

## Terms and Conditions of Business – Digital Learning Design Ltd

### 1. Introduction

- 1.1. By entering into an agreement (“Agreement”) with Digital Learning Design Ltd (“Company”) you agree to be bound by the following Terms.

### 2. Interpretation

The following definitions and rules of interpretation apply in these Terms.

#### 2.1. Definitions:

**Agreement** shall mean any agreement whether express or implied between the Company and the Client that shall arise when the Company makes an Introduction.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Contract:** the contract between the Company and the Client for the sale of Goods in accordance with these Conditions.

**Client:** the person or firm who purchases the Goods

**Company** means Digital Learning Design Ltd, a company registered in England and Wales under company number 11534694 with its registered office 93 Market Street Farnworth, Bolton, Lancashire, England, BL4 7NS.

**Goods:** the Goods (or any part of them) set out in the Order.

**Order:** the Client's order for the Goods.

**Terms:** these terms as amended from time to time.

#### 2.2. Interpretation:

- 2.3. A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

- 2.4. Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

- 2.5. A reference to **writing** or **written** includes email.

- 2.6. For the avoidance of doubt “we” shall mean the Company and “you” shall mean the Client and collectively the “parties”.

### **3. Basis of contract**

- 3.1. These Terms apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 3.2. The Order constitutes an offer by the Client to purchase the Goods in accordance with these Conditions. The Client is responsible for ensuring that the terms of the Order are complete and accurate.
- 3.3. The Order shall only be deemed to be accepted when the Company issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 3.4. A quotation for the Goods given by the Company shall not constitute an offer.

### **4. Supply of Goods**

- 4.1. The Goods are described in the quote provided by the Company.
- 4.2. The Company reserves the right to amend the Goods.
- 4.3. If you wish to make a change to the Goods you have ordered please contact us. We will let you know if the change is possible. If it is possible we will let you know about any changes to the price, the timing of supply or anything else which would be necessary as a result of your requested change and ask you to confirm whether you wish to go ahead with the change. If we cannot make the change or the consequences of making the change are unacceptable to you, you may want to end the contract in accordance with these Terms.

### **5. Delivery**

- 5.1. During the Order process we will let you know when we will be able to deliver the Goods to you. We will deliver them to you as soon as reasonably possible. Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Company shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Client's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 5.2. The Company shall deliver the Goods to the location set out in the Order or such other location as the parties may agree ("**Delivery Location**").
- 5.3. Delivery is completed on the completion of the Goods at the Delivery Location.
- 5.4. If there is to be any cost of delivery you will be as notified as soon as it is practicable and the cost shall be agreed between the parties.

- 5.5. We are not responsible for delays outside our control. If our supply of the Goods is delayed by an event outside our control then we will contact you as soon as it is practicable to advise you and we will take steps to minimise the effect of any delay. Provided we do this we will not be liable for delays caused by the event, but if there is a risk of substantial delay you may contact us to take steps to end the Contract.
- 5.6. If the Company fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Client in obtaining replacement Goods of similar description and quality in the cheapest market available, less the price of the Goods. The Company shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Client's failure to provide the Company with adequate instructions or any other instructions that are relevant to the supply of the Goods.

## **6. Quality**

- 6.1. The Company warrants that on delivery of the Goods shall:
- (a) conform in all material respects with their description;
  - (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 6.2. Subject to clause 6.3, if:
- (a) the Client gives notice in writing to the Company within 14 days of receipt that some or all of the Goods do not comply with the warranty set out in clause 6.1; and
  - (b) the Company is given a reasonable opportunity of examining such Goods; and
  - (c) the Client (if asked to do so by the Company) returns such Goods to the Company's place of business at the Client's cost,

the Company shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

- 6.3. The Company shall not be liable for the Goods' failure to comply with the warranty set out in clause 6.1 in any of the following events:
- (a) the Client makes any further use of such Goods after giving notice in accordance with clause 6.2;
  - (b) the defect arises because the Client failed to follow the Company's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
  - (c) the defect arises as a result of the Company following any drawing, design or Specification supplied by the Client;

- (d) the Client alters or repairs such Goods without the written consent of the Company;
  - (e) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 6.4. Except as provided in this clause 6, the Company shall have no liability to the Client in respect of the Goods' failure to comply with the warranty set out in clause 6.1.
- 6.5. These Conditions shall apply to any repaired or replacement Goods supplied by the Company.

## **7. Title and risk**

- 7.1. The risk in the Goods shall pass to the Client on completion of delivery.
- 7.2. Title to the Goods shall not pass to the Client until the Company receives payment in full (in cash or cleared funds) for the Goods, in which case title to the Goods shall pass at the time of payment.

## **8. Price and payment**

- 8.1. Estimates or quotations are given on the basis of the Client's description, information and/ or any source material provided. The Company reserves the right to adjust pricing and/ or delivery estimates upon receipt and evaluation of any final information and/ or source materials for service. Invoices will be in accordance with estimates or quotations and/ or any subsequent cost revisions submitted by the Company and agreed by the Client. Unless otherwise stated, prices are in pounds sterling and exclude VAT and any other tax or duty.
- 8.2. Estimates or quotations are valid for 30 days from the date of issue and may be subject to change thereafter, at the discretion of the Company, unless pricing forms part of a formal contract agreed beforehand with the Company.
- 8.3. Payment to the Company shall be effected in full no later than 14 days from the date of invoice.
- 8.4. Late payments will have interest applied at a rate of 9% per annum over the Bank of England's base rate, (or such rate as is determined by statute, the latter prevailing), and compensation for debt recovery costs to all overdue sums from the date on which they become due to until are paid in full.

## **9. Cancellation**

- 9.1 If the Client cancels or withdraws any portion of the Goods requested then, in consideration of the Company's or its subcontractors' scheduling and/ or performing the Goods, the Client shall pay the Company the full price of the Contract.

## **10. Limitation of liability**

- 10.1. Nothing in these Conditions shall limit or exclude the Company's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
  - (b) fraud or fraudulent misrepresentation;
  - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
  - (d) defective products under the Consumer Protection Act 1987; or
  - (e) any matter in respect of which it would be unlawful for the Company to exclude or restrict liability.
- 10.2. Subject to clause 10.1:
- (a) the Company shall under no circumstances whatsoever be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
  - (b) the Company's total liability to the Client in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods.

## **11. Copyright**

- 11.1 The Client hereby grants to the Company a limited right to use the items provided to the Company by the Client for the sole purpose of the Company providing the Goods to the Client.
- 11.2 The item(s) to be provided by the Company pursuant to the Contract shall be the property of the Client upon the Client's completion of all payments provided herein. To the extent necessary the Company shall use reasonable endeavours to procure the

## **12. General**

### **12.1. Assignment and other dealings.**

- (a) The Company 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.

- (b) The Client 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 Company.

**12.2. Entire agreement.**

- (a) 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.
- (b) 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.**

- (a) 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.
- (b) 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 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 laws 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.