

STANDARD TERMS & CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES BY WARMUP PLC

PART 1 - CONDITIONS RELATING TO BOTH THE SUPPLY OF GOODS AND SERVICES (CONDITIONS 1 TO 7)

1 INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply in these conditions (**Conditions**).

Buyer: the person, firm or company who purchases the Goods and/or Services from the Company.

Company: Warmup Plc or any related company as agreed on the quotation or offer for sale.

Contract: the Buyer's purchase order and the Company's acceptance of it, or the Buyer's acceptance of a quotation or offer of sale by the Company under condition 2.2.

Data Subject: the Buyer where he/she is an individual who is the subject of personal data as defined in the Data Protection Act 1998.

Delivery Point: the place where delivery of the Goods is to take place under condition 9.

Goods: any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them).

Services: any services agreed in the Contract to be supplied to the Buyer by the Company.

Work Area: the location for the provision of the Services as indicated in the Company's quotation, acknowledgement of order or as otherwise agreed with the Buyer pursuant to condition 14.1(b).

1.1 A reference to law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.2 Words in the singular include the plural and in the plural include the singular.

1.3 A reference to one gender includes a reference to the other gender.

1.4 Condition headings do not affect the interpretation of these conditions.

2. APPLICATION OF TERMS AND CONDITIONS

2.1 These Conditions shall:

- (a) apply to and be incorporated into the Contract; and

- (b) prevail over any inconsistent terms or conditions contained, or referred to, in the Buyer's purchase order, confirmation of order, acceptance of a quotation or specification, or implied by law, trade custom, practice or course of dealing.

2.2 The Buyer's purchase order, or the Buyer's acceptance of a quotation for Goods and/or Services by the Company, constitutes an offer by the Buyer to purchase the Goods and/or Services specified in it on these Conditions. No offer placed by the Buyer shall be accepted by the Company other than:

- (a) by a written acknowledgement issued by the Company; or
- (b) (if earlier) by the Company starting to provide the Goods and/or Services,

when a contract for the supply and purchase of those Goods and/or Services on these Conditions will be established. The Buyer's standard terms and conditions (if any) attached to, enclosed with or referred to in any purchase order or other document shall not govern the Contract.

2.3 Quotations are given by the Company on the basis that no Contract shall come into existence except in accordance with condition 2.2. Any quotation is valid for a period of 30 days from its date, provided that the Company has not previously withdrawn it.

3. PRICE

3.1 Unless otherwise agreed by the Company in writing, the price for the Goods shall be the recommended retail price set out in the Company's price list published on the date of delivery or deemed delivery, less any discount agreed in writing.

3.2 The price for the Services shall be as specified in the Contract.

3.3 The Company will be entitled to deliver interim invoices for Services supplied in respect of distinct and separate periods of work, or in respect of each period of one week or one calendar month.

3.4 The price for the Goods and/or Services shall be exclusive of any value added tax, which shall be charged in accordance with relevant legislation.

3.5 If the Company's performance of the Services under the Contract is prevented or delayed by any act or omission of the Buyer, its agents, sub-contractors or employees, the price for the Services shall be increased at the Company's published hourly rate (not less than €25) for each man-hour of delay.

4. PAYMENT

- 4.1 Subject to condition 4.6, and unless otherwise agreed in writing, payment of all invoices is due in the currency expressed in the Contract within 30 days from invoice date.
- 4.2 Amounts due to the Company shall be paid in full without any deduction or withholding other than as required by law. The Buyer shall not be entitled to assert any credit, set-off or counterclaim against the Company in order to justify withholding payment of any such amount in whole or in part.
- 4.3 No payment shall be deemed to have been received until the Company has received cleared funds.
- 4.4 Without prejudice to any other right or remedy that it may have, if the Buyer fails to pay the Company on the due date, the Company may:
- (a) claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and
 - (b) suspend all Services until payment has been made in full.
- 4.5 Time for payment shall be of the essence of the Contract.
- 4.6 All sums payable to the Company under the Contract shall become due immediately on its termination, despite any other provision. This condition 4.6 is without prejudice to any right to claim for interest under the law, or any such right under the Contract.
- 4.7 The Company may, without prejudice to any other rights it may have, set off any liability of the Buyer to the Company against any liability of the Company to the Buyer.

