

1. DEFINITIONS

For the purpose of these conditions, the "Agreement" shall mean these terms and conditions and the Purchase Order; the "Buyer" shall mean The Drinkaware Trust; **Intellectual Property Rights** shall mean all patents, copyright, trademarks, performer's rights, designs, and any other intellectual property rights including all revivals, extensions and renewals; "Purchase Order" shall mean the purchase order on the reverse of, or sent to the Supplier with, these terms and conditions; the "Price" shall mean the price payable for the Work and/or Services, as set out in the Purchase Order; the "Services" shall mean the services (if any) to be provided by the Supplier as stated in the Purchase Order or performed by it under this Agreement; the "Supplier" shall mean the supplier named on the Purchase Order; and the "Work" shall mean the materials (if any) to be provided by the Supplier in the course of the Services.

2. INCORPORATION

- 2.1 The terms of this Agreement applies to the exclusion of any other terms and/or proposals that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice, or course of dealing.
- 2.2 The Agreement shall be deemed to take effect on the earlier of:
 - 2.2.1 the Supplier issuing a written acceptance of the Purchase Order; or
 - 2.2.2 the date the Supplier first commenced supplying the Services or delivering the Work (the "Commencement Date").

3. SUPPLY OF WORK AND SERVICES / DELIVERY / TITLE AND RISK

- 3.1 The Supplier shall provide all Work and Services to the Buyer in accordance with the terms and conditions of this Agreement.
- 3.2 The Supplier shall deliver all Work and perform all Services within any timescales specified by the Buyer. The time for delivery of the Work and performance of Services is of the essence of the Agreement. If the Work is not delivered, or the Services are not performed by the due date or at the due time then, without prejudice to any other rights or remedies, the Buyer shall be entitled to reject the Work and Services and cancel the Agreement without liability to the Supplier.
- 3.3 The Supplier shall apply such time, attention, resources, trained personnel and skill as may be necessary or appropriate for the supply of the Work and Services.
- 3.4 The Supplier shall deliver all Work to the Buyer, at the Supplier's risk and cost to the address(es) nominated by the Buyer. Risk and title in all Work shall pass to the Buyer upon acceptance of the Work.
- 3.5 The Buyer may require variations and/or additions to the Purchase Order, subject to the parties agreeing an appropriate adjustment to the Price.
- 3.6 If requested by the Buyer the Supplier will attend progress and review meetings with the Buyer and, if appropriate, the Buyer's clients, to review the status and progress of the Services, discuss developments, consider proposals, agree actions and seek to resolve any issues arising.

4. PAYMENT

- 4.1 The Supplier may invoice the Buyer for the Price in the amount(s) and on the date(s) set out in the Purchase Order.
- 4.2 All invoices shall stipulate the applicable purchase order number and any other details requested by the Buyer. Absence of a valid purchase order number shall entitle the Buyer to withhold payment.
- 4.3 The Supplier's invoices shall be payable within 30 days after the Buyer's acceptance of the Work to which the applicable invoice relates.
- 4.4 If the Supplier has provided the Buyer with a quote, estimate or budget for any element of the Work and/or Services and later has reason to believe that the Price will or may exceed such quote, estimate or budget, the Supplier shall immediately advise the Buyer, and the Buyer shall not be obliged to pay the Supplier any excess above such quote, estimate or budget which is not so advised to the Buyer.
- 4.5 Where the Price for Services is payable on a daily, hourly or other time-spent basis, all invoices shall be accompanied by adequate records and supporting documentation in relation to the time spent by the Supplier's personnel in performing the Services.

5. CONFIDENTIALITY

- 5.1 The Supplier acknowledges that it may receive or otherwise become aware of confidential information relating to the Buyer or its clients ("Confidential Information"). The Supplier agrees to keep all Confidential Information confidential at all times and undertakes not to use or disclose such Confidential Information other than for the sole purpose of performing its obligations hereunder.
- 5.2 Upon a written request from the Buyer or the termination of this Agreement for any reason, the Supplier shall return any and all Confidential Information of the Buyer then in its possession or control and will not retain any copies of the same.
- 5.3 The Supplier acknowledges that, where it has entered into a Non-Disclosure Agreement with the Buyer, the terms in that agreement prevail over those set out in Clause 5.1.

6. WARRANTIES

- 6.1 The Supplier warrants that:
 - 6.1.1 the personnel who perform the Services hereunder are and shall be competent and suitable in every respect, whether as to qualifications, experience or otherwise, to provide the Services;
 - 6.1.2 the Services will be carried out in a competent and professional manner and with reasonable skill and care, strictly in accordance with the terms of this Agreement and all specifications, requirements and quality standards specified by the Buyer;
 - 6.1.3 it shall comply with all laws, regulatory requirements and codes of practice applicable to the Work and/or Services; and
 - 6.1.4 it shall not make any statement, orally or in writing, publicly or privately, or do any act or otherwise conduct itself in such a manner as will or may in the reasonable opinion of the Buyer disparage the Buyer, its clients, its or their businesses, products or services.

