



General Terms & Conditions

1. **DEFINITIONS**

- 1.1 'Contract' means a binding agreement for works, services & supply between **The Media Doctor** and the Client.
- 1.2 'Client' means any person actively in Contract with **The Media Doctor** and is to include Buyer, Seller and Supplier.
- 1.3 'Goods' means any goods and or services that are subject matter of Contract between **The Media Doctor** and the Client.
- 1.4 'Conditions' means the terms and conditions set out herein.

2. **GENERAL**

- 2.1 All contracts for the sale of Goods shall be upon the Conditions.
- 2.2 All contracts are accepted on the Conditions, which may supersede any other terms in **The Media Doctor's** promotional material or elsewhere and shall override and exclude any other terms stipulated, incorporated or referred to by the Client; whether in the order, in any negotiations and course of dealing between **The Media Doctor's** and the Client.
- 2.3 For the purposes of the Conditions, communications made between **The Media Doctor** and the Client by electronic mail shall be regarded as made in writing and signed by the party sending the electronic mail.

3. **PRICING POLICY**

- 3.1 The prices for Goods are subject to the provisions of clause 3.2 hereof.
- 3.2 **The Media Doctor** shall at any time be entitled to increase the prices for Goods.-
 - 3.2.1 Should the Client alter specification/instruction or **The Media Doctor** has to alter, modify or carry out additional work.
 - 3.2.2 Should there be any increase in cost to **The Media Doctor** of purchasing goods and materials by reason of currency fluctuations, alterations in any taxes or duties, variations in the cost of raw materials or components or labour or transport or by reason of any other cause whatsoever beyond the reasonable control of **The Media Doctor**.
- 3.3 All prices quoted by **The Media Doctor** are ex-works and are exclusive of VAT (being currently non-VAT registered) and other impositions.

4. **PAYMENT**

- 4.1 Should the sale be stated on the Quotation/Invoice to be a cash sale, payment for Goods is due :-
 - 4.1.1 Immediately prior to collection by the Client of the Goods from **The Media Doctor**, or;
 - 4.1.2 At the time of delivery where Goods are delivered by **The Media Doctor** to the Client.
- 4.2 If the sale is stated on the Quotation/Invoice to be a credit sale, payment is due not later than thirty working days after the date stated on **The Media Doctor's** invoice.
- 4.3 Without prejudice to the right of **The Media Doctor** to payment in accordance with sub-clauses 4.1 and 4.2, **The Media Doctor** shall be entitled to charge interest at the rate of 1.5% above the Bank of England base rate in respect of all or any outstanding sums from the due date of payment until payment in full (including all interest due), such interest to be charged daily.
- 4.4 If **The Media Doctor** allows provisional credit or extends credit in respect of any part of Goods, it shall be without prejudice to its right to refuse to give up possession of any other part of the Goods except against payment.
- 4.5 Where the Goods are to be supplied or payment therefore is to be made by instalments the failure of the Client to pay any of the instalments in due time shall entitle **The Media Doctor** to treat such failure as repudiation of the whole Contract with the Client and to recover damages incurred as a result of said breach of Contract.
- 4.6 If payment is overdue in whole or in part then the whole of any amounts outstanding to **The Media Doctor** shall immediately become payable whether or not such monies should have been payable at that time but for the provisions of this sub-clause.
- 4.7 **The Media Doctor** reserves the right to suspend all or part of any Contract services when payment is overdue in whole or in part
- 4.8 The Client shall make all payments unless prior arrangements have been negotiated with **The Media Doctor**.

5. **WARRANTY**

- 5.1 **The Media Doctor** warrants that Goods are free from any material defect in workmanship and materials for a period of one year from the date of invoice, unless otherwise stated in Quotation or goods documentation; **The Media Doctor's** liability shall be limited to making available free of charge the labour and materials required to make good any such defects or (at **The Media Doctor's** discretion) replace the defective Goods. **The Media Doctor's** liability under is also conditional upon:-
 - 5.1.1 The Goods not having been subjected to any abnormal or improper use or modification by the Client;
 - 5.1.2 The Goods having been properly stored and used by the Client;
 - 5.1.3 The Goods not having been damaged by the Client by accident, neglect, failure to follow instructions concerning the use/maintenance of the Goods, whether given in any documents supplied with the Goods or otherwise.
 - 5.1.4 Defect not arising as a result of normal wear and tear;
 - 5.1.5 The Goods not having been subjected to any internal/external interference by a non-accredited engineer.
 - 5.1.6 Written notice being given to **The Media Doctor** within twenty-four working hours of the discovery of the defect.
- 5.2 Subject to clause 14, the warranty contained in sub clause 5.1 is given in lieu of and shall be deemed to exclude all other warranties and conditions, whether express or implied and whether arising by common statute or otherwise.
- 5.3 Where the Client gives notice to **The Media Doctor** within the terms of sub-clause 5.1.5 then the Client shall return the Goods to a location specified by **The Media Doctor** for the purpose of repair under warranty.

