

BEAT CONCEPTS LIMITED

TERMS AND CONDITIONS

1. Definitions

- 1.1. "The Company" means Beat Concepts Ltd and/or its subsidiaries and/or affiliates.
- 1.2. "Customer" means any person, firm, company or unincorporated association which orders, buys or licenses goods or services from The Company.
- 1.3. "Contract" means an individual legal binding contract between The Company and the Customer created when an Order placed by the Customer is accepted by The Company subject to these Conditions.
- 1.4. "Conditions" means these terms and conditions.
- 1.5. "Customer IPR" means the Trade Marks and all Intellectual Property Rights of which the Customer is the owner or licensee and which are disclosed, licensed or provided to the Company pursuant to the Contract.
- 1.6. "Force Majeure Event" means an event, or a series of related events, that is outside the reasonable control of the party affected (including power failures, industrial disputes affecting any third party, changes to the law, government or parliamentary restrictions, import or export regulations, strikes, lockout trade disputes, natural catastrophes, breakdown of plant or premises, an act of God, extreme weather events including storms at sea, shipping diversions, port closures, airport closures, disasters, explosions, fires, floods, riots, terrorist attacks, theft, and wars, failure of water or other supplies or any other causes whatsoever beyond the control of The Company);
- 1.7. "Goods" means the goods (and/or, where the context so admits, services) which are the subject of the Contract and any instalment thereof.
- 1.8. "Invoice" means the invoice given or despatched to the Customer detailing the Goods and the Price.
- 1.9. "Intellectual Property Rights" means any and all copyright, patent, databases and database rights, registered design or other design right, utility model, trade mark (whether registered or not and including any rights in get up or trade dress), chip topography right, brand name, service mark, trade name, business name (whether registered or not), internet domain name, and any other rights in respect of any other intellectual property, whether capable of registration or not and wherever existing in the World and including all renewals, extensions and revivals and all rights to apply for any of the foregoing rights.
- 1.10. "Order" means the order placed, by way of Sale Order or Purchase Order, by the Customer (of which the Customer acknowledges that these Conditions form part) for the supply of Goods or services by The Company to the Customer.
- 1.11. "Price" means the total price to be paid by the Customer to The Company for the supply of the Goods.
- 1.12. "Purchase Order" means the purchase order provided by The Customer confirming the order.
- 1.13. "Sale Order" means the sale order generated by The Company confirming the Order.
- 1.14. "Trade Marks" means the registered Trade Marks of the Customer.

2. Acceptance of Orders

- 2.1. Any quotation relating to Goods supplied by The Company and any catalogue, mail shot or other advertisement of such Goods shall not constitute an offer capable of acceptance by the Customer but an invitation to treat only. Any Order shall be accepted entirely at the discretion of The Company and, if accepted, is accepted under these Conditions.
- 2.2. These Conditions shall override any contrary, different or additional terms or conditions contained or referred to in a Customer's order or in any other correspondence or documents from that Customer and no addition, alteration or substitution of these Conditions will bind The Company or form part of any contract unless expressly accepted in writing by a person authorised to sign on behalf of The Company.
- 2.3. The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable specification submitted by the Customer are complete and accurate.
- 2.4. Any Order shall only be deemed to have been accepted by The Company when the Company issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 2.5. The procedures to be followed by The Company and The Customer for an Order to be deemed to be placed are:
 - a) the Customer places an order using the Company's portal;
 - b) on receipt of this order the Company shall email the Customer with a link for payment;
 - c) once payment has been made the Company shall dispatch the Goods ordered.

3. Delivery of Goods

- 3.1. Unless otherwise agreed with The Customer in writing, The Company shall effect delivery of the Goods at the Customer's expense, at the price specified in the Sale Order or Purchase Order.
- 3.2. Delivery to the Customer shall be deemed to have taken place when the Goods are placed with the Customer's representative or at the address specified by the Customer.
- 3.3. The Company reserves the right to make deliveries by instalments in all cases. Where Goods are delivered by instalment, the Customer shall not be entitled to treat defective delivery in respect of one or more instalments as a repudiation of the whole of the Contract nor to defer payment for any previous instalment.
- 3.4. If the Supplier fails to deliver the Goods on the agreed delivery date, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.
- 3.5. The Company shall have no liability for any failure to deliver the Goods on the agreed delivery date to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4. Title and Risk in the Goods

- 4.1. The title and risk in the Goods shall pass to the Customer on completion of delivery.

