

## Terms and Conditions for the Purchase or Hire of Goods and/or Purchase of Services by Sonae (UK) Limited

### 1. DEFINITIONS AND INTERPRETATION

- 1.1 The definitions and rules of interpretation in this condition apply in these conditions.

**"Company"** – Sonae (UK) Limited.

**"Contract"** – the Purchase Order and the Supplier's acceptance of the Purchase Order incorporating these terms and conditions.

**"Goods"** – any goods agreed in the Contract to be purchased/hired by the Company from the Supplier (including any part or parts of them).

**"Insolvency Event"** means the passing of a resolution for the Supplier's winding-up (other than for the purpose of and followed by a solvent reconstruction or amalgamation) or summoning a meeting to pass any such resolution; or

the Supplier having a petition for a winding-up order presented against it; or

a petition for an administration order being presented in relation to the Supplier; or

a receiver, administrator, administrative receiver, receiver and manager or similar officer being appointed by any person of all or substantially all of the Supplier's property, assets or undertakings; or

the Supplier making a proposal for or becoming the subject of a voluntary arrangement as defined in section 1 of the Insolvency Act 1986; or

the Supplier entering into any other arrangement with its creditors or substantially all of them; or

the Supplier being unable to pay its debts for the purposes of Section 123 of the Insolvency Act 1986, ignoring Section 123(1)(a) thereof, or any distress, execution or other process being levied upon the whole or substantially all of the Supplier's assets.

**"Purchase Order"** – the Company's written instruction to supply the Goods/Services, incorporating these conditions.

**"Price"** – the amount stated in the Purchase Order as the purchase/hire price of the Goods/Services.

**"Services"** means the services if any as stated in the Purchase Order.

**"Supplier"** means the person, firm or company who accepts the Company's Purchase Order.

- 1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

- 1.3 A reference to one gender includes a reference to the other gender.

- 1.4 Condition headings do not affect the interpretation of these conditions.

### 2. APPLICATION OF TERMS

- 2.1 Subject to any variation under condition 2.4, these conditions are the only conditions upon which the Company is prepared to deal with the Supplier and they shall govern the Contract to the entire exclusion of all other terms and conditions.

- 2.2 Each purchase Order for Goods/Services by the Company from the Supplier shall be deemed to be an offer by the Company to purchase/hire Goods/Services subject to these conditions and no Purchase Order shall be accepted until the Supplier either

expressly by giving notice of acceptance, or impliedly by fulfilling the Purchase Order, in whole or in part accepts the offer.

- 2.3 No terms or conditions endorsed upon, delivered with or contained in the Supplier's quotation, acknowledgement or acceptance of order, specification or similar document shall form part of the Contract and the Supplier waives any right which it otherwise might have to rely on such terms and conditions.
- 2.4 These conditions apply to all the Company's purchases/hires and any variation to these conditions shall have no effect unless expressly agreed in writing and signed by an authorised signatory of the Company.

### 3. QUALITY AND DEFECTS

- 3.1 The Goods (if any) shall be of the best available design, of the best quality, material and workmanship, be without fault and conform in all respects with the Purchase Order and specification and/or patterns supplied or advised by the Company to the Supplier. The Supplier shall provide the services (if any) with all reasonable care and skill and shall meet the company's requirements.
- 3.2 The Company's rights under these conditions are in addition to the statutory conditions implied in favour of the Company by the Sale of Goods Act 1979 and all other statutory rights.
- 3.3 At any time prior to delivery of Goods and/or completion of the Services the company shall have the right to inspect and test the Goods/Services.
- 3.4 If the results of such inspection or testing cause the Company to be of the opinion that the Goods/Services do not conform or are unlikely to conform with the Purchase Order or to any specifications and/or patterns supplied or advised by the Company to the Supplier, the Company shall inform the Supplier and the Supplier shall immediately take such action as is necessary to ensure conformity and in addition the Company shall have right to require and witness further testing and inspection.
- 3.5 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods/Services and any such inspection or testing shall not diminish or otherwise affect the Supplier's obligations under the Contract.
- 3.6 If any of the Goods/Services fail to comply with the provisions set out in condition 3 the Company shall be entitled to avail itself of any one or more remedies listed in condition 12.

### 4. INDEMNITY AND LIABILITY

- 4.1 The Supplier shall keep the Company indemnified in full against all liabilities, loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the Company as a result of or in connection with:
- (a) The Supplier's breach of the Contract and/or negligent act or omission.
  - (b) defective workmanship, quality or materials;
  - (c) an infringement or alleged infringement of any intellectual property rights caused by the use, manufacture or supply of the Goods/Services; and
  - (d) any claim made against the Company in respect of any liability, loss, damage, injury, cost or expense sustained by the Company's employees or agents or by any customer or



third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Goods/Services as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the terms of the Contract by the Supplier.

