

ArchformByte Terms and Conditions

The Customer's attention is particularly drawn to the provisions of clause 11.

1. Interpretation

1.1 Definitions. In these Conditions, the following definitions apply:

Contract: the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

Customer: the person or firm who purchases the Goods and/or Services from the Supplier. **Goods:** the goods (or any part of them) set out in the Order.

Intellectual Property Rights: all patents, rights to inventions, copyright and related rights, trademarks, trade, business and domain names, rights in goodwill or to sue for passing off, rights in computer software and any other intellectual property rights, in each case whether registered or unregistered and all similar or equivalent rights or forms of protection in any part of the world.

Order: the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form, prescription ticket or the Customer's written acceptance of the Supplier's quotation, as the case may be.

Services: the services supplied by the Supplier to the Customer as set out in the Service Specification. **Service Specification:** the description or specification for the Services provided in writing by the Supplier to the Customer.

Supplier: ArchformByte Limited registered in England and Wales with company number 07365506.

2. Basis of contract

2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.

2.2 The Order shall only be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (Commencement Date).

2.3 After the Commencement Date the Contract is binding on both parties and, subject to clause 5.2 below, the Customer does not have any right to return the Goods or cancel the Services.

2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any representation made by or on behalf of the Supplier not set out in the Contract.

2.5 Samples, brochures or descriptive matter issued by the Supplier are for the sole purpose of giving an approximate idea of the Services and/or Goods described in them and shall not form part of the Contract.

2.6 These conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.7 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

2.8 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

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3. Specification

- 3.1 The Goods and Services are as described in the Supplier's quotation as modified by any applicable specification agreed in writing by the parties.
- 3.2 The Supplier reserves the right to amend the specification of the Goods or Services if required by any applicable statutory or regulatory requirements.

4. Delivery of Goods

- 4.1 The Supplier shall deliver the Goods to the location set out in the Order or such other agreed location (Delivery Location) at any time after the Supplier notifies the Customer that the Goods are ready.
- 4.2 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 4.3 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.4 If the Customer fails to accept or take delivery of the Goods within 5 Business Days of the Supplier notifying the Customer that the Goods are ready, then delivery of the Goods shall be deemed to have been completed at 9.00 am on the sixth Business Day following the day on which the Supplier notified the Customer that the Goods were ready and the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

5. Quality of Goods and services

- 5.1 Where the Customer purchases the Goods, the Supplier warrants that on delivery, and for a period of 6 months from the date of delivery the Goods shall:
- (a) conform in all material respects with their description; and
 - (b) be free from material defects in design, material and workmanship; and
 - (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 5.2 Subject to clause 5.3, if:
- (a) the Customer gives notice in writing during the Warranty Period and within a reasonable time of discovery that the Goods do not comply with the warranty set out in clause 5.1;
 - (b) the Supplier is given a reasonable opportunity of examining such Goods; and
 - (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost, the Supplier shall, at its option, repair or replace the Goods or refund the price of the defective Goods in full.
- 5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if the defect arises because the Customer failed to follow the Supplier's instructions as to the installation, use or maintenance of the Goods; the defect arises as a result of the Supplier following a goods specification supplied by the Customer; the Customer alters or repairs Goods without the written consent of the Supplier; the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

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- 5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.5 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Supplier under clause 5.2.
- 5.6 Whilst it is the intention of the Supplier that the Customer will be delighted with the Goods and Services it provides, the Supplier cannot guarantee any specific outcome from the use of the Goods and Services.

6. Title and risk

- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 6.2 If the Customer is buying the Goods, title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for the Goods and any payment for Services due.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall hold the Goods on a fiduciary basis as the Supplier's bailee; store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property; not remove, deface or obscure any identifying mark or packaging on or relating to the Goods; maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery; notify the Supplier immediately if it becomes subject to any of the events listed in clause 12.1(b); and give the Supplier such information relating to the Goods as the Supplier may require from time to time, but the Customer may use the Goods in the ordinary course of its business.
- 6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 12.1(b), or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided the Goods have not been resold, the Supplier may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. Supply of Services

