

drinkaware

TERMS AND CONDITIONS

1 BASIS OF AGREEMENT

- 1.1 This Order constitutes an offer by Customer (as defined in the Order) to purchase Services in accordance with these General Terms.
- 1.2 This Agreement shall be deemed to take effect when Customer has returned a signed Order to Drinkaware Trading Limited ("Drinkaware") and Drinkaware has issued written acceptance of the Order.
- 1.3 Any samples, drawings, descriptive matter or advertising issued by Drinkaware, and any descriptions or illustrations contained in Drinkaware's marketing materials, are issued or published for the sole purpose of giving an approximate idea of the Services and/or Deliverables described in them. They shall not form part of the Agreement or have any contractual force.
- 1.4 This Agreement applies to the exclusion of any terms that Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 1.5 Save for any Special Terms set out in the Order, which shall take precedence over the General Terms, where any provision contained in an Order conflicts with any provision contained in these General Terms, the General Terms shall prevail.

2 SUPPLY OF SERVICES AND DELIVERABLES

- 2.1 Drinkaware shall from time to time during the term of this Agreement perform the services set out in the Order ("Services") and supply any Deliverables (as defined in Clause 5.1) in accordance with these terms and the Order.
- 2.2 Any changes to the Services and the Charges must be agreed by the parties in writing.
- 2.3 Subject to Clause 2.4, acceptance of Deliverables by Customer shall occur three (3) business days from delivery to Customer, unless Drinkaware has received a written notice setting forth a reasonable, detailed basis for the rejection of the Deliverables. Customer acknowledges that it may only reject a Deliverable if it does not materially comply with its description in an Order.
- 2.4 Notwithstanding any other provision of this Agreement, to the extent that Customer uses a Deliverable(s) in a production environment (other than for testing), or if Customer does not reject a Deliverable(s) in accordance with Clause 2.3, then such Deliverable(s) shall be deemed accepted by Customer.
- 2.5 Subject to Clause 8.3, Drinkaware shall not be liable under or in connection with this Agreement for any modifications, adaptations or amendments to any Deliverables made by Customer or by a third party on Customer's behalf in circumstances where the original Deliverables would not have given rise to such liabilities.

3 CUSTOMER OBLIGATIONS

- 3.1 If the performance of any Services requires the use of any resources, information, documentation, equipment, software or other material to be supplied to Drinkaware by or on behalf of Customer ("Customer Resources") then Customer agrees to promptly provide the Customer Resources to Drinkaware.

- 3.2 Customer shall: (a) ensure that the terms of the Order and any information provided in the Customer Resources are complete and accurate; (b) co-operate with Drinkaware; (c) provide Drinkaware, its employees, agents, consultants and subcontractors, with access to Customer's premises, office accommodation and other facilities as reasonably required by Drinkaware; (d) where applicable, prepare the Customer's premises for the supply of the Services; (e) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start; and (f) comply with all applicable laws, including health and safety laws.

- 3.3 To the extent that Customer or its agents or contractors do not fulfil their obligations under this Agreement, then Drinkaware will be relieved of its obligations to Customer to the extent that Drinkaware is prevented from performing in accordance with this Agreement.

4 CHARGES, THIRD PARTY COSTS AND DISBURSEMENTS

- 4.1 Customer shall pay Drinkaware the fees, expenses and third party costs set out in the Order (the "Charges").
- 4.2 All Charges exclude VAT and all invoices issued by Drinkaware under or in connection with this Agreement shall be payable by Customer within 30 days of the date of the invoice without any right of set-off, abatement or withholding.
- 4.3 If Drinkaware has not received payment within seven (7) days after the due date, and without prejudice to any of Drinkaware's other rights and remedies, Drinkaware shall have the right to immediately suspend performance of the Services and/or access to the Deliverables until Drinkaware has received payment of the overdue amount together with any accrued interest.

5 INTELLECTUAL PROPERTY

- 5.1 Definitions (a) "Deliverables(s)" means all tangible materials that are developed, licensed, or acquired on behalf of Customer and supplied to Customer by Drinkaware under this Agreement including software and those products set out in the Order but excluding the Customer Resources (as defined in Clause 3.1); (b) "IPR" means all copyright, patents, database rights, trademarks, design rights and any other proprietary right, now known or hereinafter created, together with all extensions and renewals of such rights.
- 5.2 All IPR in or arising out of or in connection with the Services and/or Deliverables shall be owned by Drinkaware, or its licensors.
- 5.3 Drinkaware grants to Customer, or shall procure the direct grant to Customer of, a non-exclusive, royalty-free licence during the term of this Agreement to use the Deliverables for the purpose of receiving and using the Services and/or the Deliverables for its own business purposes. Customer may not in any circumstances share any Deliverables outside of its organisation.
- 5.4 Customer shall not sub-license, assign or otherwise transfer the rights granted in this Clause 5.
- 5.5 Customer grants Drinkaware a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Resources to Drinkaware for the term of this

Agreement for the purpose of providing the Services and/or Deliverables to Customer.

