



## TERMS & CONDITIONS OF TRADE

### 1. Definitions and Interpretation

1.1 In these Terms and Conditions the following expressions have the following meanings unless inconsistent with the context:-

"Business Day"	any day other than a Saturday or Sunday or a local, public or bank holiday in Scotland.
"Confidential Information"	all information in respect of the business of the Company including, but not limited to, know-how or other matters connected with the Goods or Services and information concerning the Company's relationships with actual or potential clients, customers or suppliers and the needs and requirements of the Company and of such persons and any other information which, if disclosed, will be liable to cause harm to the Company.
"the Company"	Sidey Solutions Ltd, registered company no. 9613925
"the Contract"	any contract between the Company and the Customer for the sale and purchase of the Goods formed in accordance with clause 2.
"Force Majeure"	any cause preventing the Company from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable contemplation and control of the Company including, without limitation, compliance with any law or governmental order, rule, regulation or restriction, act of God, war or natural emergency, strike, lockout or other industrial disturbances (whether or not involving the workforce of the Company), fire, flood, explosion, storm, epidemic, riot or civil commotion, malicious damage, accident, breakdown of machinery or default of suppliers or subcontractors.
"Goods"	any goods which the Company supplies to the Customer (including any of them or any part of them) under a Contract.
"the Relevant Date"	the date referred to in clause 5.
"the Specified Rate"	3% per annum above Bank of England base lending rate from time to time.
"Services"	any services which the Company provides to the Customer under a Contract.
"Supply"	includes (but is not limited to) any supply under a contract for sale.
"Terms and Conditions"	the standard terms and conditions of sale set out in this document together with any special terms agreed in writing between the Customer and the Company.

## 2. **Formation**

- 2.1 Subject to any variation under clause 2.4 the Contract will be upon these Terms and Conditions to the exclusion of all other terms and conditions, including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order or similar document, whether or not such document is referred to in the Contract, unless otherwise specified in the quotation notes.
- 2.2 Each order or acceptance of a quotation for Goods or Services will be deemed to be an offer by the Customer to purchase Goods or Services upon these Terms and Conditions. The Contract will only come into existence once the Company has received and accepted the Customer's order, by way of a written acknowledgement of order. Until acceptance the Company will not be under any obligation to the Customer.
- 2.3 Except as provided in clause 2.4 a representative or agent of the Company does not have authority to agree any term or make any representation which is inconsistent with these Terms and Conditions or to enter into any Contract except on the basis of these Terms and Conditions.
- 2.4 Any term or representation inconsistent with these Terms and Conditions will only bind the Company if it is in writing and signed by one of its officers. The words "unless otherwise agreed in writing by the Company" in these Terms and Conditions mean unless otherwise agreed in writing and signed by an officer of the Company.
- 2.5 Any samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods or Services represented by or described in them. They will not form part of the Contract and this is not a sale by sample.
- 2.6 The Company reserves the right to correct any clerical or typographical errors made by its employees at any time.
- 2.7 The Customer must ensure that the terms of its order and any applicable specifications are complete and accurate.
- 2.8 We have the right to revise and amend these Terms from time to time. You will be subject to the policies and terms in force at the time that you order the Goods from us, unless any change to those policies or these Terms is required by law or government or regulatory authority (in which case, it will apply to orders you have previously placed that we have not yet fulfilled).
- 2.9 Acceptance of delivery of the Goods or commencement of the performance of the Services will be deemed conclusive evidence of the Customer's acceptance of these Terms and Conditions.