5. Price and Payment

- 5.1. The Price shall be the price quoted by The Company (plus VAT where applicable and/or any other taxes, duties and appropriate other charges) as set out in the Sale Order or Purchase Order.
- 5.2. Unless otherwise agreed with the Customer, quotations are valid for 30 days from the date of quotation.
- 5.3. Unless otherwise agreed and specified in the Sale Order or Purchase Order, The Company reserves the right to obtain from the customer up to a 50% deposit before commencement of production. If you decide to end the Contract you will not be entitled to a refund of your deposit.
- 5.4. The Customer shall pay the Company for the Goods in accordance with the agreed payment terms set out in the Sale Order or Purchase Order.
- 5.5. In the absence of any alternative payment terms set out in the Sale Order or Purchase Order, The Company may invoice the Customer for the Goods on or at any time after the completion of delivery. All invoices shall be paid in full by the Customer to The Company on or before 30 days from the invoice date, unless otherwise agreed in writing between the Customer and The Company.
- 5.6. The Company may, by giving notice to the Customer at any time up to 5 Business Days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
 - a) any factor beyond the Company's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs;
 - b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the specification of the goods; or
 - c) any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate or accurate information or instructions.
- 5.7. If a party fails to make any payment due to the other under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 4% per annum above HSBC's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount.
- 5.8. Certain Goods may be supplied to the Customer by The Company, at its absolute discretion, subject to a "satisfaction guarantee" which may, if the said goods are not to the Customer's satisfaction, be exercised by the Customer within 3 months of the Invoice Date, provided that such goods are returned to The Company within that period in mint condition.
- 5.9. If the Price is not paid in full by the due Date, interest shall (at the absolute discretion of The Company) be payable (both before and after decree or judgement) on the Price or the part unpaid from the Due Date for payment until paid in full. Such interest shall be calculated in accordance with the provisions of The Late Payment of Commercial Debts (Interest) Act 1998.
- 5.10. The customer shall reimburse the Company (on all full indemnity basis) all costs and expenses incurred by The Company in connection with the recovery of any money due to The Company under the Contract.
- 5.11. Without prejudice to Clause 5.7 above, it is hereby expressly stated that prompt payment of the Price is of the essence of the Contract and, in default of prompt payment The Company may at its option either suspend all further deliveries of Goods or performances of service under the Contract or otherwise until payment is made or cancel the Contract and subsequent Contracts so far as Goods remain to be delivered or services performed there under.

- 5.12. Payment made by the Customer to The Company shall be applied by The Company to invoices, and to Goods listed in Invoices, in such order or manner that The Company shall, at its entire discretion, think fit.
- 5.13. Except in the express agreement in writing of The Company, no deduction shall be made by the Customer from any payment for Goods for or on account of any matter or thing whatsoever, including, but not limited to any set-off, compensation, counterclaim or present or future taxes.