5. LIMITATION OF LIABILITY

- 5.1 Subject to condition 9, condition 10 and condition 12, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
- (a) any breach of these conditions;
 - (b) any use made or resale by the Buyer of any of the Goods and/or Services or any part of them; and
 - (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

- 5.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 5.3 The Company shall have no liability to the Buyer under the Contract if it is prevented from or delayed in performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes (whether involving the workforce of the Company or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.
- 5.4 Nothing in these conditions excludes or limits the liability of the Company:
- (a) for death or personal injury caused by the Company's negligence; or
 - (b) under section 12 of the Sale of Goods Act 1979; or
 - (c) under section 2(3), Consumer Protection Act 1987; or
 - (d) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
 - (e) for any damage or liability incurred by the Buyer as a result of fraud or fraudulent misrepresentation by the Company; or
 - (f) for any liability incurred by the Buyer as a result of any breach by the Company of the condition as to title or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Services Act 1982.
- 5.5 Subject to condition 5.2 and condition 5.3:
- (a) the Company shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for:
 - (i) loss of profits; or
 - (ii) loss of business; or
 - (iii) depletion of goodwill and/or similar losses; or
 - (iv) loss of anticipated savings; or
 - (v) loss of goods; or
 - (vi) loss of contract; or
 - (vii) loss of use; or
 - (viii) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and
 - (b) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in

connection with the performance or contemplated performance of the Contract shall be limited to the price paid for the Goods and/or Services.

6. DATA PROTECTION ACT 1998

6.1 The Company is registered as a data controller pursuant to the Data Protection Act 1998.

6.2 All data provided to the Company with respect to a Data Subject shall be:

- (a) fairly and lawfully processed;
- (b) processed for limited purposes and not in any manner incompatible with those purposes;
- (c) adequate, relevant and not excessive;
- (d) accurate - not kept for longer than is necessary;
- (e) processed in line with the Data Subject's rights;
- (f) secure; and
- (g) not transferred to countries without adequate protection

6.3 The Data Subject may request details of the information held by the Company by writing to:

Data Controller
Warmup plc
702 Tudor Estate
Abbey Road
London NW10 7UW.

6.4 The Company reserves the right to charge a fee for the production of any information requested by the Data Subject pursuant to condition 6.3.

6.5 The Buyer acknowledges and agrees that the Company may transfer information about the Buyer to the Company's financiers, who:

- (a) may use, analyse and assess information about the Buyer, including the nature of the Buyer's transactions, and exchange such information with other members of their group of companies and others for credit or financial assessment, market research, statistical analysis, insurance claim, underwriting and training purposes and in making payments and servicing their agreement with the Company;
- (b) from time to time, may make searches of the Buyer's record at credit reference agencies where the Buyer's records with such agencies may include searches made and information given by other businesses; details of

their searches will be kept by such agencies but will not be seen by other organisations that may make searches;

- (c) may give information about the Buyer and the Buyer's indebtedness to the following:
 - (i) the Company's or their insurers for underwriting and claims purposes;
 - (ii) any guarantor or indemnifier of the Buyer's or the Company's obligations to enable them to assess such obligations;
 - (iii) their bankers or any advisers acting on their behalf;
 - (iv) any business to whom the Buyer's indebtedness or the Company's arrangements with them may be transferred, to facilitate such transfer;
- (d) may monitor and/or record any phone calls the Buyer may have with them, for training and/or security purposes;
- (e) may transfer all or any of their rights and obligations under their agreement with the Company to a third party and may transfer information about the Buyer the third party to enable them enforce their rights or comply with the obligations.

6.6 On request to the address provided at condition 6.3, the Company will provide the Buyer with the details of the Company's financiers including a contact telephone number. The Buyer may contact the Company's financier to request details of the credit reference agencies and other third parties referred to above. The Buyer may also have the right to receive a copy of certain information held by the Company's financiers on a written application to them, subject to a fee.

7. GENERAL

7.1 The Company may sub-contract the performance of the Contract in whole or in part.

7.2 Each of the parties acknowledges and agrees that, in entering into the Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to these terms and conditions or not) relating to the subject matter of the Contract, other than as expressly set out in the Contract.

7.3 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

7.4 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity,

voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

- 7.5 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 7.6 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 7.7 The Buyer shall not, without the prior written consent of the Company, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 7.8 The Company may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 7.9 Nothing in the Contract is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 7.10 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 7.11 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the non-exclusive jurisdiction of the English courts.

PART 2 - CONDITIONS RELATING ONLY TO THE SUPPLY OF GOODS (CONDITIONS 8 TO 12)

8. DESCRIPTION

- 8.1 The quantity and description of the Goods shall be as set out in the Company's quotation or acknowledgement of order.
- 8.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate

idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.

9. DELIVERY

- 9.1 Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place at the Buyer's place of business.
- 9.2 Any delay in the delivery of the Goods (even if caused by the Company's negligence), shall not entitle the Buyer to terminate or rescind the Contract.
- 9.3 The Company may deliver the Goods by separate instalments and to render a separate invoice in respect of each instalment.
- 9.4 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

10. NON-DELIVERY

- 10.1 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

11. RISK/TITLE

- 11.1 The Goods are at the risk of the Buyer from the time of delivery.
- 11.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
- (a) the Goods; and
 - (b) all other sums which are or which become due to the Company from the Buyer on any account.
- 11.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:
- (a) hold the Goods on a fiduciary basis as the Company's bailee;
 - (b) store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
 - (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and

- (d) maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company.