## 3. **Specification**

- 3.1 If Goods are made to the Customer's specification, instruction or design, then the suitability and accuracy of that specification, instruction or design will be the Customer's responsibility. The Customer will also indemnify the Company for any loss, damage or expense in respect of any liability arising under or by reason of the Consumer Protection Act 1987 in relation to the specification or design of the Goods.
- 3.2 Any estimate in respect of quantities needed or advice as to the suitability or fitness of any goods for any particular purpose given by the Company or its servants or agents will be treated as without obligation or responsibility on the part of the Company and the Buyer will be entirely responsible for ascertaining the quantities required and the suitability and fitness of the goods for their purpose.
- 3.3 The Company may make any changes to the specification, design, materials or finishes of Goods which:
- 3.2.1 are required to conform with any applicable safety or other statutory or regulatory requirements; or
  - 3.2.2 do not materially affect their quality or performance.
- The provisions of this clause 3.2 shall apply even where the Goods are to be supplied to the Customer's specification.
- 3.3 The Customer will pass on to all third parties to whom it may supply Goods all

information as to the use and safe handling of the Goods which has been passed on to the Customer by the Company.

- 3.4 The use of a brand name in any specification document – provided by the Company, Customer or other party – does not bind the Company to use a specific brand. The Company reserve the right to substitute with items of an equal or higher standard at its discretion.
- 3.5 Thermal Safety Checks are the responsibility of the Customer and not the company.

#### **4. Prices**

- 4.1 The Company's quotation for Goods or Services remains open for acceptance for 28 days only from its date unless otherwise specified within the quotation notes.
- 4.2 The price of Goods or Services will be as stated in the Company's quotation accepted in accordance with clause 4.1. Unless the Company's quotation notes contain a specific price validity and fluctuation clause then the Company retains the right to increase its prices at any time to take account of any increase in the cost to the Company of the following:-
  - 4.2.1 the increased purchase costs of any goods or materials required in the manufacture of Goods; or
  - 4.2.2 manufacturing, working on or supplying the Goods; or
  - 4.2.3 performing Services.The Company may also increase its price at any time to take account of factors beyond the reasonable control or knowledge of the company this includes, but is not limited to, foreign exchange – if appropriate - tax and duties, any changes, error or inadequacy in any specification, instruction or design provided by the Customer or any modification carried out by the Company at the Customer's request.
- 4.3 All prices quoted are exclusive of any value added tax or other applicable sales tax or duty which will be added to the sum in question
- 4.4 No deduction for any set off or customer claim may be made by the customer

#### **5. Payment**

- 5.1 For the purposes of these Terms and Conditions the Relevant Date means the earlier of the date on which:-
  - 5.1.1 the Customer takes delivery of the Goods at the Company premises;
  - 5.1.2 the Company despatches the Goods;
  - 5.1.3 the Company completes performance of the Services;
  - 5.1.4 the Customer defaults in his obligations under clause 6.1; or
  - 5.1.5 the Customer is invoiced by the Company.
- 5.2 The Customer is to pay The Company in cash or cleared funds prior to delivery, unless The Customer has applied for and has been granted an approved credit account.
- 5.3 Credit will only be approved strictly subject to the Company's Terms and Conditions of Trade. The Customer, by process of making an application for a credit account, formally accepts The Company's Terms and Conditions of Trade, as set out here.
- 5.4 The level of credit approved will be strictly limited to the level of credit insurance allowed for each individual Customer by The Company's supplier of credit insurance; the level of credit approved may be altered by The Company at any time, as directed by the supplier of credit insurance. It is The Customer's responsibility to satisfy the supplier of insurance that his cover is maintained at the required level. If an invoice will cause the actual current level of credit given to exceed the approved limit, then the account will be put on stop and deliveries will cease until The Customer makes sufficient payments to reduce the actual level of credit sufficiently.
- 5.5 In cases where a credit account has been approved, The Company may invoice the Customer on or at any time after delivery of Goods or commencement of the performance of the Services and unless otherwise agreed in writing by the Company, full payment will be made by the Customer in cash or cleared funds not later than thirty days from the Relevant Date. No payment will have been deemed to have been made until

the Company has received cleared funds.

