

TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES

1. INTERPRETATION

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

Accessories: any of the ancillary accessories supplied by the Supplier for us with the Goods.

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

Commencement Date: has the meaning set out in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 15.10.

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

Customer: the Royal National Institute for Deaf People trading as Action on Hearing Loss, a company registered in England and Wales under number 454169 whose registered office is at 19-23 Featherstone Street, London EC1Y 8SL and is registered as a charity under numbers 207720 (England and Wales) and SC038926 (Scotland).

Deliverables: all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

Delivery Location: the location set out in the Order or such other location as instructed by the Customer before delivery or performance with reasonable prior notice.

Goods: the goods (or any part of them) set out in the Order which shall include all Accessories unless otherwise specified.

Goods Specification: any specification for the Goods, including any related plans and drawings, that is agreed by the Customer and the Supplier, and set out in the Order.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trade marks, 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 rights, topography 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.

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Order: the order for the supply of Goods and/or Services, as set out in the Customer's purchase order.

Services: the services, including without limitation any Deliverables, to be provided by the Supplier under the Contract as set out in the Service Specification.

Service Specification: the description or specification for Services agreed in the Order by the Customer and the Supplier.

Supplier: the person or firm from whom the Customer purchases the Goods and/or Services.

VAT: value added tax chargeable under the Value Added Tax Act 1994 and any similar, replacement or additional tax.

1.2 Construction: In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its personal representatives, successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) a reference to **writing** or **written** includes faxes and e-mails.

2. BASIS OF CONTRACT

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

2.2 The Order shall be deemed to be accepted on:

- (a) the Supplier issuing written acceptance of the Order; or
- (b) any act by the Supplier consistent with fulfilling the Order,

at which point and on which date the Contract shall come into existence (**Commencement Date**).

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

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

3. SUPPLY OF GOODS

3.1 The Supplier shall ensure that:

- (a) the Goods shall correspond with their description and any applicable Goods Specification;
- (b) the Goods shall be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by the Customer, expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgment;
- (c) the Goods (which for the purposes of this clause 3.1(c) shall not include Accessories) shall be free from defects in design, materials and workmanship and remain so for a period of 12 months from the date of delivery or such longer period provided under the Supplier's warranty;
- (d) the Accessories shall be free from defects in design, materials and workmanship and remain so for a period of 90 days from the date of delivery or such longer period provided under the Supplier's warranty; and
- (e) comply with all applicable statutory and regulatory requirements relating to amongst others the manufacture, packing, labelling, packaging, storage, handling and delivery of the Goods.

3.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.

3.3 The Customer, providing reasonable notice in advance, shall have the right to inspect and test the Goods before delivery.

3.4 If following such inspection or testing the Customer considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at

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clause 3.1, the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

- 3.5 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and the Customer shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

4. DELIVERY OF GOODS

4.1 The Supplier shall ensure that:

- (a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
- (b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- (c) if the Supplier requires the Customer to return any packaging material for the Goods to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.

4.2 The Supplier shall deliver the Goods:

- (a) on the date specified in the Order or, if no such date is specified, then within 21 calendar days of the date of the Order, unless otherwise agreed by the parties;
- (b) to the Delivery Location;
- (c) during the Customer's normal hours of business on a Business Day, or as otherwise reasonably requested by the Customer.

4.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

4.4 The Supplier shall not deliver the Goods in instalments unless agreed by the parties and specified in the Order. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately.

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However, failure by the Supplier to deliver any one instalment on time or at all shall entitle the Customer to the remedies set out in clause 6.1.

- 4.5 Title and risk in the Goods shall pass to the Customer on completion of delivery.

5. SUPPLY OF SERVICES

- 5.1 The Supplier shall from the date and for the duration set out in the Order provide the Services to the Customer in accordance with the terms of the Contract.

- 5.2 The Supplier shall meet any performance dates for the Services specified in the Order or as reasonably notified to the Supplier by the Customer.

- 5.3 In providing the Services, the Supplier shall:

- (a) co-operate with the Customer in all matters relating to the Services, and comply with all reasonable instructions of the Customer;
- (b) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with these Conditions;
- (d) ensure that the Services will conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the Customer;
- (e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- (f) use the appropriate quality goods, materials, apply the best standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Customer, will be free from defects in workmanship, installation and design;
- (g) obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;

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- (h) observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises;
- (i) not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Customer may rely or act on the Services; and
- (j) perform any additional obligations specified in the Order.

6. CUSTOMER REMEDIES

6.1 If the Supplier fails to deliver the Goods and/or perform the Services by the date set out in the Order, the Customer shall, without limiting its other rights or remedies, have one or more of the following rights:

- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
- (b) to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
- (c) to recover from the Supplier any costs incurred by the Customer in obtaining substitute goods and/or services from a third party;
- (d) where the Customer has paid in advance for Services that have not been provided by the Supplier and/or Goods which have not been delivered by the Supplier by the date set out in the Order, to have such sums refunded by the Supplier; and
- (e) to claim damages for any additional costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to meet such dates.

