



## **STANDARD TERMS AND CONDITIONS OF SALE OF DUBOIS LTD. t/a Amaray**

In these terms and Conditions of sale:

‘Buyer’ means the Buyer of Goods and/or Services from the Company.

‘Company’ means a subsidiary of Dubois Ltd (T/A ASG Amaray). This enters into the Contract.

‘Contract’ means the agreement between the Buyer and the Company for the supply of Goods and/or Services.

‘Goods’ means the Goods agreed to be supplied to the Buyer by the Company.

‘Order’ means the Order form including any applicable specification submitted by the Buyer to the Company for Goods or Services.

‘Services’ means the Services agreed to be provided to the Buyer by the Company.

‘Supplies’ means the Goods and/or Services to be supplied under the Contract.

### **1 BASIS OF SALE**

- 1.1 The Company shall sell and the Buyer shall purchase the Supplies in accordance with Orders accepted by the Company subject to these Conditions which shall govern the Contract to the exclusion of any other terms and Conditions subject to which any such Order is made or purported to be made by the Buyer
- 1.2 No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Company
- 1.3 The Company’s employees or agents are not authorised to make any representations concerning the Supplies unless confirmed by the Company in writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed
- 1.4 Any typographical clerical or other error or omission in any documents or information issued by the Company shall be subject to correction with out any liability on the part of the Company.
- 1.5 Paragraph headings shall be ignored in interpretations.

### **2. ORDERS AND SPECIFICATIONS**

- 2.1 No Order shall be deemed to be accepted by the Company unless and until confirmed in writing by the companies authorised representatives.
- 2.2 The Buyer shall be responsible to the Company for ensuring the accuracy of the terms of any Order (including any applicable specification) submitted by the Buyer, and for giving the Company any necessary information relating to the Supplies within a sufficient time to enable the Company to perform the Contract in accordance with its terms.
- 2.3 The quantity, quality and description of and any specification for the Supplies shall be those set out in the company’s confirmation of Order.
- 2.4 If the Goods are to be manufactured or any process is to be applied to the Goods or any Services are to be provided by the Company in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringement of any patent, copyright, design, trademark or other intellectual property rights of any other person which results from the Company’s use of the Buyers specification.

- 2.5 The Company reserves the right to make any changes in the specification of the Supplies which are required to conform with any applicable legal requirements or where the Supplies are to be supplied to the Company's specification, which do not materially effect their quality or performance. If any variation in the Supplies or Contract terms is agreed or is required for compliance with any applicable law, regulation or safety recommendation the Buyer shall pay such additional amount as is fair and reasonable and the Company shall have reasonable additional time to perform the Contract.
- 2.6 No Order which has been accepted by the Company may be cancelled by the Buyer except with the agreement in writing of the Company and on terms that the Buyer shall indemnify the Company in full against all loss (including loss of profit) costs (including the cost of all labour and materials used or appropriated to the Contract) damages, charges and expenses incurred by the Company as a result of cancellation.

### **3. THE PRICE OF THE GOODS AND SERVICE**

- 3.1 The price of the Supplies shall be that stated in the Company's confirmation Order which is exclusive of Value Added Tax and any other sales tax or excise duties. The Company reserves the right to make an additional charge for packaging, carriage, insurance and other items as are not listed on the Order.
- 3.2 The Company reserves the right prior to delivery or final performance to increase the price of Supplies to reflect any increase in labour or material costs or other costs of production, any foreign exchange fluctuation, currency regulation, alteration in duties or any change in delivery date, quantities or specifications for the Supplies which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Company adequate information or instructions or to perform its obligations for the Supplies.