- 7.1 The Supplier shall provide the Services to the Customer in accordance with the Service Specification in all material respects.
- 7.2 The Supplier shall use all reasonable endeavours to meet performance dates for the Services specified in the Order, but such dates shall be estimates only and time shall not be of the essence of the contract.
- 7.3 The Supplier shall have the right to make changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 7.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

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8. Customer's obligations

The Customer shall: ensure that the terms of the Order are complete and accurate in all material respects; co-operate with the Supplier in all matters relating to the Services; provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Services, and ensure that such information is accurate in all material respects; obtain and maintain all necessary licences and consents which may be required for the use of the Goods and/or Services before the date on which the Goods are delivered and the Services are to start; and keep and maintain all equipment and other property of the Supplier at the Customer's premises in safe custody at its own risk and maintain the Supplier's property in good condition until returned to the Supplier;

8.1 If the Supplier's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation:

- (a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform its obligations as set out in this clause 8.1; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the customer default.

9. Charges and payment

9.1 The price for Goods and Services shall be the price set out in the Order or the price set out in the Supplier's published price list as at the date of delivery and is exclusive of packaging, insurance and transport.

9.2 The Supplier shall invoice the Customer before delivery of the Goods and the Supplier will not deliver the Goods until it has received in cleared funds any advance payment specified in the Order.

9.3 The Customer shall pay each invoice submitted by the Supplier within 30 days of the date of the invoice; and in full and in cleared funds as directed and time for payment shall be of the essence of the Contract.

9.4 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

9.5 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment (Due Date), the Supplier shall have the right to claim interest on the overdue amount together with reasonable costs and compensation under the Late Payment of Commercial Debts (Interest) Act 1998 and the Customer shall pay the interest immediately on demand.

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9.6 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

10. Intellectual property rights

10.1 All Intellectual Property Rights in or arising out of or in connection with the Goods and the Services shall be owned by the Supplier.

10.2 All Supplier Materials are the exclusive property of the Supplier.

11. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

11.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for: death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; fraud or fraudulent misrepresentation; breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982; or breach of the terms implied by section 12 of the Sale of Goods Act 1979.

11.2 Subject to clause 11.1:

(a) the Supplier shall under no circumstances whatever be liable to the Customer for any loss of profit, loss of data, or any indirect or consequential loss arising under or in connection with the Contract ; and

(b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract shall in no circumstances exceed the value of the Contract.

(c) The Supplier shall not be liable to the Customer for any losses suffered by the Customer due to the failure of the Customer to follow the Supplier's instructions regarding the use of the Goods or Services.

(d) The Supplier shall under no circumstances be liable to the Customer for any losses suffered by it caused by inaccurate or incomplete information provided by the Customer to the Supplier.

11.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

11.4 This clause 11 shall survive termination of the Contract.

12. Termination

12.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

(a) the other party commits a material breach of its obligations under this Contract and fails to remedy that breach within 10 Business Days after receipt of written notice of the breach;

(b) the other party commits or threatens to commit or is threatened with any act of insolvency under the Insolvency Act 1986;

(c) the other party suspends, threatens to suspend, ceases or threatens to cease all or substantially the whole of its business.

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12.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract: by giving the Customer one month's written notice; or with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.

12.3 Without limiting its other rights or remedies, the Supplier shall have the right to suspend the supply of Services if the Customer fails to make pay any amount due under this Contract on the due date for payment.

13. Consequences of termination

On termination of the Contract for any reason the Customer shall immediately pay to the Supplier the Supplier's outstanding unpaid invoices and interest and for Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt; the Customer shall return all of the Supplier's property and any Goods which the Customer has not bought; the accrued rights and remedies of the parties as at termination shall not be affected; and clauses which expressly or by implication have effect after termination shall continue in full force.

14. General

14.1 Force Majeure Event means an event beyond the reasonable control of the Supplier. The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event. If the Force Majeure Event prevents the Supplier from providing any of the Services or Goods for more than 4 weeks, either party may terminate this Contract immediately on written notice.

14.2 Neither party shall assign, transfer, subcontract or deal with all or any of its rights under the Contract without the prior written consent of the other party, which shall not be unreasonably withheld.

14.3 A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default.

14.4 Except as set out in these Conditions, any variation to the Contract shall only be binding when agreed in writing and signed by the Supplier.

14.5 This Contract, and any dispute or claim arising out of it shall be governed by English law, and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

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