payable under this Order and Supplier agrees to indemnify CT against all demands for any such tax, contributions, penalties and interest (or similar liabilities in any relevant jurisdiction) made against it in respect of the Supplier's services (including the services of any person through whom Supplier performs Services).

10 Termination

10.1 If: Supplier makes any voluntary arrangement with its creditors; (being an individual or firm) becomes bankrupt; (being a company) has petition for administration or winding-up order presented against it, goes into liquidation (other than for purposes of amalgamation or reconstruction); or an encumbrancer takes possession or receiver is appointed of any property or assets of Supplier; Supplier ceases or threatens to cease to carry on business; CT reasonably apprehends that any of the above is about to occur (or anything analogous under laws of any relevant jurisdiction) and so notifies Supplier; or Supplier is in breach of terms of this Order and if capable of remedy fails to remedy breach within 7 days of notice by CT, then (without prejudice to any other right or remedy) CT may cancel or suspend Order in whole or part without liability to Supplier who shall be liable for additional costs incurred by CT in completing Order or obtaining alternative Supply.

10.2 Completion of performance of any Order or its termination for any reason shall not affect the accrued rights of the parties under this Order.

11 Force Majeure

CT shall not be liable to Supplier for delay or failure (including failure to accept Supply) due to any cause beyond CT's control (including, without limitation, due to fire, flood, material adverse weather, epidemic, quarantine restriction, trade disputes or industrial actions, actual or threatened act of war, terrorism, civil disturbance, act or omission of government) and in such circumstances CT reserves right to terminate all or part of Order or require Supplier to suspend further performance.

12 General

12.1 If Supplier is more than one person, they shall be liable both individually and together.

12.2 No person other than CT and Supplier shall have any rights under or to enforce this Order and The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Order.

12.3 The obligations on part of Supplier under this Order shall not be assigned or sub-contracted without CT's written consent.

12.4 Any notice under this Order shall be in writing and may be served by hand, pre-paid first class post or airmail, or facsimile to the party's address or facsimile number set out in this Order or such other address as is notified for the purpose.

12.5 Delay shall not prevent CT enforcing any provision of this Order. Any waiver of a breach of this Order shall not operate as a waiver of a later breach of the same or any other provision. If any provision of this Order is held to be invalid or unenforceable in whole or in part, the validity of the remaining provisions shall not be affected.

12.6 This Order shall be governed and construed in accordance with English law. The parties agree to submit to the non-exclusive jurisdiction of the English Courts