### **4. TERMS OF PAYMENT**

- 4.1 Unless otherwise stated in the Order, or otherwise agreed in writing between the Buyer and the Company, payment shall be made in sterling in cleared funds within 30 days of invoice and without any withholding, deduction, set-off, counterclaim or cross demand (whether in respect of the Contract or any related Contract).
- 4.2 **The time of payment of the price shall be of the essence of the Contract.**
- 4.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:
- 4.3.1 Cancel the Contract in whole or in part or suspend any further deliveries to the Buyer or other performance.
- 4.3.2 Appropriate any payment by the Buyer to such of the Goods or Services (or the Goods or Services supplied under any other Contract between the Buyer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Buyer) and;
- 4.3.3 Change the Buyer interest (both before and after any judgement) on the amount unpaid, at the 4 percentage points above National Westminster Bank plc base rate from time to time or at such rate as is the maximum permissible by statute until payment in full is made.

### **5. DELIVERY**

- 5.1 The Company shall affect delivery by making the Goods available for collection from its premises and so informing the Buyer, or if some other place for delivery is stated in the Company's written confirmation of Order, by the Company dispatching the Goods from its premises in accordance with the Buyer's instructions.

- 5.2 Delivery times are approximate and shall not be of the essence. The Goods may be delivered by the Company in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 5.3 If the Buyer fails to take delivery or give adequate delivery instructions then, without prejudice to its other rights and at the Buyer's expense, the Company may store and/or dispose of the Goods or any Goods the subject of any Services performed by the Company. Any shortfall in disposal proceeds below the Contract price shall be paid by the Buyer to the seller.
- 5.4 The Company may deliver the quantity of Goods Contracted for within a range of plus or minus 10% without thereby being in breach, subject to an appropriate price adjustment being made.
- 5.5 The Company may deliver in instalments constituting separate Contracts and delay in delivery or termination of any instalment of will not entitle the Buyer to terminate the Contract as a whole, nor permit the set-off of any payments in respect of one delivery against any claim of any other delivery whether under one Contract or any related Contract. Where Goods are delivered in instalments the Company may issue separate invoices.

## **6. INSPECTION AND ACCEPTANCE**

- 6.1 Within 7 days of delivery of the Goods and/or completion of the Services the Buyer shall inspect and test the same and immediately give notice to the Company of any damage or non-conformity with the Contract. In the absence of such notice, the Supplies shall be deemed to comply with the terms of the Contract and the Buyer is bound to accept them.
- 6.2 The Buyer will indemnify the Company against any loss which it suffers because any notification pursuant to sub-clause 6.1 is received too late to enable it to claim against carriers or insurers in respect of such damage or loss in transit.

## **7. RISK AND PROPERTY**

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer at the earlier of the time when the Company notifies the Buyer that the Goods are available for collection or upon the Company first dispatching the Goods from its premises in accordance with the Buyers instructions.**
- 7.2 All other material or Goods including but not limited to items referred to in clause 13.4, in the possession of the Company or otherwise, shall be held, worked on and carried at the Buyers risk in every respect and the Buyer is advised to retain duplicates or copies of any master artwork films tapes disks and other material provided to the Company.**
- 7.3 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of the contact, title to and ownership of the Goods shall not pass to the Buyer until the Company has received in cash or cleared funds payment in full of the price of the Goods.**
- 7.4 If at the date that payment in full for the Goods is made any other monies then due for payment by the Buyer to the Company on any account have not been paid, title to the Goods shall not in any event pass to the Buyer until the Company has received in cash or clear funds payment in full of the monies overdue.**
- 7.5 Until such time as property in the Goods passes to the Buyer, the Buyer shall:**
- 7.5.1 Hold the Goods as the Company's fiduciary agent and ballee.**
- 7.5.2 Keep the Goods separate from those belonging to the Buyer and third parties and properly stored, insured and identified as the Company's property and:**
- 7.5.3 The Company shall have a lien over any of the Buyer's assets in its possession or control.**

## **8. ISDN TRANSMISSIONS**

Supplies may be delivered to the Buyer by ISDN transmission, where the Order so provides. Where any material is sent by one party ('The sender') to the other party ('The receiver') by means of ISDN or other electronic transmission:

- 8.1 The sender shall give the Receiver reasonable notice of any ISDN transmissions subject to which transmission shall be deemed to be effected when the Receiver's ISDN connection number has been dialled by the sender.
- 8.2 The Buyer undertakes to ensure that its ISDN receiver is compatible with that of the Company, is not part of a network and is capable of receiving transmissions at the times notified to it by the Company
- 8.3 The sender shall not be liable for late or non-delivery which is a result of the receivers failure to comply with this clause 8 or of failure of the ISDN connection or corruption of material in the course of transmission outside the control of the sender.
- 8.4 Where the Order provides for ISDN transmission, delivery shall be deemed to have place when the Supplies are transmitted from the Company to the Buyer by ISDN, transmission being deemed to be effective when the Buyer's ISDN connection number has been dialled by the Company subject to 8.1
- 8.5 The receiver shall notify the sender immediately that any ISDN transmission has not been successful and the Company reserves the right to deliver by any other means in accordance with the Contract.
- 8.6 The Company shall not be liable for abuse of electronical or digital communications by third parties or for alterations or corruptions in the transmission and the Buyer acknowledges that such communications may not be secure.

## **9. EXCLUSION OF LIABILITY:**

- 9.1 **The Buyer shall not rely upon any representation concerning the Supplies unless made by the Company in the Contract documents save that liability for fraudulent misrepresentation of either party is not excluded.**
- 9.2 **If the Company fails to provide the Supplies in compliance with the Contract or they are proven defective by reason of the Company's default, it's liability shall be limited to their repair or their replacement or if this is not possible to refunding any monies paid in respect of the faulty Goods and/or Services. Without limiting the forgoing the Company shall not be liable for any lost or anticipated profits or savings or any special incidental or consequential losses or damages (including with out limitation loss of value of any Goods packed by the Company on behalf of the Buyer, loss of data, loss of revenue, profit or goodwill, business interpretation, managements costs or third party liability.)**
- 9.3 **Liability for death or personal injury caused by the negligence of the Company, its servants or agents is not hereby purported to be excluded.**
- 9.4 **No statutory or other warranty, Condition or representation of any kind what so ever (including with out limitation any relating to satisfactory quality, suitability or fitness for any purpose of the Buyer) is given or to be implied. The only warrentless, Conditions or representations, made are those expressly stated to be such and contained within the Contract documents.**
- 9.5 **If the agreement is a consumer transaction within paragraph 2(i) Consumer Transactions (restrictions on statements) Order 1976 (as amended)nothing in this clause 9 or otherwise in this contact affects or will affect the statutory rights of the Buyer.**

## **10. TERMINATION OF CONTRACT**

- 10.1 The Company shall be entitled to terminate the Contract forthwith by notice in writing to the Buyer if:
- 10.1.1 The Buyer fails to pay the Company any sum when due; or
- 10.1.2 The Buyer fails to remedy any breach or non performance within fourteen days of notice from the Company to do so; or
- 10.1.3 The Buyer is, or is deemed to be insolvent or steps are taken to:
- (a) Propose any composition, scheme or arrangement involving the Buyer and its creditors.
  - (b) Obtain and administration Order or appoint any administrative or other receiver or manager of the Buyer or any of its property or otherwise enforce any security over the Buyers property, or repossess its asset; or
  - (c) File a partiton of bankruptcy or wind up or dissolve the Buyer, sequesterate its estate or outside England anything corresponding to any of the above occurs.
- 10.2 If the Contract is terminated the Company (with out prejudice to its other rights but subject to any relevant mandatory laws) may do any of the following:
- 10.2.1 Declare immediately payable (and so interest bearing under clause 4) any sums owed by the Buyer, proceed against the Buyer for the same and/or damages, and appropriate any payment by the Buyer as the Company thinks fit (notwithstanding any purported appropriation by the Buyer).
- 10.2.2 Suspend further performance of any Contract and/or any credit granted to the Buyer on any account (and the time for delivery by the Company shall be extended by the period of such suspension.
- 10.2.3 Take possession of and deal with (including the sale of) any materials and other assets of the Buyer held by or on behalf of the Company and apply any proceeds of the sale in payment of any sums owing under or damages arising in connection with any Contract including any interest and costs arising thereon, with out limitation to the generality of the foregoing the Company may retain any original or copy artwork films tapes disks and other materials of the Buyer and produce duplicates of and from the same (whether in part or in whole) for resale as the Company shall in its discretion determine and in such quantities so as to realise sufficient funds to compensate the Company for all loss and damage suffered by it (including interest and cost thereon.) by reason of the Buyer's breach. The Buyer hereby grants an irrevocable non-exclusive royalty-free licence to copy use products sell and distribute such works and materials and shall indemnify the Company against any claim loss damage or expense suffered by it as a result of any such action being in breach of the Buyer's or a third party's rights or entitlements.