6.2 The Goods shall be inspected by the Customer within 10 Business Days of delivery, and if the Customer finds that the Goods do not comply with the undertaking set out in clause 3.1(a), then without limiting its other rights or remedies, the Customer shall have one or more of the following rights:

- (a) to reject the Goods (in whole or in part) and subsequently, at the Customer's discretion:
 - (i) to return them to the Supplier at the Supplier's own risk and expense; or
 - (ii) to require the Supplier to collect the Goods from the Delivery Location at the Supplier's own risk and expense;

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- (b) to require the Supplier to replace the rejected Goods within 10 Business Days, and where the Supplier has failed to do so within the timeframe, to terminate the Contract with immediate effect by giving written notice to the Supplier;
- (c) to receive a full refund of the price of the rejected Goods (if paid);
- (d) to recover from the Supplier any expenditure incurred by the Customer in obtaining substitute goods from a third party; and
- (e) to claim damages for any additional costs, loss or expenses incurred by the Customer arising from the Supplier's failure to supply Goods in accordance with clause 3.1(a).

6.3 In the event that the Goods fail to comply with the undertakings set out in clause 3.1(b)-(e), then without limiting its other rights or remedies, the Customer shall, at its sole discretion, have the right to return the defective Goods to the Supplier at the Supplier's own risk and expense and receive either:

- (a) a full refund of the price of the defective Goods; or
- (b) to require the Supplier to repair or replace the defective Goods;

within 14 Business Days of the Customer notifying the Supplier that the Goods are defective.

6.4 If the Supplier delivers more than the quantity of Goods ordered, the Customer may at its sole discretion reject the excess Goods, and any rejected Goods shall be returnable at the Supplier's own risk and expense.

6.5 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.

6.6 The Customer's rights under these Conditions are in addition to its rights and remedies implied by statute and common law.

7. CUSTOMER'S OBLIGATIONS

The Customer shall:

- (a) provide the Supplier with reasonable access at reasonable times to the Delivery Location for the purpose of providing the Services and/or delivering the Goods; and

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- (b) provide such information as the Supplier may reasonably request for the provision of the Services and the Customer considers reasonably necessary for the purpose of providing the Services.

8. CHARGES AND PAYMENT

8.1 The price for the Goods:

- (a) shall be the price set out in the Order, or if no price is quoted, the price set out in the Supplier's published price list in force at the Commencement Date; and
- (b) shall be inclusive of the costs of packaging, insurance and carriage of the Goods, unless otherwise agreed by the Customer and set out in the Order. No extra charges shall be effective unless agreed in writing and signed by the Customer.

8.2 The charges for the Services:

- (a) shall be set out in the Order, and shall be the full remuneration in respect of the Supplier's performance of the Services; and
- (b) unless otherwise agreed by the Customer and set out in the Order, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

8.3 The Supplier shall invoice the Customer within 3 months of delivery of the Goods or within 3 months of completion of the Services. Each invoice shall include sufficient supporting information to enable the Customer to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.

8.4 In consideration of the supply of Goods and/or Services by the Supplier and on receipt of an undisputed invoice, the Customer shall pay the amount within 30 Business Days from the end of the month in which the invoice is received by BACS transfer or such other method of payment stipulated in the Order.

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

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- 8.6 If the Customer fails to pay any amount properly payable by it under the Contract within 3 months of the due date, the Supplier shall have the right to charge interest on the overdue amount at the rate of 0.5% per annum above the base rate for the time being of the Customer's bank accruing on a daily basis from the due date up to the date of actual payment. This clause shall not apply to payments that the Customer disputes in good faith.
- 8.7 The Supplier:
- (a) shall maintain complete and accurate records of:
 - (i) the Goods provided and all relevant invoices; and
 - (ii) time spent and materials used by the Supplier in providing the Services; and
 - (b) shall allow the Customer to inspect such records at all reasonable times on request.
- 8.8 The Customer may, without limiting its other rights or remedies, set off any amount owing to it by the Supplier against any amount payable by the Customer to the Supplier under the Contract.

9. INTELLECTUAL PROPERTY RIGHTS

- 9.1 In respect of the Goods and any goods that are transferred to the Customer under the Contract, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to the Customer, it will have full and unrestricted rights to sell and transfer all such items to the Customer.
- 9.2 The Supplier assigns to the Customer, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Services, including for the avoidance of doubt the Deliverables.