6. Warranties and Guarantees

- 6.1. The Company warrants that it either has the right to sell the Goods or has obtained all necessary rights to licence them and the Customer's rights to unencumbered possession and quiet title in terms of the Sale of Goods Act 1997 and the Supply of Goods and Services Act 1982 are preserved.
- 6.2. The Company further warrants that the Goods shall correspond with their descriptions as set out in approved samples, specifications, visuals and other documents issued by it, unless the Customer is specifically advised by The Company to the contrary prior to delivery of the Goods (any verbal description of Goods or any descriptions provided by other than that by The Company shall not form part of their description for the purposes of these warranties) and, where the Goods consist of or include services to be provided by The Company, such services shall be provided with reasonable care and skill.
- 6.3. The Customer shall inspect the Goods immediately upon delivery and within 7 days of delivery (time being of the essence) shall give notice to The Company of any alleged shortages in the Goods or any damage to or defect in the Goods or any other matter or thing by reason whereof the Customer alleges that the Goods shall be conclusively presumed to be in accordance with the Contract in all respects and the Customer shall not (subject to clause 6.5) thereafter be entitled to reject the Goods or to claim from the Company in respect of any shortage, damage or other defect to the Goods.
- 6.4. In the case of damage or other defect to the Goods which was not apparent on reasonable inspection notice shall be given The Company within 72 hours after discovery of the damage or other defect, otherwise Clause 6 will apply. If requested by The Company following notification of a claim, defective Goods shall be returned promptly by the Customer to the Company.
- 6.5. In the event that the Goods are defective and the damage or other defect complained of shall have arisen as a result of the negligence of The Company and the Customer has notified any claim to The Company in accordance with Clause 6.3. The Company guarantees that it shall refund to the Customer the price in respect of the defective Goods or cancel the liability of the Customer to pay the said Price, provided that where this is possible the Company may instead opt to repair or replace defective Goods free of charge.

7. Limitation of Liability

- 7.1. Subject to Clause 7.3 The Company's liability under Clause 7 shall be to the exclusion of all other liability to the Customer whether in contract, tort, delict (including negligence or breach of statutory duty) or otherwise for defects in the Goods or for any loss or damage caused by the Goods, and all other conditions, warranties, stipulations or other statements whatsoever concerning the goods, whether expressed or implied, by statute, at common law or otherwise, are hereby excluded.
- 7.2. Subject to Clause 7.3, The Company's liability to the Customer in respect of the Contract, in contract, tort or delict (including negligence or breach of statutory duty) or howsoever otherwise arising shall be limited to the Price.

- 7.3. Nothing in these Conditions shall operate or be construed so as to exclude or restrict the liability of The Company for death or personal injury resulting from the negligence of The Company or its servants, employees or agents, or the statutory rights of the Customer where the Contract entered into as a consumer transaction (as defined in the Consumer Transaction (Restriction of Statements) Order 1976 (as amended)).

8. Force Majeure

The Company shall not be responsible for any delay or failure to fulfil any of its obligations under the Contract nor be liable for any loss or damage suffered by the Customer by reason of any delay in delivery of the Goods or any part thereof caused directly or indirectly by any Force Majeure Event.

9. Copyright and Restriction on re-sale

- 9.1. Subject to clause 9.4, all Intellectual Property Rights in the Goods or any materials derived are reserved to the Company and the Customer irrevocably acknowledges and agrees that the supply of Goods to it by The Company shall not serve to transfer such rights unless previously consented to in writing.
- 9.2. No part of the Goods may be reproduced in any material form (including photocopying or storing it in any medium by electronic means and whether or not transiently or incidentally to some other use of the Goods) without the written permission of The Company except as permitted by law or under the terms of licence. Applications for the copyright owner's written permission to reproduce any part of the Goods should be addressed to The Company. The Customer is put on notice that the doing of any unauthorised act in relation to a copyright work may result in both a civil claim for damages and criminal prosecution.
- 9.3. The Company acknowledges that the Customer IPRs and the Trade Marks are and remain the exclusive property of the Customer or, where applicable, the third party licensor from whom the Customer derives the right to use them.
- 9.4. The Customer hereby grants the Company a non-exclusive, royalty-free licence to use the Customer IPRs solely for the purpose of performing its obligations under the Contract.
- 9.5. The Company's use of the Customer IPR is limited to applying them to the Goods in the form and manner specified by the Customer from time to time, and not otherwise.

10. Termination

- 10.1. Each Contract will come into force in accordance with clause 2, and will continue in force until the earlier of the later of completion of: (i) delivery of all Goods; and (ii) the receipt by the Company of all amounts due to the Company under the Contract; and the termination of the Contract in accordance with the provisions of this clause.
- 10.2. A Contract may be terminated in the following circumstances: either party may terminate a Contract immediately by giving written notice to the other party if the other party commits any material breach of any term of the Contract; the Company may terminate any Contract immediately by giving written notice to the Customer if the Customer fails to pay to the Company any amount due under the Contract by the due date for payment.
- 10.3. Either party may terminate any Contract immediately by giving written notice to the other party if the other party: (i) is dissolved; (ii) ceases to conduct all (or substantially all) of its business; (iii) is or becomes unable to pay its debts as they fall due; (iv) is or becomes insolvent or is declared insolvent; or (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors.