- 5.6 Time for payment will be of the essence of the Contract.
- 5.7 If any sum payable under the Contract is not paid when due then, without prejudice to the Company's other rights under the Contract, that sum will bear interest from the due date until payment is made in full, both before and after any judgement, at the Specified Rate and the Company will be entitled to suspend deliveries of Goods or performance of Services until the outstanding amount has been received by the Company from the Customer and the full purchase price of Goods or Services will include any interest payable under this clause.
- 5.8 The Company may invoice the Customer for a partial delivery of the Goods or partial performance of the Services including a delivery, or part thereof, refused or cancelled by the customer in line with 6.1 below.
- 5.9 All sums payable to the Company under the Contract will become due immediately upon termination of the Contract.
- 5.10 All payments to be made by the Customer under the Contract will be made in full without any set-off, restriction or condition and without any deduction or withholding for or on account of any counterclaim or any present or future taxes, levies, duties, charges, fees, deductions or withholdings of any nature, unless the Customer is required by law to make any such deduction or withholding.
- 5.11 The Company will have the right to suspend performance of its obligations if it reasonably believes that the Customer will not make payment in accordance with this clause.
- 5.12 The Company may appropriate any payment made by the Customer to the Company to such of the invoices for Goods or Services as the Company thinks fit, despite any purported appropriation by the Customer.

## **6. Delivery**

- 6.1 Unless otherwise agreed in writing by the Company:-
  - 6.1.1 The Customer will take delivery of the Goods at the Company's premises within fourteen days of receiving notification that they are ready;
  - 6.1.2 If the Company agrees to deliver the Goods other than at its premises the Customer will give the Company all necessary instructions and transport and off-loading will be at the Customer's risk and expense.
  - 6.1.3 Deliveries cancelled or refused by the customer can, subject to agreement from the Company, be held for a limited time. A daily storage and subsequent re-delivery charge may be applied at the discretion of the Company. Deliveries will be invoiced in accordance with clause 5 with the originally agreed delivery date as the Relevant date.
- 6.2 Services will be performed at a place agreed between the Company and the Customer.
- 6.3 The Company will be entitled to add to the Contract price a reasonable charge for packaging and delivery of Goods and reasonable call-out charges for Services as appropriate.
- 6.4 The Company will not be liable for any loss or damage to any goods left with the Company as a result of a refused or cancelled delivery for items ordered/called off. This provision will apply whether or not the loss or damage is attributable to the Company's or its servant's or agent's negligence or wilful default. The Customer agrees to indemnify the Company from liability in the event of product defects or failure as a result.
- 6.5 The Company will use reasonable endeavours to deliver each of the Customer's orders for the Goods or perform the Services within the time agreed when the Customer places an order and, if no time is agreed, then within a reasonable time, but the time of delivery or performance will not be of the essence. If, despite those endeavours, the Company is unable for any reason to fulfil any delivery or performance on the specified date, the Company will be deemed not to be in breach of this Contract, nor (for the avoidance of doubt) will the Company have any liability to the Customer for direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of

profits, loss of business, depletion of goodwill and like loss) howsoever caused (including as a result of negligence) by any delay or failure in delivery or performance except as set out in this condition.

## **7. Termination and Cancellation**

- 7.1 The Company may by notice in writing served on the Customer terminate the Contract forthwith if the Customer:
- 7.1.1 is in material breach of any of the terms of the Contract and, where the breach is capable of remedy, the Customer fails to remedy such breach within 28 days service of a written notice from the Company, specifying the breach and requiring it to be remedied. Failure to pay any sums due in accordance with clause 5 is a material breach of the terms of the Contract which is not capable of remedy.
  - 7.1.2 becomes bankrupt or insolvent, makes any composition with his creditors, has a receiver appointed under mental health legislation or dies;
  - 7.1.3 has any distraint, execution or other process levied or enforced on any of its property; or
  - 7.1.4 the equivalent of any of the above occurs to the Customer under the jurisdiction to which the Customer is subject.
- 7.2 The termination of the Contact howsoever arising is without prejudice to the rights, duties and liabilities of either the Customer or the Company accrued prior to termination the conditions which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.
- 7.3 The Company will be entitled to suspend any deliveries of Goods or performance of Services otherwise due to occur following service of a notice specifying a breach under clause 7.1.1, until either the breach is remedied or the Contract terminates, whichever occurs first.
- 7.4 Cancellation by the Customer will only be accepted at the discretion of the Company. Acceptance of the cancellation will only be binding on the Company if in writing and signed by a director. Any costs or expenses incurred by the Company up to the date of cancellation and all loss or damage resulting from the cancellation will be paid by the Customer.
- 7.5 Where the Customer:-
- 7.5.1 defers or suspends any order; or
  - 7.5.2 defaults in collecting Goods or giving instructions, documents, licences or authorisations required for the delivery of any Goods or performance of any Services;
- a charge will be made for any costs (including costs of storage) incurred directly or indirectly by the Company.