- 11.4 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:
 - (a) any sale shall be effected in the ordinary course of the Buyer's business at full market value; and
 - (b) any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.

- 11.5 The Buyer's right to possession of the Goods shall terminate immediately if:
 - (a) the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer or is the subject of any process outside of England which is analogous to any of the foregoing; or
 - (b) the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade or is the subject of any process outside of England which is analogous to any of the foregoing; or
 - (c) the Buyer fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer,
 - (d) the Buyer encumbers or in any way charges any of the Goods.

- 11.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

11.7 On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this condition 11 shall remain in effect.

12. QUALITY

12.1 Where the Company is not the manufacturer of the Goods, the Company shall endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Company.

12.2 The Company warrants that (subject to the other provisions of these conditions) upon delivery the Goods shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979;

PART 3 - CONDITIONS RELATING ONLY TO SUPPLY OF SERVICES (CONDITIONS 13 TO 14)

13. THE COMPANY'S OBLIGATIONS

13.1 The Company shall use reasonable endeavours to provide the Services, and to deliver the Goods to the Buyer, in accordance in all material respects with the Contract.

13.2 The Company shall use reasonable endeavours to meet any performance dates specified in the Contract, but any such dates shall be estimates only and time shall not be of the essence of the Contract.

13.3 The Company shall not be obliged to observe any health and safety rules and regulations or any other security requirements save to the extent that it has agreed in writing to do so prior to the Contract having come into existence under condition 2.2.

14. BUYER'S OBLIGATIONS

14.1 The Buyer shall:

- (a) co-operate with the Company in all matters relating to the Services;
- (b) provide, for the Company, its agents, sub-contractors and employees, in a timely manner and at no charge, access to the Buyer's premises, office accommodation, data and other facilities as requested by the Company;
- (c) ensure that no other persons will traverse the Work Area for the duration of the Services.
- (d) provide, in a timely manner, such information as the Company may request relating to the Services and ensure that it is accurate in all material respects;
- (e) be responsible (at its own cost) for preparing and maintaining the relevant premises for the supply of the Services, including identifying, monitoring, removing and disposing of any debris and/or hazardous materials from its

premises in accordance with all applicable laws, before and during the supply of the Services at those premises, and informing the Company of all of its obligations and actions under this condition 14.1(e);

- (f) inform the Company of all health and safety rules and regulations and any other reasonable security requirements that apply at the Buyer's premises;
- (g) obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services and the installation of the Goods, in all cases before the date on which the Services are to start;
- (h) keep, maintain and insure the Work Area for purpose and duration of the Services;
- (i) ensure that all sub-floor preparations:
 - (i) are in accordance with the Company's guidelines;
 - (ii) meet building regulations; and
 - (iii) were laid more than seven days prior to the date specified in the Contract for commencement of the Services,
- (j) ensure that the Work Area is level, dry and clear of all debris;
- (k) ensure that prior to the date specified in the Contract for commencement of the Services all electrical wiring, connections, fittings and conduits:
 - (i) have been installed (in the correct position to allow the provision of the Services) and are in a clean condition;
 - (ii) comply with all appropriate regulations and are fit for purpose based upon the amperage ratings⁷ of the connecting heaters;
 - (iii) have been connected to the appropriate consumer units with appropriate protection devices (RCD and breakers), prior to commencement of service provision; and
 - (iv) are the correct size for the installation of the Goods.

14.2 After completion of Services, the Buyer shall ensure that:

- (a) the heater cabling is adequately protected; and
- (b) no person traverse the Work Area until completion of the top-floor, other than persons laying the top-floor (instructions and diagrams are available upon request).

14.3 If the Company's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Buyer, its agents, sub-contractors or employees, the Company shall not be liable for any costs, charges or losses sustained or incurred by the Buyer arising directly or indirectly from such prevention or delay.

- 14.4 The Buyer shall be liable to pay to the Company, on demand, all reasonable costs, charges or losses sustained or incurred by the Company (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Buyer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to the Company confirming such costs, charges and losses to the Buyer in writing.
- 14.5 The Buyer shall not, without the prior written consent of the Company, at any time from the date of the Contract to the expiry of six months after the completion of the Services, solicit or entice away from the Company or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of the Company in the provision of the Services.
- 14.6 Any consent given by the Company in accordance with condition 14.5 shall be subject to the Buyer paying to the Company a sum equivalent to 20% of the then current annual remuneration of the Company's employee or sub-contractor or, if higher, 20% of the annual remuneration to be paid by the Buyer to that employee or sub-contractor.