6. **CLIENT'S SPECIFICATION**

- 6.1 Where Goods are made/conducted or modified to the Client's specification, instruction or design, the Client undertakes full responsibility for the suitability and accuracy of the specification, instructions or design.

7. **DELIVERY / COLLECTION**

- 7.1 Where Goods are delivered by **The Media Doctor** to the Client, such Goods shall be delivered to the location in the Contract.
- 7.2 **The Media Doctor** shall make reasonable endeavours to avoid delay but no responsibility is undertaken for meeting any specific delivery dates. Accordingly no liability will be accepted for any direct or indirect loss which may be caused by delayed delivery whether brought about by a cause beyond the control of **The Media Doctor** or not.
- 8.1 **The Media Doctor** shall be entitled to deliver the Goods in one or more consignments unless otherwise agreed.
- 8.2 The Client shall inspect the Goods immediately on delivery thereof and shall within two working hours give **The Media Doctor** notice of any matter or thing by reason whereof the Client may allege that Goods are not in accordance with the Contract or are

defective in material or workmanship. If the Client fails to give such notice Goods shall be conclusively presumed to be in all respects in accordance with the Contract and free from any defect which would be apparent on any reasonable examination and the Client shall be deemed to have accepted the Goods accordingly. In the event that the Client establishes to **The Media Doctor's** reasonable satisfaction that the Goods are not in accordance with the Contract or are so defective, **The Media Doctor** may elect to repair the Goods, offer further Service, and replace the Goods or to refund the purchase price against the return of the Goods or service as deemed.

8.3 Where Goods are damaged in transit the Client shall notify **The Media Doctor** within two Working hours of taking delivery.

8.4 Where the Goods are to be collected by the Client, **The Media Doctor** shall notify the Client of the availability of such Goods for collection. Such Goods shall be collected within seventy-two hours of such notice. Failure by the Client to collect the Goods within the stated period shall entitle **The Media Doctor** to repudiate the Contract and the Client shall be liable for any costs.

9. PASSING OF RISK

9.1 The Goods shall be at the Client's risk from the time of delivery of the Goods to the Client.

9.2 Where Goods are to be collected by the Client, these shall be at the Client's risk from the time of collection.

10. RETENTION OF TITLE

10.1 The Goods agreed to be sold shall remain the property of **The Media Doctor** until all sums due to **The Media Doctor** have been paid in full.

10.2 Without prejudice to any of its other rights, **The Media Doctor** may recover or resell Goods supplied and its servants or agents may enter upon the Client's premises for that purpose if :-

10.2.1 Any payment due by the Client to **The Media Doctor** is overdue in whole or in part; or

10.2.2 If the Client convenes a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part 1 of the Insolvency Act of 1986 or a proposal for any other composition, scheme or arrangement with (or assignment for the benefit of) its creditors or if the other is unable to pay its debts within the meaning of the Section 123 of the Insolvency Act 1986, or if a trustee receiver, administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the other or if a petition is presented or if a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other or the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction).

10.2.3 **The Media Doctor** has reasonable grounds to believe that the Client is insolvent or that **The Media Doctor's** right to receive payment or its interest in the Goods is or is likely to be in jeopardy; or

10.2.4 The Client ceases or threatens to cease to carry on trading; or

10.2.5 The Client is in breach of any provision of these conditions.

10.3 Until such time as the Client becomes the owner of the Goods supplied it will store the Goods on its premises separately from its own goods in a manner which makes them readily identifiable as the Client's Goods.

10.4 Until property in the Goods has passed to the Client hereunder the Client shall not :-

10.4.1 Pledge the Goods or documents to title thereon, or allow any credit to arise thereon; or

10.4.2 Dispose of the Goods or documents of title thereon or any interest therein ; or

10.4.3 Until such times as the Client becomes the owner of the Goods supplied to it, the Client will keep the Goods properly insured for not less than their Contract value.

11. USE OF GOODS

11.1 The Client shall not remove any label affixed to the Goods referring any user thereof to **The Media Doctor's** instructions.