- 4.2 The Company's liability to the Supplier under the contract howsoever arising shall be limited to the Price.

## **5. DELIVERY (GOODS ONLY)**

- 5.1 The Goods shall be delivered, carriage paid, to the Company's place of business or to such other place of delivery as is agreed by the Company in writing prior to delivery of the Goods or as stated in the Purchase Order. The Supplier shall off-load the Goods at its own risk as directed by the Company.
- 5.2 The date for delivery shall be specified in the Purchase Order, or if no such date is specified then delivery shall take place within 28 days of the Purchase Order.
- 5.3 The Supplier shall invoice the Company upon, but separately from, delivery of the Goods to the Company.
- 5.4 The Supplier shall ensure that each delivery is accompanied by a delivery note which shows, inter alia, the Purchase Order number, date of Purchase Order, number of packages and contents and, in the case of part delivery, the outstanding back order to be delivered.
- 5.5 Unless otherwise stipulated by the Company in the Purchase Order, deliveries shall only be accepted by the Company in normal business hours.
- 5.6 If the goods are not delivered on the due date then, without prejudice to any other rights which it may have, the Company reserves the right to:
- (a) cancel the contract in whole or in part;
  - (b) refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
  - (c) recover from the Supplier any expenditure reasonably incurred by the Company in obtaining the Goods in substitution from another supplier; and
  - (d) claim damages for any additional costs, loss or expenses incurred by the Company which are in any way attributable to the supplier's failure to deliver the Goods on the due date.
- 5.7 If the Supplier requires the Company to return any packaging material to the Supplier that fact must be clearly stated on any delivery note delivered to the Company and any such packaging material shall only be returned to the Supplier at the cost of the Supplier.
- 5.8 Where the Company agrees in writing to accept delivery by instalments the Contract shall be construed as a single Contract in respect of each instalment. Nevertheless failure by the Supplier to deliver any one instalment shall entitle the Company at its option to treat the whole Contract as repudiated.
- 5.9 If the Goods are delivered to the Company in excess of the quantities ordered the Company shall not be bound to pay for the excess and any excess shall be and shall remain at the Supplier's risk and shall be returnable at the Supplier's expense.
- 5.10 The Company shall not be deemed to have accepted the Goods until it has had 30 days to inspect them following delivery. The Company shall also have the right to reject the Goods as though they had not been accepted for 30 days after any latent defect in the Goods has become apparent.

## **6. RISK/PROPERTY (GOODS ONLY)**

- 6.1 The Goods shall remain at the risk of the Supplier until delivery to the Company is complete (including off-loading and stacking) when risk in and ownership (where the Goods are being purchased outright) of the Goods shall pass to the Company. If the Company is hiring the Goods, risk in the Goods shall revert to the Supplier once the Goods have been off-hired to the Supplier and an off-hire number confirmed.

## **7. PRICE**

- 7.1 The price of the Goods/Services shall be stated in the Purchase Order and unless otherwise agreed in writing by the Company

shall be exclusive of value added tax but inclusive of all other charges.

- 7.2 No variation in the price nor extra charges shall be accepted by the Company unless the Company agrees in writing.

## **8. PAYMENT**

- 8.1 The Supplier shall invoice the Company once the Supplier has delivered the Goods to the Company and/or completed the services to the satisfaction of the Company.
- 8.2 The Company shall pay each valid invoice by the end of the month following the month in which the company receives the invoice.
- 8.3 Unless otherwise agreed in writing the Supplier shall submit invoices and make initial enquiries with respect to payment to Sonae (UK), Accounts Payable, Unit 4d Waterway House, Canal Street, Wigan WN6 7NQ or email [accounts@sonaeuk.org](mailto:accounts@sonaeuk.org).
- 8.4 Without prejudice to any other right or remedy, the Company reserves the right to set off any amount owing at any time to it from the Supplier against any amount payable by the Company to the Supplier under the Contract.
- 8.5 If any sum under the Contract is not paid when due then, without prejudice to the parties other rights under the Contract that sum shall bear interest from the due date until payment is made in full, both before and after any judgment, at 2% per annum over the HSBC Bank plc base rate from time to time. The Supplier is not entitled to suspend deliveries of the Goods/performance of the services as a result of any disputed sums being outstanding.