## **11. LICENCES AND COPYRIGHT CLEARANCES**

- 11.1 The Buyer shall obtain in writing in good time and hereby warrants that it has so obtained any and all necessary licences, permits and consents or approvals for the import/export, copying, use, production, reproduction, distribution or sale of the Goods or the provision of the Services (including without limitation all necessary copy right, design right, registered design, trademark, patents and other applicable intellectual property right consents, clearances, licences or approvals and any necessary waivers of moral rights) and will indemnify the Company and keep it fully and effectively indemnified on demand against any cost, claim, liability or expense the Company incurs as a result of any failure or delay so to do.
- 11.2 If the Company is a signatory to the Mechanical Copyright Protection Societies (MCPS) 'Code of practice for manufacturers of disks, CDs and Tapes' from time to time in force (the Code) it may:

(a) Obtain from the Buyer or any other person and/or;

(b) Require the Buyer to obtain from any other person

Such confirmations, consents and approvals as may be necessary for the Company to meet any obligations under the Code.

11.2.2 The Company shall not be liable to perform all or any part of the Contract if it considers such action would or might be in breach of the Code.

11.2.3 If the Company so request, the Buyer shall further apply to be included on one of the two approved licensee lists, AP1 or AP2, of, or to take a specific licence to cover the particular Goods and/or Services from, the MCPS (or overseas equivalent)

11.2.4 The Company may (with out incurring liability) withhold performance of the Contract until such consents or approvals are provided and/or such registration or specific licence is complete and shall be entitled to further time for performance in the event of a delay.

11.3 The Company may at any time refuse to produce any Goods or provide any Services which it considers may be illegal or defamatory or might infringe any third party's rights or create criminal or civil liability or otherwise bring the Company into disrepute in the minds of right thinking people.

11.4 If any claim is made or action brought against the Company concerning the Supplies (and whether settled, litigated discontinued or otherwise dealt with by the Company) and the Company thereby incurs costs, loss, liability, or penalty of any kind the Buyer shall upon demand pay to the Company on a full indemnity basis the full amount of such costs, loss, liability, expense or penalty without inquiry, deduction, withholding, set-off, counterclaim or cross demand (whether in respect of the Contract or any related Contract).

11.5 The Buyer agrees that the Company may include the Supplies, the Contract and the Buyers name and marks in its promotional material.

## **12. INTERLECTUAL PROPERTY AND CONFIDENTIALITY**

12.1 The Company retains ownership of all inventions, designs, copyrights and processes relevant to the supply's and not provided by the Buyer. Copyright exists in all documents, designs, programs, or other material issued by or on behalf of the Company, which the Buyer shall keep confidential and not disclose or use the same (other than for the particular purpose for which it was disclosed) for his or another's benefits without the Company's prior written consent.

12.2 All film negatives and positives, disks, sketches, samples and original designs of any kind, moulds, tapes, designs and other materials created or acquired for the performance of a Contract shall remain the exclusive property of the Company including any items subject to an extra charge. The Company shall not be obliged to preserve any of the same unless expressly agreed in the Company's confirmation of Order and the cost of storage of which shall be an extra charge unless otherwise stated in such confirmation to be included within the price.

## **13. BUYERS MATERIAL AND OTHER ITEMS**

13.1 The Company may reject any materials and other items supplied or specified by the Buyer but acceptance of them shall not constitute a warranty that they are suitable or comply with the Contract.