11.2 If any item comprised in the goods is resold by the Client, the Client shall bring to the attention of its purchaser all of **The Media Doctor's** instructions/recommendations for use or referred to in **The Media Doctor's** promotional media or which **The Media Doctor** has notified to the Client. Further on such resale the Client shall ensure its purchaser does not remove any label affixed to the Goods referring any user thereof to **The Media Doctor's** instructions/recommendations for use and if the Goods are to be used at work/home, that such purchaser shall take such steps as are necessary to ensure that there will be available in connection with the use of the Goods at work/home adequate information about the use for which they were designed and about any conditions necessary to ensure that when put to that use they will be safe and without risk to health.

11.3 Where Goods have been manufactured, constructed or delivered according to design, configuration or process specified by the Client, the Client warrants to **The Media Doctor** that it will have satisfied itself that all necessary tests and examinations have been made or will be made prior to the Goods and Services being brought into use to ensure that Goods are designed, constructed and operate safely and without risk to the health and safety of all, and that it will take such steps necessary to ensure that there will be available at work/home adequate information about the use for which they were designed and tested and about any conditions necessary to ensure that they are used safely and without risk to health.

11.4 The Client shall indemnify and keep indemnified **The Media Doctor** on a continuing basis against all actions, suits, claims, demands, losses, charges costs and expenses which **The Media Doctor** may suffer or incur in connection with any claim or third party alleging the facts which if established would indicate a breach of the undertakings, representations and warranties on the part of the Client contained in this clause 11 or which if established would indicate a breach by any purchaser from the Client of any undertaking, which the Client is required in this clause 11 to exact from such purchaser.

12. CANCELLATION

12.1 No cancellation, alteration, amendment or postponement of delivery of all or part of its order by the Client shall be effective unless communicated in writing to **The Media Doctor** and agreed in writing by **The Media Doctor**.

12.2 Upon any such cancellation **The Media Doctor** shall be entitled to be paid the price of the Goods manufactured or supplied to the date of the cancellation and the Client shall take over and pay for at the current price.

13. COMPUTER SOFTWARE

13.1 All Software shall be supplied to the Client on licence for use by the Client and all intellectual property and title and the rights shall remain vested in **The Media Doctor** if developed by it or in any third party owning such property, title and rights.

13.2 Any warranty or guarantee given by **The Media Doctor** in respect of the Software shall be strictly limited to the medium of storage and **The Media Doctor** shall not be liable in respect of any loss or damage occasioned to the Software itself or consequential upon the use of the Software for any purpose.

14. EXCLUSION OF LIABILITY

14.1 Save as otherwise specified in these conditions of sale and save as herein expressly set out the Goods are not supplied with or subject to any condition, warranty or other term whether express or implied unless specifically stated by **The Media Doctor** in writing and except for the term implied by section 12 of Sale of Goods Act 1979.

14.2 Where the Client deals as a consumer within the terms of Section 12 of the Unfair Contract Terms Act 1977 or under the Unfair Terms in Consumer Contracts Regulations 1994 the Client shall have the benefit of the terms implied by Sections 13 (correspondence with description), 14 (satisfactory quality and fitness for purpose) and 15 (sale by sample) of the Sale of Goods Act 1979.