## **9. CONFIDENTIALITY**

- 9.1 The Supplier shall keep in strict confidence all technical or commercial knowledge, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Supplier by the Company or its agents and any other confidential information concerning the Company's business or its products which the Supplier may obtain and the Supplier shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Supplier's obligations to the Company and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Supplier.

## **10. INTELLECTUAL PROPERTY**

- 10.1 Materials, equipment, tools, dies, moulds, copyright, design rights or any other forms of intellectual property rights in all drawings, specifications and data supplied by the Company to the Supplier shall at all times be and remain the exclusive property of the Company but shall be held by the Supplier in safe custody at its own risk and maintained and kept in good condition by the Supplier until returned to the Company and shall not be disposed of other than in accordance with the Company's written instructions, nor shall such items be used otherwise than as authorised by the Company in writing.
- 10.2 (GOODS ONLY) The Supplier shall licence the Company all intellectual property rights (belonging to the Supplier or to any third parties) as necessary to enable the Company to freely use the Goods.
- 10.3 (SERVICES ONLY) The Supplier shall assign all intellectual property rights arising in respect of the services to the Company.

## **11. TERMINATION**

- 11.1 The Company shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Supplier written notice whereupon all work on the Contract shall be discontinued and the Company shall pay to the Supplier fair and reasonable compensation for work-in-progress at the time of termination but such compensation shall not include loss of anticipated profits or any consequential loss.
- 11.2 The Company shall additionally have the right at any time by giving notice in writing to the Supplier to terminate the Contract forthwith if:



- (a) the Supplier commits a material breach of any of the terms and conditions of the Contract and does not remedy such breach (where remediable) within 7 days; or
- (b) any distress, execution or other process is levied upon any of the assets of the Supplier; or
- (c) the Supplier suffers and Insolvency Event; or
- (d) the Supplier ceases or threatens to cease to carry on its business; or
- (e) the financial position of the Supplier deteriorates to such an extent that in the opinion of the Company the capability of the Supplier adequately to fulfil its obligations under the Contract has been placed in jeopardy.

11.3 The termination of the Contract, however arising, shall be without prejudice to the rights and duties of the Company accrued prior to termination. The conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

## 12. REMEDIES

Without prejudice to any other right or remedy which the Company may have, if any Goods/Services are not supplied in accordance with, or the Supplier fails to comply with, any of the terms of the Contract the Company shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods/Services have been accepted by the Company:

- (a) to rescind the Purchase Order
- (b) to reject the Goods (in whole or in part)/Services and return the Goods/deliverables to the Supplier at the risk and cost of the Supplier on the basis that a full refund for the Goods/deliverables so returned shall be paid forthwith by the Supplier;
- (c) at the Company's option to give the Supplier the opportunity at the Supplier's expense either to remedy any defect in the Goods/Services or to supply replacement Goods/Services and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;
- (d) (GOODS ONLY) to refuse to accept any further deliveries of the Goods but without any liability to the Supplier;
- (e) To carry out at the Supplier's expense any work necessary to make the Goods/Services comply with the Contract; and
- (f) To claim such damages as may have been sustained in consequence of the Supplier's breach or breaches of the Contract.

## 13. ASSIGNMENT

- 13.1 The Supplier shall not be entitled to assign or subcontract the Contract or any part of it without the prior written consent of the Company. If the Company does approve any subcontracting, the Supplier shall remain responsible as prime contractor.
- 13.2 The Company may assign and/or subcontract the Contract or any part of it to any person, firm or company.

## 14. FORCE MAJEURE

The Company reserves the right to defer the date of the delivery or payment or to cancel the Contract or reduce the volume of Goods ordered (GOODS ONLY) if it is prevented from or delayed in carrying on its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

## 15. MISCELLANEOUS

- 15.1 The Supplier shall maintain adequate insurance protection against the risks it is assuming under the Contract.
- 15.2 (SERVICES ONLY) The Supplier shall complete the services within the timescale advised by the Company.
- 15.3 (HIRE OF GOODS ONLY) The Purchase Order (or as otherwise agreed by the parties) shall detail the hire period for the hire of any plant or equipment. The Supplier shall provide Company with operating instructions to enable the Company to safely use or operate the Goods.

## 16. GENERAL

- 16.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 16.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 16.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 16.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Supplier shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 16.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 16.6 The Supplier warrants and represents on behalf of its self and its subcontractors (if any) that it has not, and shall not, carry out any offence under the Bribery Act 2010, and that it has adequate procedures in place to prevent such an occurrence.
- 16.7 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English Law and the parties submit to the exclusive jurisdiction of the English courts.