10. INDEMNITY

- 10.1 The Supplier shall keep the Customer indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Customer as a result of or in connection with:
- (a) any claim made against the Customer by a third party for death, personal injury or damage to property arising out of, or in connection

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with, defects in the Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;

- (b) any claim made against the Customer by a third party arising out of, or in connection with, the supply of the Goods or Services, to the extent that such claim arises out of the negligent performance of the Contract by the Supplier, its employees, agents or subcontractors; and
- (c) any claim made against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services.

10.2 Unless otherwise specified in the Order, for the duration of the Contract and for a period of 6 years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract and shall, on the Customer's request, produce both the insurance certificate giving details of the cover and the receipt for the current year's premium in respect of each insurance.

10.3 This clause 10 shall survive termination of the Contract.

11. CONFIDENTIALITY

A party (**Receiving Party**) shall:

- a) 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; and
- b) 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. The Receiving Party may also disclose such of the Disclosing Party's confidential information as is required to be disclosed

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by law, any governmental or regulatory authority or by a court of competent jurisdiction.

This clause 11 shall survive termination of the Contract.

12. TERMINATION

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

- (a) the Supplier commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 Business Days of receipt of notice in writing of the breach; or
- (b) the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business, is or will be wound up or is unable to pay its debts.

12.2 Without limiting its other rights or remedies, the Customer may terminate the Contract:

- (a) in respect of the supply of Services, by giving the Supplier the period of written notice specified in the Order; and
- (b) in respect of the supply of Goods, with immediate effect by giving written notice to the Supplier, in which case the Customer shall pay the Supplier fair and reasonable compensation for any work in progress on any of the Goods at the date of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.

12.3 In any of the circumstances in these Conditions in which the Customer may terminate the Contract, where both Goods and Services are supplied, the Customer may instead terminate part of the Contract in respect of the Goods, or in respect of the Services, and the Contract shall continue in respect of the remaining supply.

13. CONSEQUENCES OF TERMINATION

On termination of the Contract or any part of it for any reason:

- (a) where the Services are terminated, the Supplier shall immediately deliver to the Customer all Deliverables, whether or not then complete;

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- (b) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination; and
- (c) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

14. DISPUTES

If any dispute arises out of, or in connection with, the Contract, the parties will attempt to settle the dispute progressively through each of the following options:

- (a) the representatives of the Customer and the Supplier responsible for the administration of the Contract shall first meet and discuss in good faith in an attempt to come to an agreement in relation to the disputed matter;
- (b) if clause 14(a) has not resolved the dispute within 30 Business Days of the meeting then the matter shall be escalated to a meeting between the financial director (or equivalent) of each party;
- (c) if clause 14(b) has not resolved the dispute within 30 Business Days of the meeting then the parties will attempt to settle it by entering into mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR; and
- (d) if and to the extent that the parties do not resolve the dispute following mediation pursuant to clause 14(c), then either party may commence court proceedings in respect of such unresolved dispute.

15. GENERAL

- 15.1 Force majeure: Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under the Contract if and to the extent such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party which by its nature could not have been foreseen by such a party or if it could have been foreseen was unavoidable. If such event or circumstance prevents the Supplier from supplying the Goods and/or Services for more than 30 Business Days, the Customer shall have the right, without limiting its other rights or remedies, to terminate the Contract with immediate effect by giving written notice to the Supplier.

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- 15.2 Assignment and subcontracting: The Supplier shall not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Customer.
- 15.3 Notices:
- (a) Any notice or other communication required to be given to a party under or in connection with the Contract shall be in writing and shall be sent by recorded delivery or by commercial courier to the other party's registered office, or sent by fax to the other party's main fax number as specified in the Order.
 - (b) Any notice or communication shall be deemed to have been duly received if sent by recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission to the fax number specified in the Order.
 - (c) This clause 15.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under the Contract shall not be validly served if sent by e-mail.
- 15.4 Communications: all written and oral communications and notices, all documents and the labelling and marking of all packages shall be in English.
- 15.5 Waiver and cumulative remedies:
- (a) 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. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
 - (b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

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15.6 Severance:

- (a) If Goods are to be delivered or Services performed in instalments the Contract will be treated as a single Contract and is not severable.
- (b) If a court or any other competent authority finds that any provision (or part of any provision) of the Contract is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (c) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

15.7 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

15.8 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.

15.9 Entire Agreement and Precedence:

- (a) The Contract, the Order(s), any exclusivity agreement and/or any non-disclosure agreement constitute the complete entire agreement, and supersedes all prior or contemporaneous, oral or written agreements made between the parties with respect to its subject matter.
- (b) In the event of any conflict among the terms of the Contract, an Order, exclusivity agreement or non-disclosure agreement, the following order of precedence shall apply:
 - (i) the Order
 - (ii) the Contract
 - (iii) non-disclosure agreement
 - (iv) exclusivity agreement

15.10 Variation: Any variation, including any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by an authorised representative of the Customer.

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- 15.11 Governing law and jurisdiction: The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.