## **8. Warranty, Exclusion of Liability and Indemnity**

### Warranty

- 8.1 The Company will, free of charge, within a period of time, as defined in the contract guarantee, from the date of delivery of Goods or performance of Services which are proved to the reasonable satisfaction of the Company to be damaged or defective not comply with specification due to defects in material, or workmanship or design (other than a design made, furnished or specified by the Customer), repair, or at its option replace, such Goods or re-perform such Services. This obligation will not apply where:
- 8.1.1 the Goods have been improperly altered in any way whatsoever, or have been subject to misuse or unauthorised repair;
  - 8.1.2 the Goods have been improperly installed or connected;
  - 8.1.3 any maintenance requirements relating to the Goods have not been complied with;
  - 8.1.4 any instructions as to storage of the Goods have not been complied with in all respects; or
  - 8.1.5 the Customer has failed to notify the Company of any defect or suspected defect within 14 days of the delivery where the defect should be apparent on reasonable inspection, or within 14 days of the same coming to the knowledge of the Customer where the defect is not one which should be

apparent on reasonable inspection, and in any event no later than 12 months from the date of delivery or performance.

- 8.2 Any Goods which have been replaced will belong to the Company. Any repaired or replacement Goods will be liable to repair or replacement under the terms specified in clause 8.1 for the unexpired portion of the 12 month period from the original date of delivery of the replaced Goods.
- 8.3 The warranty period will be as detailed in the contract specific guarantee.

#### Exclusion of Liability

- 8.3 In the event of any breach of the Company's express obligations under clause 6.5, 8.1 and 8.3 above the remedies of the Customer will be limited to damages.
- 8.4 The Company does not exclude its liability (if any) to the Customer:
- 8.4.1 for breach of the Company's obligations arising under section 12 Sale of Goods Act 1979 or section 2 Sale and Supply of Goods and Services Act 1982;
  - 8.4.2 for personal injury or death resulting from the Company's negligence;
  - 8.4.3 under section 2(3) Consumer Protection Act 1987;
  - 8.4.4 for any matter which It would be illegal for the Company to exclude or to attempt to exclude its liability; or
  - 8.4.5 for fraud.
- 8.5 Except as provided in clause 6.5 and 8.1 to 8.5, the Company will be under no liability to the Customer whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any Injury, death, damage or direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) howsoever caused arising out of or in connection with:
- 8.5.1 any of the Goods, or the manufacture or sale or supply, or failure or delay in supply, of the Goods by the Company or on the part of the Company's employees, agents or sub-contractors;
  - 8.5.2 any breach by the Company of any of the express or implied terms of the Contract;
  - 8.5.3 any use made or resale by the Customer of any of the Goods, or of any product incorporating any of the Goods;
  - 8.5.4 any statement made or not made, or advice given or not given, by or on behalf of the Company.
- 8.6 Except as set out in clauses 6.5 and 8.1 to 8.5, the Company hereby excludes to the fullest extent permissible in law, all conditions, warranties and stipulations, express (other than those set out in the Contract) or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of the Customer.
- 8.7 Each of the Company's employees, agents and sub-contractors may rely upon and enforce the exclusions and restrictions of liability in clauses 6.5 and 8.4 to 8.7 in that person's own name and for that person's own benefit, as if the words "its employees, agents and sub-contractors" followed the word Company wherever it appears in those clauses.
- 8.8 The Customer acknowledges that the above provisions of this clause 8 are reasonable and reflected in the price which would be higher without those provisions, and the Customer will accept such risk and/or insure accordingly.
- 8.9 We cannot accept liability for imperfections of a minor or insignificant nature.
- 8.10 We will rectify any damage to plastering caused during installation to the areas close (in our reasonable opinion) to the items being replaced, but we cannot undertake to match exact finishes such as external rendering.

