

Conditions for the Supply of Goods and Services

N.B. - These conditions contain limitations and exclusions of liability

1. Definitions & Interpretation

1.1 In the Agreement (as defined below) the following terms have the following meanings:

"Agreement"	together the Proposal and these Conditions;
"CD Team"	CD Team Limited (registered in England number 03071115) whose registered office is at 1 Fairview Trading Estate, Reading Road, Henley on Thames, Oxfordshire RG9 1HE;
"Conditions"	the conditions for the supply of goods and services set out in this document;
"Customer"	the person who accepts a quotation of CD Team for the supply of goods and/or services or whose order for goods and/or services is accepted by CD Team [in accordance with clause 3.1 below];
"Customer Material"	all documents, designs, pictures, images, tapes, discs or other device embodying information in any form, information, packaging and materials provided by the Customer in relation to the Agreement;
"Goods"	the goods (including any parts for them and/or any instruction manual or other documentation to be supplied with them) which CD Team has agreed to supply to the Customer, as specified in or by reference to the Agreement;
"Intellectual Property"	patents, trade marks, trade secrets, copyright, database rights, design rights, inventions, know how and any other industrial or intellectual property rights of any nature whatsoever, whether registered or capable of registration or not, in any part of the world and including all applications and the right to apply for any of the foregoing rights and the right to sue for past infringements of any of the foregoing rights;
"Proposal"	a quotation made by CD Team for the supply of goods and/or services which is accepted by the Customer or an order made by the Customer for the supply of goods and/or services which is accepted by CD Team in each case in accordance with clause 3.1 below;
"Services"	the disc duplication and related services which CD Team has agreed to supply the Customer, as specified in or by reference to the Agreement;

1.2 In the Agreement, unless the context otherwise requires

1.2.1 any reference to a person shall be construed as a reference to any person, corporate entity, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) or one or more of the foregoing;

1.2.2 any reference to any legislation or legislative provision shall be construed as a reference to that legislation or provision as amended, re-enacted or extended at the relevant time;

1.2.3 any reference to the singular shall include the plural and vice versa;

1.2.4 any reference to the masculine gender shall include the feminine and neuter and vice versa;

1.2.5 the clause headings are inserted for ease of reference only and shall not affect the construction of this Agreement.

2. Basis of the Agreement

- 2.1 CD Team will supply and the Customer will purchase the Goods and/or Services in accordance with the Proposal, subject in either case to the Conditions which will govern the Agreement to the exclusion of any other terms and conditions (other than any special conditions expressly referred to in the Proposal, which special conditions will prevail over any inconsistent or conflicting provision in the Conditions). No conduct by CD Team is to be treated as constituting acceptance of any terms put forward by the Customer.
- 2.2 The Agreement will constitute the entire agreement and understanding, and will supersede any previous agreements, between the parties in relation to the supply of the Goods and/or Services.
- 2.3 The Customer acknowledges and agrees that it has not been induced to enter into the Agreement in reliance upon, and does not have any remedy in respect of, any warranty, representation, statement, agreement or undertaking of any nature whatsoever other than as expressly set out in the Agreement.
- 2.4 No variation to the Agreement will be binding unless agreed in writing by an authorised representative of CD Team.
- 2.5 Other than any advice given in written instructions supplied with the Goods or that CD Team expressly confirms in writing that the Customer may rely on, the Customer agrees that it will not rely on, and that CD Team will not be liable for, any advice or recommendations given by CD Team or any of its employees or agents in relation to the storage, application or use of the Goods.

3. Orders & Specification

- 3.1 No order submitted by the Customer is to be treated as having been accepted by CD Team unless and until confirmed in writing by an authorised representative of CD Team or if earlier by delivery of the Goods and/or Services to the Customer. In the case of any quotation submitted by an authorised representative of CD Team, authorisation to proceed with the delivery of the Goods and/or provision of the Services, whether oral or in writing, will constitute the Customer's acceptance of that quotation and the Conditions.
- 3.2 No order which has been accepted by CD Team may be cancelled by the Customer except with the agreement in writing of CD Team [and on terms that the Customer will indemnify CD Team in full against all loss (including loss of profit), costs (including the costs of all labour and materials used), damages, charges and expenses incurred by CD Team as a result of the cancellation].
- 3.3 CD Team reserves the right to make any changes to the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Customer's specification, which do not materially affect their quality or performance.
- 3.4 In the case of Goods not manufactured by CD Team:
 - 3.4.1 any specifications given by CD Team in any quotation submitted by it are stated as correctly as possible having regard to the information provided to CD Team by the manufacturer, and any photographs, descriptions, illustrations or advertising matter are based on information obtained from the manufacturer of those goods and represent generally the goods offered but do not constitute a sale by description; and

3.4.2 any figures relating to performance published or communicated by CD Team are based on information obtained from the manufacturer of the Goods and experience obtained during testing by CD Team but will not be incorporated as a term of the Agreement; and CD Team will not have any liability to the Customer for any inaccuracy in any specification or other information obtained from the manufacturer.