13.2 The Company shall not be liable for any defect, wastage or other loss whatsoever arising from such materials, or other items which shall be held and used at the Buyers risk. Quantities of materials or other items supplied by the Buyer shall allow for normal spillage.

13.3 The Company shall not be responsible for any loss, damage, cost or expense, arising from or from any mistake, defect or inaccuracy in any artwork, tapes, films, disks or other materials or items specified or supplied by the Buyer. Any loss, damage, cost or expense arising

- therefrom or from the Company's reproductions of such mistakes, defects or inaccuracies shall be for the sole account of the Buyer who shall indemnify the Company accordingly.
- 13.4 The Company's liability for disks, tapes, films, artwork and other materials or items specified or provided to the Company by or otherwise held by the Company on behalf of the Buyer shall be limited to the basic raw material cost of the media and not any production, artistic aesthetic or rarity cost or value in the material.
- 13.4.1 any materials and other items of the Buyer held by the Company may be dealt with by the Company in the manner and circumstances provided for under clause 10.2.3 above.
- 13.5 Prior to their delivery to the Company the Buyer shall notify the Company of the nature of any materials or other items to be held by the Company on the Buyer's behalf, shall provide adequate warnings and instructions where such material or Goods are or may be hazardous to safety and shall ensure that they comply with any requirements or descriptions in the Contract or Contract documents.
- 13.6 The Buyer shall indemnify the Company for any loss, damage or claim which arises from or relates to such materials or Goods whilst in the Company's possession and which could not have been prevented by the Company acting in accordance with the Buyer's reasonable written instructions and which was not caused by the negligence or wilful default of the Company or its employees.

#### **14. PROOFS AND SAMPLES**

The Company may submit proofs for the Buyer's approval and shall not be liable for any error not corrected by the Buyer. The Buyer's corrections (including alterations in style, composition and layout) and the cost of additional proofs in relation thereto shall be an extra charge. Every effort shall be made to see that the Supplies shall comply with substantially with any samples previously supplied but the Company shall not be liable if they do not comply save in circumstances where there is a material non-compliance but subject always to the provision of clause 9 of these Conditions.

#### **15. PERIODICALS**

Without prejudice to any remedies available to the Company for the Buyer's breach of Contract, a Contract for printing any periodical publications shall be terminable by either party on written notice of not less than 13 weeks in respect of monthly or more frequent periodicals or 26 weeks in respect of other periodicals.

#### **16. FORCE MAJEURE**

The Company shall not be liable for any failure to perform all or any of its obligations under a Contract by reason of any fire, flood or act of God, armed conflict, civil unrest, industrial action, equipment or supply difficulties or failure, Order of public authority or any cause whatsoever beyond it's control... In such circumstances the Company may terminate the Contract whereupon the Buyer shall pay a sum equal to the costs to the Company to date of performing the Contract and the Company's liability shall be limited to repayment of any sums paid for undelivered Goods or unperformed Services, less costs.

#### **17. WAIVERS AND ASSIGMENT**

The Company's rights shall not be prejudiced by any indulgence, forbearance or previous waiver extended to the Buyer. The Buyer shall not assign, charge or otherwise dispose of any Contract of any of its rights there under without the Company's prior written consent

## **18. NOTICES AND COMMUNICATIONS**

All notices or any other communications under a Contract shall be in writing in English addressed to the addressee's registered office or address stated in the Order (or other address notified to the other party) and shall be sent by hand (and thereby be deemed served when properly left at such address) or by first class pre-paid post (and thereby be deemed served 48 hours after posting).

## **19. APPLICABLE LAW**

The Contract shall be governed and construed in accordance with English Law and the Buyer irrevocably submits to the exclusive jurisdiction of the courts of England provided that (without prejudice thereto) the Company shall be entitled to apply for any provision of conservatory measures or interim relief in any other court having jurisdiction.

## **20. THIRD PARTY RIGHTS**

No person who is not a party to the Contract shall have any right under the Contracts (Rights of the Third Parties) Act 1999 to enforce any term of the Contract but this does not affect any right to remedy which is available apart from that act.