#### Indemnity

8.11 The Customer agrees to indemnify, keep indemnified and hold harmless the Company from and against all costs (including the costs of enforcement), expenses, liabilities, injuries, direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings or legal costs (on a full indemnity basis) and judgments which the Company incurs or suffers as a consequence of a direct or indirect breach or negligent performance or failure in performance by the Customer of the terms of the Contract.

## 9. Risk/Ownership

9.1 Risk of damage to or loss of the Goods will pass to the Customer on delivery.

9.2 Ownership of the Goods will not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of;

9.2.1 the Goods; and

9.2.1 all sums which are or which become due to the Company on any account.

9.3 Until ownership of the Goods has passed to the Customer, the Customer must:

9.3.1 hold the Goods on a fiduciary basis as the Company's bailee;

9.3.2 store the Goods (at no cost to the Company) separately from all other Goods of the Customer or any third party in such a way that they remain readily identifiable as the Company's property;

9.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and

9.3.4 maintain the Goods in satisfactory condition insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company, and will whenever requested by the Company produce a copy of the policy of insurance.

9.4 The Customer may resell the Goods before ownership has passed to it solely on the following conditions:

9.4.1 any sale will be effected in the ordinary course of the Customer's business at full market value and the Customer will account to the Company accordingly; and

9.4.2 any such sale will be a sale of the Company's property on the Customer's own behalf and the Customer will deal as principal when making such a sale.

9.5 The Customer's right to possession of the Goods will terminate immediately if any of the circumstances set out in clause 7.1 occur.

9.6 The Company will be entitled to recover payment for the Goods notwithstanding that title in any of the Goods has not passed from the Company.

9.7 The Customer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.

9.8 Where the Company is unable to determine whether any Goods are the goods in respect of which the Customer's right to possession has terminated, the Customer will be deemed to have sold all goods of the kind sold by the Company to the Customer in the order in which they were invoiced to the Customer.

9.9 On termination of the Contract, howsoever caused, the Company's (but not the Customer's) rights contained in this clause 9 will remain in effect.

## 10. Intellectual Property

10.1 No right or licence is granted to the Customer in respect of any intellectual property rights of the Company, except the right to use, or re-sell the Goods in the Customer's ordinary course of business.

10.2 The Customer will not without the Company's prior consent allow any trade marks of the Company or other words or marks applied to the Goods to be obliterated, obscured or omitted nor add any additional marks or words.

10.3 The Company may provide technical advice in relation to the use of the Goods. Such advice is given in good faith and free of charge. The Company will not be liable or under any obligation for the advice given.

## **11. Force Majeure**

11.1 The Company will be deemed not to be in breach of the Contract or otherwise liable to the Customer in any manner whatsoever for any failure or delay in performing its obligations under the Contract due to Force Majeure, provided that it has and continues to comply with its obligations set out in clause 11.2.

11.2 If the Company's performance of its obligations under the Contract is affected by Force Majeure:

11.2.1 it will give written notice to the Customer, specifying the nature and extent of the Force Majeure, as soon as reasonably practicable after becoming aware of the Force Majeure and will at all times use all reasonable endeavours to bring the Force Majeure event to an end and, whilst the Force Majeure is continuing, mitigate its severity;

11.2.2 subject to the provisions of clause 11.3, the date for performance of such obligation will be deemed suspended only for a period equal to the delay caused by such event; and

11.2.3 it will not be entitled to payment from the Customer in respect of extra costs and expenses incurred by virtue of the Force Majeure.