4. Customer Obligations

- 4.1 The Customer will provide to CD Team the Customer Material identified in the Agreement to enable CD Team to produce the Goods and/or supply the Services. The Customer will:
- 4.1.1 grant to CD Team a non-exclusive licence to use any Intellectual Property in the Customer Material for the purpose of performing the Agreement and undertakes that it has all necessary rights, licences, power and authority to provide the Customer Material to CD Team for the purpose of the Agreement;
 - 4.1.2 procure that the Customer Material is of satisfactory quality and fit for any purpose held out by the Customer and is free from defects in design, material and workmanship and complies with all applicable statutory and regulatory requirements;
 - 4.1.3 ensure that all Customer Material is free from any defamatory or unlawful content and that it does not infringe any rights (including Intellectual Property rights) of any third party;
 - 4.1.4 provide the Customer Material in a timely manner and within sufficient time to enable CD Team to supply the Goods and/or the Services in accordance with the Agreement; and
 - 4.1.5 indemnify CD Team (and keep it indemnified) against all costs, claims, losses, expenses and other liabilities arising out of or in connection with any breach by the Customer of its obligations in this clause or arising from any action or claim brought against CD Team for infringement or alleged infringement of any Intellectual Property rights of any third party in connection with the performance of CD Team's obligations under the Agreement.
- 4.2 The Customer will provide CD Team with such co-operation and access to the Customer's premises as CD Team may reasonably require from time to time in order to perform its obligations under the Agreement.

5. Confidentiality

- 5.1 Each party shall safeguard and keep confidential all confidential information that it may acquire in relation to the business or affairs of the other party. Neither party shall use or disclose the other party's confidential information except to the extent that such use or disclosure is necessary for the purposes of performing its obligations or exercising its rights under this Agreement. Each party shall ensure that its officers and employees and any other persons to whom the confidential information is disclosed comply with the provisions of this clause 5.
- 5.2 The obligations on a party set out in clause 5.1 shall not apply to any information to the extent that such information:
- 5.2.1 is publicly available or becomes publicly available other than as a result of the act or omission of that party;]
 - 5.2.2 is required to be disclosed by law or by order of a court of competent jurisdiction or other competent authority.

6. Prices & Payment

- 6.1 The price of the Goods and/or Services will be the price stated in the Proposal together with any additional costs for packaging (if appropriate). All prices stated in any quotation given by CD Team, but not yet agreed by the Customer, are valid for 30 days only, after which time they may be altered by CD Team without giving notice to the Customer.
- 6.2 The prices payable in respect of the supply of the Services will be those specified in the Proposal or otherwise expressly agreed in writing from time to time by an authorised representative of the CD Team.
- 6.3 Unless otherwise expressly agreed in writing between the Customer and CD Team:
- 6.3.1 all prices for the Goods are given by CD Team on an "ex works";
- 6.3.2 Customers may organise collection of the Goods from CD Team by prior arrangement only. Where CD Team agrees to deliver the Goods otherwise than at CD Team's premises, there will be an additional charge for delivery notified to the Customer.
- 6.3.3 all prices and any other amounts payable by the Customer are expressed exclusive of any value added or other sales tax.
- 6.4 CD Team reserves the right, by giving notice to the Customer at any time before delivery, to increase the price for the Goods and/or Services to reflect any increase in the cost to CD Team of supplying the Goods and/or Services which is due to:
- 6.4.1 any factor beyond the control of CD Team (such as, but without limitation, any foreign exchange fluctuation, significant increase in the costs of labour, raw materials or other costs of manufacture); and/or
- 6.4.2 any change in delivery dates, quantities or specifications for the Goods and/or Services which is requested by the Customer; and/or
- 6.4.3 any failure of the Customer to comply with its obligations under the Agreement, including those under clause 4 above.
- 6.5 CD Team will be entitled to invoice the Customer for the price of the Goods, together with any delivery charges and any applicable value added or other sales tax, on or at any time after delivery of the Goods, unless the Customer wrongfully fails to take delivery of the Goods, in which case CD Team will be entitled to invoice the Customer for such sums at any time after CD Team has tendered delivery of the Goods.
- 6.6 CD Team will be entitled to invoice the Customer for the price of the Services, together with all expenses incurred by CD Team in providing the Services and any applicable value added or other sales tax, on the dates specified in the Proposal, or where no such dates are specified, either on completion of the Services or at any time after the end of each calendar month in respect of Services provided during that month, whichever is the earlier.
- 6.7 Unless otherwise agreed in writing with an authorised representative of CD Team] the Customer will pay the full price of the Goods and/or Services, together with any other sums owing under the Agreement, in cleared funds within 30 days of the date of CD Team's invoice.
- 6.8 If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to CD Team, CD Team will be entitled to:

6.8.1 terminate the Agreement or (without prejudice to its right to terminate subsequently) suspend any further deliveries and/or provision of Services to the Customer; and/or

6.8.2 appropriate any payment made by the Customer to such of the Goods (or any goods supplied under any other agreement between the Customer and CD Team) as CD Team may think fit (notwithstanding any purported appropriation by the Customer); and/or

6.8.3 charge the Customer interest (both before and after any judgement) on the amount unpaid, at the rate of [4] per cent per annum above the Royal Bank of Scotland Plc base rate from time to time from the due date until the date of actual payment in cleared funds.

6.9 All sums payable by the Customer under the Agreement are to be paid without set-off, counterclaim or deduction of any description.

7. Delivery of Goods

7.1 Delivery of the Goods will be made:-

7.1.1 by collection of the Goods from CD Team's premises by prior arrangement only and for the purposes of the Agreement CD Team will accordingly be treated as having tendered delivery at any time after CD Team has notified the Customer that the Goods are ready for collection; or

7.1.2 if CD Team has expressly agreed in writing to deliver the Goods to some other place, by CD Team delivering the Goods to that place (namely to the ground floor entrance of that place).

7.2 Where CD Team agrees to deliver the Goods otherwise than at CD Team's premises, CD Team shall be under no obligation under section 32(2) of the Sale of Goods Act 1979.

7.3 In relation to delivery time-scales:-

7.3.1 CD Team will use its reasonable endeavours to meet any delivery dates specified in the Agreement, but subject to CD Team having used such endeavours, it will not be liable to the Customer for any failure to meet such dates;

7.3.2 any Goods may be delivered by CD Team in advance of the delivery date specified in the Agreement upon CD Team giving reasonable notice to the Customer.

7.4 If the Customer fails to take delivery of any consignment of Goods (except where the failure was the result of a default by CD Team) then, without prejudice to any other right or remedy that CD Team may have, CD Team may:

7.4.1 store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage; and/or

7.4.2 after more than 28 days, sell the Goods at the best price readily obtainable and charge the Customer for any shortfall below the price specified in the Agreement.

7.5 Where the Goods are to be delivered in instalments, each delivery will constitute a separate contractual obligation. Failure by CD Team to deliver any one or more of the instalments in accordance with the Agreement, or any claim by the Customer in respect of any one or more instalments, will not give the Customer the right to treat the Agreement as a whole as repudiated.

8. Risk & Property in Goods

- 8.1 Risk of damage to or loss of the Goods will pass to the Customer at the time of delivery or, if the Customer wrongfully fails to take delivery of the Goods, the time when CD Team has tendered delivery of the Goods.
- 8.2 Notwithstanding the passing of risk in the Goods to the Customer, title to the Goods shall not pass from CD Team to the Customer until CD Team has received in cash or cleared funds the full price of the Goods.
- 8.3 Until title to the Goods passes from CD Team, the Customer will:
- 8.3.1 hold the Goods on a fiduciary basis as bailee for CD Team; and
- 8.3.2 keep the Goods insured (at no cost to CD Team) for not less than the full Price against all risks to the reasonable satisfaction of CD Team and whenever requested by CD Team, produce to CD Team a copy of the policy of insurance together with suitable evidence that it remains in force; and
- 8.3.3 not remove, alter or interfere with the packaging or labels on the Goods.
- 8.4 CD Team will be entitled to recover the Price (plus applicable VAT) from the Customer notwithstanding that title to any of the Goods has not passed from CD Team.
- 8.5 Until such time as title to the Goods passes from CD Team the Customer will upon CD Team's request immediately deliver up to CD Team all such Goods that remain the property of CD Team. If the Customer fails to do so CD Team may enter upon any premises owned, occupied or controlled by the Customer where the Goods are situated and repossess the Goods and the Customer will indemnify CD Team against any costs, expenses, losses, damages or other liabilities that CD Team may suffer or incur in connection with the repossession of those Goods, whether arising out of any claims made against CD Team by any third party or otherwise.
- 8.6 In the event of loss, damage or disappearance of any of the Goods howsoever caused the Customer will pay in full the Price of the said Goods to CD Team.
- 8.7 Any Goods remaining in the possession of the Customer will be presumed to be those Goods for which payment has not been made and CD Team will be entitled to take possession of the said Goods without prejudice to any other rights of CD Team under the Agreement or to any claim for damages made by CD Team for total or partial failure to pay the price thereof.
- 8.8 On termination of the Agreement however caused CD Team's rights under this clause shall continue.