6 CONFIDENTIALITY

Each party shall treat as confidential all information obtained from the other in the course of the relationship governed by this Agreement and shall not divulge such information to any person without the other party's written consent provided that this Clause 6 shall not extend to information which: (a) was rightfully in the possession of such party prior to the commencement of the negotiations leading to this Agreement; (b) is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this Clause); or (c) is required to be disclosed by law. If Drinkaware shall appoint any sub-contractor then Drinkaware may disclose confidential information supplied by Customer to such sub-contractor provided that such sub-contractor has entered into a covenant in substantially similar terms to this Clause 6.

7 WARRANTIES

7.1 Drinkaware warrants that: (a) the individual signing an Order has the full authority to legally bind Drinkaware; (b) it will perform the Services in a workmanlike manner and with reasonable skill and care; and (c) when used in accordance with the terms of this Agreement, Customer's use of the Deliverables will not infringe the IPR of any third party provided that such infringement is not attributable to the modification of Deliverables performed by Customer, or performed on behalf of Customer by a third party.

7.2 Customer warrants that: (a) the individual signing an Order has the full authority to legally bind Customer; (b) Drinkaware's use of the Customer Resources will not infringe the IPR of any third party; and (c) the Customer Resources are accurate and complete in all material respects and comply with all applicable laws. The Customer hereby indemnifies the Agency on demand against any claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's breach of its warranties under this Clause 7.2.

8 LIMITATION OF LIABILITY

8.1 Subject to Clause 8.3, Drinkaware shall not be liable to Customer under or in connection with this Agreement for any loss of actual or anticipated income or profits, loss of contracts, loss of goodwill, loss of any benefit or for any special, indirect or consequential loss or damage of any kind howsoever arising and whether caused by tort (including negligence), breach of contract or otherwise, whether or not such loss or damage is foreseeable, foreseen or known.

8.2 Subject to Clause 8.3, Drinkaware's maximum aggregate liability under or in connection with this Agreement, whether in contract, tort (including negligence) or otherwise, shall in no circumstances exceed the greater of 125% of the Charges paid or payable by Customer up to the date that the claim first arose.

8.3 Nothing in this Agreement shall exclude or in any way limit either party's liability for fraud, death or personal injury caused by its own negligence or any other liability to the

extent that the same may not be excluded or limited as a matter of law.

8.4 Save as specifically stated in this Agreement, Drinkaware shall not be bound by any conditions, warranties, representations or other terms concerning the performance of the Services and the supply of the Deliverables which might otherwise be implied into or incorporated into this Agreement, whether by statute, common law or otherwise, all of which are hereby excluded to the fullest extent permissible by law.

9 PUBLICITY

Customer hereby consents that Drinkaware may use Customer's name and logo for the purposes of promoting its work and its business including on Drinkaware's website.

10 TERM AND TERMINATION

In addition to any termination or cancellation right set out in an Order, either party may terminate this Agreement or cancel an Order immediately upon written notice to the other in the event: (a) of any material breach of this Agreement by the other party which breach is not remediable or, if remediable, is not remedied within thirty (30) days after the service by the party not in default of a written notice on the other party, specifying the nature of the breach and requiring that the same be remedied; or (b) that the other party becomes insolvent, enters into liquidation, has an administrator appointed, makes any composition or arrangement with its creditors or takes or suffers any similar action in consequence of debt.

11 CONSEQUENCES OF TERMINATION

Upon termination of this Agreement for any reason: (a) Customer shall immediately pay Drinkaware all of Drinkaware's outstanding unpaid invoices and, in respect of Services and/or Deliverables supplied but for which no invoice has been submitted, Drinkaware shall submit an invoice, which shall be payable by Customer within 30 days of the date of the invoice; (b) Drinkaware shall deliver to Customer any Customer Resources in Drinkaware's possession or control; and (c) provisions of this Agreement which either are expressed to survive its termination or from their nature or context it is contemplated that they are to survive such termination, shall remain in full force and effect notwithstanding such termination.

12 DATA PROTECTION

Definitions (a) "**Data Protection Legislation**" means: (i) the EC Directive 1995/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data and all local laws or regulations giving effect to this Directive; (ii) the EC Directive 2002/58/EC on Privacy and Electronic Communications and all local laws or regulations giving effect to this Directive; (iii) the EC Regulation 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (when in force); (iv) all relevant laws or regulations implementing or supplementing the EU legislation mentioned in (i) - (iii) above, including elements of the EC Regulation 2016/679 incorporated into or governed by national law relevant for the Services; and (v) any related codes of conduct or guidance issued by a regulator or other

governmental entity. (b) Other terms and expressions defined in the Data Protection Legislation and used in this Clause 12 shall have the same meaning given to them in the Data Protection Legislation.