11. Effects of termination

11.1. Upon termination of a Contract, all the provisions of that Contract will cease to have effect, save that any provisions of these Conditions capable of surviving termination will survive and continue to have effect.

11.2. Termination of a Contract will not affect either party's accrued rights (including accrued rights to be paid and accrued rights to a remedy for breach of condition or warranty) as at the date of termination.

12. Compliance with Anti-Slavery and Human Trafficking Laws

12.1. In performing its obligations under the Contract, the Company shall:

- a) comply with all applicable anti-slavery and human trafficking laws, statutes and regulations from time to time in force including the Modern Slavery Act 2015; and
- b) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;
- c) include in contracts with its direct subcontractors and suppliers provisions which are at least as onerous as those set out in this clause 12.
- d) maintain a complete set of records to trace the supply chain of all Goods provided to the Customer in connection with this Contract; and permit the Customer and its third party representatives to inspect the Company's premises, records, and to meet the Customer's personnel to audit the Company's compliance with its obligations under this clause 12..

12.2. The Company warrants that at the date of this Contract it not has been convicted of any offence involving slavery and human trafficking; nor has it been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.

13. Anti-Bribery and Anti-Corruption

13.1. The Company shall:

- a) comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption including the Bribery Act 2010 (Relevant Requirements);
- b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- c) have and shall maintain in place throughout the term of this Contract its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and clause 13 (b), and will enforce them where appropriate; and
- d) promptly report to the Customer any request or demand for any undue financial or other advantage of any kind received by the Company in connection with the performance of this Contract.

13.2. The Company shall ensure that any person associated with the Company who is performing services in connection with this Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Company in this clause 13 (Relevant Terms). The Company shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Customer for any breach by such persons of any of the Relevant Terms.

- 13.3. For the purpose of this clause 13, the meaning of adequate procedures and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act) and section 8 of that Act respectively. For the purposes of this clause 13 a person associated with the Company includes any subcontractor of the Supplier.

14. General

- 14.1. No failure or delay by the Company to exercise any right, power, remedy or privilege shall operate as a waiver of the same.
- 14.2. If any provision of these Conditions shall be held to be illegal or unenforceable, in whole or in part, under any enactment of rule of law, such term or provision or part shall to that extent be deemed not to form part of these Conditions but the validity and enforceability of the remainder of these Conditions shall not be affected.
- 14.3. Any notices or other communications required or permitted to be given by The Company to the Customer, or vice versa, shall be in writing and sent, in the case of notices to The Company, to the Registered Office of The Company (or such other address as may be intimated to the Customer from time to time) and, in the case of notices to the Customer, to the Customer's last known address. Notices and other communications shall be sent by first class mail, facsimile transmission or delivered by hand and shall be deemed to have been received, in the case of first class mail, 72 hours after posting, on facsimile transmission on completion of such transmission, and on delivery by hand, at the time of delivery.
- 14.4. The amount of any sum due by the Customer to The Company under the Contract shall be sufficiently ascertained by a certificate under the hand of the Secretary or a Director or any other authorised signatory of The Company and such certificate shall be final and binding on the Customer for every purpose.
- 14.5. The Company shall be entitled, in its entire discretion, to alter these Conditions or any of them at any time and from time to time whether by way of a variation and or substitution and or deletion of the subsisting Conditions and/or adding new Conditions and these Conditions as so altered shall apply to Contracts whether current at the time or entered into hereafter, provided always that, in the case of each Contract, then one month's prior notice in writing shall be given by The Company to the Customer stating the amended Conditions of supply of goods and services and the effective date thereof.

15. Jurisdiction and Governing Law

The Conditions and any Contract of which they form part shall be governed in all respects by the Law of England and The Company and the Customer each irrevocably agree to submit to the nonexclusive jurisdiction of the English Courts.