14.3 In no circumstances except under clause 5 above and save for :-

- 14.3.1 Any liability in relation to death or personal injury occasioned solely by the negligence of **The Media Doctor** or its employees; or
- 14.3.2 Any liability arising under Part 1 of the Consumer Protection Act 1987 shall be **The Media Doctor's** liability whether in contract or in respect of any negligence or otherwise to the Client arising under or out of or in connection with any contract for the supply of Goods exceed the cost to the Client in replacing or repairing the said Goods. Except in any case where a claim is made under Section 12 of the Sale of Goods Act 1979 or where clause 14.2 applies, **The Media Doctor** shall not be under any liability for any cost or expenses incurred by the Client in repairing, replacing or making good the said Goods unless **The Media Doctor** is first afforded a reasonable opportunity of repairing, replacing or making good them provided that the Client shall be entitled to effect such repairs or replacements before affording such an opportunity as may be reasonably necessary to prevent any consequential loss or damage to the Client.
- 14.4 Without prejudice to the generality of the foregoing, **The Media Doctor** expressly excludes liability for direct, indirect or consequential loss arising from the loss or damage to data and all consequential losses howsoever arising.
- 14.5 The Client shall indemnify **The Media Doctor** and keep **The Media Doctor** indemnified on a continuing basis from and against all damage, injury or loss occurring to any person or property and against all actions, suits, claims, demands, charges or expenses in connection herewith arising from the condition or use of the Goods in the event and to the extent of that damage, injury or loss shall have been occasioned partly or wholly by the carelessness of the Client, its servants or agents and any breach by the Client of its obligations to **The Media Doctor** hereunder.
- 15. PATENTS, TRADEMARKS, ETC**
- 15.1 The Goods are sold subject to the rights of any person, whether in respect of any patent, trade mark, registered design, copyright, confidential disclosure or otherwise howsoever to prevent or restrict the sale or use of the Goods in any part of the world; and the Client will in this respect accept such title to the Goods as **The Media Doctor** may have.
- 15.2 Where Goods have been manufactured, constructed or delivered according to design, configuration or process specified or supplied by the Client, the Client warrants to **The Media Doctor** that the Goods as so specified do not infringe the rights of any persons, whether in respect of any patent, trademark, registered design, copyright, confidential disclosure or otherwise howsoever to prevent or restrict the sale or use of the Goods or the use of such processes in any part of the world. The Client shall indemnify **The Media Doctor** and keep **The Media Doctor** indemnified on a continuing basis from and against all damage, injury or loss occurring to any person or property and against all actions, suits, claims, demands, charges or expenses which **The Media Doctor** may suffer or incur in connection with any claim by which any third party alleging facts which if established would indicate a breach of the representations and warranties in this clause 15.2.
- 16. TERMINATION**
- 16.1 If the Client fails to take and pay for Goods sold in accordance with the Contract **The Media Doctor** shall be entitled to treat the Contract as repudiated. Without prejudice to **The Media Doctor's** right to recover from the Client by way of damages any loss or expense which **The Media Doctor** may suffer or incur by reason of the Client default and **The Media Doctor** shall be entitled to dispose of the Goods as he shall think fit and shall not be under any liability to account to the Client for the price received therefore or otherwise.
- 16.2 **The Media Doctor** shall be entitled immediately to terminate the Contract at any time upon occurrence of any of the events specified in clause 10.2. Upon any such termination **The Media Doctor** shall be entitled to be paid the price of the Goods manufactured or supplied to the date of the cancellation and the Client shall take over and pay for at the current price.
- 16.3 Should **The Media Doctor**, whilst in the possession of a Client's property, detect media content of an objectionable or illegal nature **The Media Doctor** shall be entitled immediately to terminate the contract applying clauses 16.2.
- 17. FORCE MAJEURE**
- The Media Doctor** shall be relieved of all liability arising under these Conditions should it be unable to carry out any of its obligations hereunder by reason of circumstances beyond its reasonable control (including but not limited to flood, fire, earthquake, war, tempest, hurricane, industrial action (except by **The Media Doctor's** staff), government restrictions, legislation, act of God or any other occurrence of a like nature), provided always that **The Media Doctor** immediately notifies the Client.
- 18. HEADINGS**
- Headings to clauses in this Agreement have been inserted for convenience of reference only and should not be construed as forming part of this Agreement.
- 19. WAIVER**
- No forbearance, delay or failure by either party to exercise any of its powers rights or remedies under this Agreement will operate as a waiver of them nor shall any single or any partial exercise of any such powers or rights or remedies preclude any other or further exercise of them. Any waiver to be effected must be in writing.
- 20. SEVERABILITY**
- If any part of these Conditions is found by any competent jurisdiction to be invalid, unlawful or unenforceable then such part will be severed from these Conditions. The remainder of these Conditions will continue to be valid and enforceable to the full extent permitted by law.
- 21. NOTICES**
- Any notice or communication to be given hereunder shall be delivered or sent by first class post to the address of the other party set out in the Quotation and shall be deemed to have been received by the addressee within two Working Days of posting.
- 22. GOVERNING LAW**
- 22.1 Any Contract between the Client and **The Media Doctor** and the rights and obligations of the parties thereto shall be governed by the laws of England and both parties hereby agree to submit to the exclusive jurisdiction of the English courts.
- 22.2 Should **The Media Doctor**, whilst in the possession of Client's property, detect media content of an unlawful nature **The Media Doctor** shall under duty of law be required to report the matter to the appropriate authorities.
- 23. CONFIDENTIALITY**
- The Media Doctor** undertakes and warrants to the client that it shall not disclose under any circumstance to anyone sensitive, personal or secure information that it may have acquired during an undertaking of contract with the Client.
- 24. DATA PROTECTION**
- 24.1 **The Media Doctor** warrants to the client that:-
- 24.1.1 In accordance with the Data Protection Act 1998 (DPA 1998) the Information commissioner has been duly notified.
- 24.1.2 **The Media Doctor** will only hold only that personal information, within the terms of the DPA 1998, which is adequate to deliver Goods effectively.
- 24.1.3 **The Media Doctor** will make available upon formal request to the Client, any and all data pertaining to said client; subject to a nominal administration charge to be no more than ten pounds sterling.
- 24.1.4 **The Media Doctor** will dispose of personal information in a secure and responsible manner.