7. INDEMNITY AND INSURANCE

- 7.1 The Supplier shall be liable for and shall indemnify the Buyer against any and all claims, actions, liabilities, losses, damages or expenses (including legal expenses) incurred by the Buyer which arise out of or in connection with, directly or indirectly, the

Supplier's performance of the Services, including without limitation any losses, damages or expenses arising out of or in connection with:

- 7.1.1 defective workmanship, quality or materials in respect of any of the Work;
 - 7.1.2 any infringement or alleged infringement of any third party Intellectual Property Rights arising from the use of the Work or the receipt of the Services; and
 - 7.1.3 any claim that the use of the Work or the receipt of the Services is contrary to applicable law.
- 7.2 The Supplier shall effect and maintain insurance policies with levels of cover reasonably adequate in all the circumstances in respect of the Supplier's obligations and liabilities under this Agreement. The Supplier shall provide written evidence of such insurance to the Buyer on the Buyer's request.

8. TERMINATION

- 8.1 The Buyer may at any time and for any reason cancel the Work and/or the Services in whole or in part on written notice to the Supplier. Upon receipt of such a notice, the Supplier will immediately cease all work on the cancelled part(s) of the Work or Services. The Buyer shall pay the Supplier for all Work delivered and/or the Services performed in accordance with this Agreement up to and including the date of cancellation.
- 8.2 The Buyer may terminate this Agreement upon written notice to the Supplier in the event of:
 - 8.2.1 any material or persistent breach of this Agreement by the Supplier which breach is either irremediable or, if remediable, is not remedied within 30 days after the Buyer has served a written notice on the Supplier specifying the nature of the breach and requiring that the same be remedied; or
 - 8.2.2 the Supplier becoming insolvent, entering into liquidation, whether voluntary or compulsory, passing a resolution for its winding up, having a receiver or administrator appointed over the whole or any part of its assets, making any composition or arrangement with its creditors or taking or suffering any similar action in consequence of its debt.
- 8.3 Upon cancellation or termination of this Agreement for any reason, the Supplier shall immediately deliver to, or otherwise dispose of as directed by the Buyer, any and all materials and property in its possession, custody or control belonging or relating to the Buyer or its clients including, without limitation all complete and incomplete Work.
- 8.4 The terms of and obligations imposed by Clauses 5, 6, 7 and 9 shall survive the termination of this Agreement for any reason.

9. INTELLECTUAL PROPERTY RIGHTS

- 9.1 Subject to Clause 9.2, the Supplier hereby assigns with full title guarantee, free of all encumbrances, to the Buyer (including by present assignment of future copyright) all Intellectual Property Rights in the Work.
- 9.2 If and to the extent that any of the Work comprises or includes any material in which the Intellectual Property Rights are owned by a third party, the Supplier shall procure that the Buyer shall be licensed to use such materials without restriction on a worldwide basis including the right to sub-license such rights.
- 9.3 The Supplier will ensure that all moral rights or analogous rights subsisting in the Work are waived and the Supplier shall also ensure that all applicable consents have been obtained to entitle the Buyer to make the fullest use of the Work without restriction or further payment.
- 9.4 The Supplier agrees, at the Buyer's request, to take all such actions and execute all such documents as may in the Buyer's opinion be necessary to enable the Buyer to obtain, defend or enforce its rights in the Work and shall not do or fail to do any act which would or might prejudice the Buyer's rights under this Clause 9.
- 9.5 If the performance of the Services or the use of or dealing with any Work infringes or in the Buyer's opinion is likely to be held to infringe any Intellectual Property Rights belonging to a third party, the Supplier shall at the Buyer's option:
 - 9.5.1 procure the right to continue to perform the Services and/or use the Work in question, free of any liability for such infringement;
 - 9.5.2 modify the Services and/or Work in question so that they become non-infringing while otherwise complying with the requirements of this Agreement; or
 - 9.5.3 substitute the Services and/or Work in question with suitable non-infringing replacement(s).

10. DATA PROTECTION

- 10.1 Where the Supplier processes personal data on behalf of the Buyer, the Supplier shall:
 - 10.1.1 only process such data solely in accordance with the Buyer's instructions from time to time; and
 - 10.1.2 comply with the seventh data protection principle as though it were a Data Controller as that term is defined in the Data Protection Act 1998.
- 10.2 Without limitation to its obligations under clause 10.1, the Supplier will adopt and maintain such security procedures as the Buyer may require from time to time to ensure the security of Buyer's personal data.

11. ASSIGNMENT AND SUBCONTRACTING

- 11.1 The Buyer may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Agreement.
- 11.2 The Supplier may not assign, transfer, charge, subcontract or otherwise dispose of this Agreement or any of its rights or obligations arising hereunder without the prior written consent of the Buyer. Any permitted sub-contracting by the Supplier shall not relieve the Supplier of its obligations under this Agreement.

12. GENERAL

- 12.1 The Buyer's failure to enforce any term of or right arising pursuant to this Agreement does not constitute a waiver of such term or right and shall in no way affect the Buyer's right later to enforce or exercise the term or right.
- 12.2 A person who is not a party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

13. APPLICABLE LAW

The construction, validity and performance of this Agreement shall be governed in all respects by the laws of England and Wales and the exclusive forum for settling any disputes shall be the English and Welsh courts.