- 12.1 In the course of performing its obligations under this Agreement, Drinkaware may receive "personal data" (as defined Data Protection Legislation) relating to Customer's personnel and/or actual or potential customers which Drinkaware shall be required to process in order to fulfil its obligations under this Agreement. The type of personal data that Drinkaware may be required to process includes names, email addresses, age range, [health information] and other contact information.
- 12.2 The parties agree that in respect of any personal data processed in connection with this Agreement, Customer shall be the "data controller" and Drinkaware shall be "data processor".
- 12.3 Each party shall comply with its respective obligations under Data Protection Legislation.
- 12.4 Without prejudice to its other rights or obligations, Drinkaware shall in respect of its processing of such personal data: (a) process the data only to the extent, and in such a manner, as is necessary for the purposes of this Agreement and in accordance with Customer's written instructions from time to time and Drinkaware shall not process, nor permit the processing, of the data for any other purpose; (b) as soon as reasonably practicable comply with any request from Customer requiring Drinkaware at Drinkaware's cost to amend, transfer or delete the data, either during or after the term of this Agreement; (c) only make copies of the data to the extent reasonably necessary; (d) only permit access to data to those personnel who require such access in order to carry out their roles in the performance of Drinkaware's obligations under this Agreement and ensure that any person authorised to process data in connection with this Agreement is subject to a duty of confidentiality; (e) having regard to the state of technological development and the cost of implementing any measures, take appropriate technical and organisational measures against the unauthorised or unlawful processing of data and against the accidental loss or destruction of, or damage to data, to ensure a level of security appropriate to: i) the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage of the data; and ii) the nature of the data to be protected; (f) at Customer's expense shall provide Customer with full co-operation and assistance in relation to Customer's obligations under Data Protection Legislation including providing Customer and a regulator (as applicable) with all information and assistance necessary to comply with data subject requests, investigate security breaches or otherwise to demonstrate compliance by the parties with Data Protection Legislation; and (g) keep a written record of any processing of the data carried out and of its compliance with its obligations set out in this Agreement at its normal place of business.
- 12.4 Drinkaware may authorise a third party to process personal data ("**Sub processor**") provided that the Sub processor's contract: (a) is on terms which are substantially the same as

those set out in this Agreement; and (b) provides sufficient guarantees to implement appropriate technical and organisation measures in compliance with the Data Protection Legislation; and (c) terminates automatically on termination of the Agreement for any reason. Drinkaware shall remain liable for all acts or omissions its sub processors as if they were acts or omissions of Drinkaware.

13 GENERAL

- 13.1 If due to events or obstacles beyond a party's reasonable control ("**Force Majeure Event**"), that party fails to perform any of its obligations under this Agreement, that party shall not be held responsible for any loss or damage which may be incurred as a result of such Force Majeure Event. Should the Force Majeure Event continue for longer than one month, the party adversely affected shall have the option of terminating this Agreement immediately without further liability.
- 13.2 No waiver of any term of this Agreement is valid unless it is in writing and signed by an authorised person of the party charged with the waiver.
- 13.3 Customer may not assign its rights or obligations hereunder unless Drinkaware gives its written consent. Drinkaware shall be entitled to assign or sub-contract its rights and obligations under this Agreement.
- 13.4 All notices required to be given under this Agreement shall be in writing and shall be deemed to have been given: (a) on the date actually delivered, if delivered, by hand; or (b) three (3) days after deposit in the mail, postage prepaid, return receipt requested, in each case sent to the person and address specified in the Order.
- 13.5 This Agreement and the Order agreed by the parties constitutes the entire agreement and understanding between the parties and supersedes any prior agreement, understanding or arrangement between the parties, with respect to the same. No representation, undertaking or promise shall be taken to have been given or be implied from anything said or written in communications between the parties prior to this Agreement, except as set out herein. Neither party shall have any remedy in respect of any untrue statement made to it upon which it has relied in entering into this Agreement (unless such untrue statement was made fraudulently) and that party's only remedies shall be for breach of contract as provided in this Agreement.
- 13.6 No person who is not a party to this Agreement shall acquire any rights under it or be entitled to enforce any of its terms whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 13.7 The relationship of the parties is that of independent contractors dealing at arm's length. Except as otherwise stated in this Agreement, nothing in this Agreement shall constitute the parties as partners, joint venturers or co-owners, or constitute either party as the agent, employee or representative of the other, or empower either party to act for, bind or otherwise create or assume any obligation on behalf of the other, and neither party shall hold itself out as having authority to do the same.

13.8 This Agreement shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.