9. Intellectual Property

- 9.1 All Intellectual Property subsisting in any underlying software provided by the Customer and comprised in the Goods will belong (as between CD Team and the Customer) to the Customer absolutely.
- 9.2 All Intellectual Property subsisting on, in or in relation to , the process used by CD Team in producing the Goods. will belong (as between CD Team and the Customer) to CD Team absolutely.

10. Warranties & Liability

- 10.1 The Customer acknowledges that the prices for the Goods and the Services have been determined on the basis of the following limitations and exclusions of liability and the Customer expressly agrees that these limitations are reasonable because of (amongst other things):

- 10.1.1 the likelihood that the damages awardable to the Customer for a breach by CD Team of the Agreement would be disproportionately greater than the value of the Agreement to CD Team; and
- 10.1.2 the likelihood that the Customer will be in a better position than CD Team to insure itself in a cost effective manner against any damage flowing from any breach by CD Team of the Agreement.
- 10.2 Subject to the remaining provisions of clause 10 below CD Team warrants that the Goods will correspond with their specification and be of satisfactory quality on delivery, provided that:
- 10.2.1 CD Team will be under no liability in respect of any defect in the Goods arising from or due to any defect in the Customer Material;
- 10.2.2 CD Team will be under no liability in respect of any defect in the Goods arising, at any time after delivery to the Customer, from any fair wear and tear use or storage in or under abnormal conditions misuse, negligence, wilful damage or failure to follow CD Team's instructions (whether oral or in writing) on the part of any person, other than CD Team and its employees or agents, alteration or repair of the Goods without CD Team's express approval;
- 10.2.3 CD Team will have no liability to the Customer in respect of any claim (whether for breach of this clause 10 or otherwise) that arises out any failure by the Customer to ensure that reasonable steps are taken prior to any particular use (whether by the Customer or any other person) to verify that the Goods are suitable for that particular use;
- 10.2.4 CD Team shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment; and
- 10.2.5 the above warranty does not extend to consumable items or to any parts, materials or equipment not manufactured by CD Team, in respect of which the Customer will only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to CD Team.
- 10.3 Subject to the remaining provisions of clause 10 below CD Team warrants that it will provide the Services using all reasonable care and skill and, as far as reasonably possible, in accordance with any specification set out in the Proposal.
- 10.4 Subject as expressly provided in the Agreement, all warranties, conditions or other terms implied by statute, common law or otherwise are excluded to the fullest extent permitted by law.
- 10.5 The Customer will notify any damage, defect or shortage in respect of the Goods to CD Team in writing, and if requested to do so by CD Team, return to CD Team any Goods alleged to be defective or damaged:-
- 10.5.1 in the case of any shortage, or any damage or defect which should have been apparent on delivery, promptly and in any event within 7 days of delivery;
- 10.5.2 in the case of any damage or defect which was not reasonably apparent on delivery, promptly and in any event within [14 days] of that damage or defect becoming apparent; failing which all liability on CD Team's part in respect of such shortage, damage or defect is excluded.
- 10.6 In the case of any damage, defect or shortage in respect of the Goods notified by the Customer to CD Team in accordance with clause 10.5 the Customer shall be entitled:

10.6.1 (in the case of damage or defects) to the repair or replacement of the damaged or defective Goods (or any parts); or

10.6.2 (in the case of a shortage) the supply of such additional Goods as may be necessary to make up the shortage.

Once CD Team has complied with its obligations under clauses 10.6.1 to 10.6.3 it shall have no further liability to the Customer in respect of the failure of the Goods in question to comply with clause 10.2.

10.7 For the avoidance of doubt, save as provided by clauses 10.5.1 and 10.5.2 above or otherwise expressly agreed in writing by CD Team in a particular case, the Customer will have no right to reject any Goods delivered by CD Team or otherwise to return any Goods to CD Team.