11.3 If the Force Majeure in question continues for more than three months, either party may give written notice to the other to terminate the Contract. The notice to terminate must specify the termination date, which must not be less than 15 days after the date on which the notice is given, and once such notice has been validly given, the Contract will terminate on that termination date.

## **12. Confidentiality**

12.1 The Customer will keep confidential any and all Confidential Information that it may acquire.

12.2 The Customer will not use the Confidential Information for any purpose other than to perform its obligations under the Contract. The Customer will ensure that its officers and employees comply with the provisions of this clause 12.

12.3 The obligations on the Customer set out in clauses 12.1 and 12.2 will not apply to any information which:

12.3.1 is publicly available or becomes publicly available through no act or omission of the Customer; or

12.3.2 the Customer is required to disclose by order of a court of competent jurisdiction.

## **13. General**

13.1 Time for performance of all obligations of the Customer under the Contract is of the essence.

13.2 Time for performance of all obligations of the Company under the Contract is not, and may not be made by notice, of the essence.

13.3 Each right or remedy of the Company under any Contract is without prejudice to any other right or remedy of the Company under this or any other Contract.

13.4 If any condition or part of the Contract is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from the Contract and will be ineffective without, as far as is possible, modifying any other provision or part of the Contract and this will not affect any other provisions of the Contract which will remain in full force and effect.

13.5 No failure or delay by the Company to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.

13.6 The Company may assign, delegate, novate, license, hold on trust or sub-contract all or any part of its rights or obligations under the Contract.

13.7 The Contract is personal to the Customer who may not assign, delegate, license, hold on trust or sub-contract all or any of its rights or obligations under the Contract without the Company's prior written consent.



- 13.8 Save as set out in clause 8.7, the parties to the Contract do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.
- 13.9 The Contract and the specification contains all the terms which the Company and the Customer have agreed in relation to the Goods or Services and supersedes any prior written or oral agreements, representations or understandings between the parties relating to such Goods or Services. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract or specification.

#### 14. **Communication**

- 14.1 Any notice, demand or communication in connection with the Contract will be in writing and may be delivered by hand, first class post Special Delivery post, or facsimile, (but not by e-mail), addressed to the recipient at its registered office or its address or facsimile number as the case may be and will be marked for the attention of the Company Secretary (or such other address or facsimile number or person which the recipient has notified in writing to the sender in accordance with this clause 14, to be received by the sender not less than seven Business Days before the notice is despatched).
- 14.2 The notice, demand or communication will be deemed to have been duly served:
- 14.2.1 if delivered by hand, at the time of delivery;
  - 14.2.2 if delivered by first class post or Special Delivery post, 48 hours after being posted or In the case of airmail 14 days after being posted (excluding days other than Business Days);
  - 14.2.3 if delivered by facsimile, at the time of transmission, provided that a confirming copy is sent by first class post to the other party within 24 hours after transmission;
- provided that, where in the case of delivery by hand or transmission by facsimile, such delivery or transmission occurs either after 4.00 pm on a Business Day, or on a day other than a Business Day, service will be deemed to occur at 9.00 am on the next following Business Day.
- 14.3 Service by facsimile is a valid means of service only where service of the original notice, demand or communication is not required.
- 14.4 For the avoidance of doubt, where proceedings have been issued in the Courts of Scotland, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connection with those proceedings.

#### 15. **Jurisdiction**

The formation, existence, construction, performance, validity and all aspects whatsoever of the Contract or of any term of the Contract will be governed by Scottish law. The Scottish Courts will have exclusive jurisdiction to settle any disputes which may arise out of or in connection with the Contract. The parties agree to submit to that jurisdiction.

I have read and agree to the Terms and Conditions as set out above.

For and on behalf of:

Signed Date:

Name:

Position with Company:

Please sign and date both copies and return one to the Company at its address for service stated above