10.8 In respect of any claim by the Customer alleging that CD Team has failed to provide Services in accordance with the Agreement or any other duty owed by CD Team to the Customer, or has failed to provide them at all:-

10.8.1 that claim is to be notified in writing to CD Team within [14 days] of the date on which the Services in question were provided; and

10.8.2 CD Team is to be given a reasonable opportunity to remedy the failure in question; failing which all liability on CD Team's part in respect of such failure is excluded.

10.9 Subject to clause 10.10 CD Team shall not be liable to the Customer for loss of profit or depletion of goodwill loss of business or business opportunity or special, indirect or consequential damage (however caused) which arises out of or in connection with this Agreement.

10.10 Nothing in this Agreement shall operate to limit or exclude the liability of CD Team to the Customer for death or personal injury caused by the negligence of CD Team or any of its employees or agents, or for fraud or fraudulent misrepresentation or for any other matter in respect of which liability cannot lawfully be limited or excluded.

10.11 Without prejudice to clause 10.10, CD Team's total liability arising under or in connection with the Agreement, whether arising in contract, tort (including negligence) or restitution or for breach of statutory duty or misrepresentation or otherwise shall be limited to £250,000.

10.12 CD Team will not be liable to the Customer or be deemed to be in breach of the Agreement as a result of any delay in performing, or failure to perform, any of its obligations under the Agreement where the delay or failure was caused by circumstances beyond CD Team's reasonable control, including (but not limited to) any governmental restriction, machinery breakdown, power failure, industrial action or shortage of raw materials.

11. Breach & Insolvency

11.1 This clause 11 applies if any one or more the following events occurs, or has occurred prior to the date of the Agreement and is continuing:

11.1.1 the Customer commits a material breach of any of the provisions of the Agreement and in the case of a breach capable of remedy fails to remedy the same within 30 days (or such other period as CD Team reasonably thinks fit) after being served with a written notice specifying the breach and requiring it to be remedied; and/or

11.1.2 the Customer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a firm) has one of its partners becomes bankrupt or (being a body corporate) enters administration or goes into liquidation; and/or

- 11.1.3 a security holder takes possession, or a receiver or administrative receiver is appointed, over all or any of the property or assets of the Customer; and/or
 - 11.1.4 anything analogous to any of the foregoing occurs to the Customer under the laws of any jurisdiction; and/or
 - 11.1.5 the Customer ceases, or threatens to cease, to carry on business; and/or
 - 11.1.6 CD Team reasonably believes that any of the events described above is about to occur.
- 11.2 If this clause 11 applies then, without prejudice to any other right or remedy available to CD Team:
- 11.2.1 CD Team will be entitled to terminate the Agreement or (without prejudice to its right to terminate subsequently) suspend any further deliveries of Goods and/or further provision of Services without any liability to the Customer; and/or
 - 11.2.2 if any of the Goods have been delivered and/or any of the Services provided, but not paid for, the price applicable to those Goods and/or Services and any other sums payable by the Customer under the Agreement will become immediately due and payable.

12. General

12.1 Notices

- 12.2 Any notice under this Agreement shall be in writing and shall be sent by recorded delivery, hand delivery or fax to the address/number for the relevant party as stated in this Agreement or otherwise notified to the other party for this purpose. Any such notice shall be deemed to have been duly received (provided it was sent to the proper address/number):
- 12.2.1 if despatched by recorded delivery - 48 hours from the time of posting (subject only to any delays caused by industrial action affecting the postal service);
 - 12.2.2 if delivered by hand - at the time of actual delivery;
 - 12.2.3 if despatched by fax - 24 hours after the time of the despatch.

12.3 Assignment/Sub-contracting

The Customer shall not be entitled to assign, sub-contract or otherwise dispose of any of its rights or obligations under this Agreement without the prior written consent of CD Team.

12.4 Severability

- 12.5 If any provision in this Agreement is declared void or unenforceable by any court or other body of competent jurisdiction, or is otherwise rendered so by any applicable law, that provision shall to the extent of such invalidity or unenforceability be deemed severable and all other provisions of this Agreement not affected by such invalidity or unenforceability shall remain in full force and effect.
- 12.6 If any provision in this Agreement is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it valid and enforceable.

12.7 Exclusion of Third Party Rights

Unless expressly stated in the Agreement, nothing in the Agreement shall confer any rights on any person under the Contracts (Rights of Third Parties) Act 1999.

12.8 Governing Law & Jurisdiction

The Agreement shall be governed by and construed in accordance with the law of England and Wales and any dispute arising under or in connection with the Agreement shall be subject to the exclusive jurisdiction of the courts of England and Wales, to which each of the parties irrevocably submits.