



## TERMS AND CONDITIONS OF PURCHASE

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### 1. INTERPRETATION

#### 1.1 In these Terms and conditions:

**Buyer:** Xena Events of 1 Station Cottages, Beamish, Stanley, County Durham, DH9 0QZ (including its employees, agents, consultants, and subcontractors).

**Contract:** the contract for the purchase and sale of the Goods or Services.

**Goods:** any goods (including any instalment of the Goods or any parts from them) described in the Order.

**Order:** the Buyer's written instruction to buy the Goods or Services, incorporating these Terms.

**Price:** the price of the Goods and/or the charges for the Services.

**Seller:** the person, firm or company who accepts the Buyer's Order (including its employees, agents, consultants, and subcontractors).

**Services:** the services (including any part performance thereof) which the Seller is to provide in accordance with these Terms.

**Terms:** the standard terms and conditions of purchase set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller.

**Writing:** and any similar expression, includes facsimile transmission email and comparable means of communication.

#### 1.2 A reference in these Terms to any provision of a statute shall be construed as a reference to that provision 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.

#### 1.3 The headings in these Terms are for convenience only and do not affect the interpretation of these Terms.

1.4 Any obligation in the Contract on a person not to do something includes, without limitation, an obligation not to agree, allow, permit or acquiesce in that thing being done.

## **2. BASIS OF THE PURCHASE**

2.1 Subject to any variation under condition 2.4, these Terms are the only terms upon which the Buyer is prepared to deal with the Seller and they shall govern the Contract to the entire exclusion of all other terms or conditions.

2.2 Each Order for Goods or Services by the Buyer from the Seller shall be deemed to be an offer by the Buyer to buy Goods or Services subject to these Terms and no Order shall be accepted until the Seller either expressly by giving notice of acceptance, or impliedly by fulfilling the Order, in whole or in part accepts the offer.

2.3 No terms or conditions endorsed upon, delivered with or contained in the Seller's quotation, acknowledgement or acceptance of order, specification or similar document shall form part of the Contract and the Seller waives any right which it otherwise might have to rely on such terms and conditions.

2.4 No variation to these Terms shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.

## **3. QUALITY AND DEFECTS OF GOODS**

3.1 The Goods shall be of the best available design, of the best quality, material and workmanship, be without fault and conform in all respects with the Order and specification and/or patterns supplied or advised by the Buyer to the Seller.

3.2 The Buyer's rights under these Terms are in addition to the statutory conditions implied in favour of the Buyer by the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982, related statutes and any statutory re-enactments(s) or modification(s) thereof.

3.3 At any time prior to delivery of the Goods to the Buyer the Buyer shall have the right to inspect and test the Goods at all times.

3.4 If the results of such inspection or testing cause the Buyer to be of the opinion that the Goods do not conform or are unlikely to conform with the Order or to any specifications and/or patterns supplied or advised by the Buyer to the Seller, the Buyer shall inform the Seller and the Seller shall immediately take such action as is necessary to ensure conformity and in addition the Buyer shall have the right to require and witness further testing and inspection.

3.5 Notwithstanding any such inspection or testing, the Seller shall remain fully responsible for the Goods and any such inspection or testing shall not diminish or otherwise affect the Seller's obligations under the Contract.

3.6 If any of the Goods fail to comply with the provisions set out in condition 3 the Buyer shall be entitled to avail itself of any one or more remedies listed in condition 12.

#### **4. STANDARD OF SERVICES**

4.1 The seller warrants and represents to the Buyer that any Services performed by the Seller shall be:

- (a) Performed in a good and workmanlike fashion and with all due speed, care, skill and diligence; and
- (b) Carried out in accordance with the Order, with current industry standards, codes of practice and the highest standards prevailing in the Seller's industry.

4.2 The Seller shall ensure that all of its personnel are suitably qualified to perform the Services and that all necessary licences, work permits or other authorisations have been obtained.

4.3 If any materials which are required by the Seller for the provision of the Services are not delivered fully in accordance with any stipulations in the Order, the Seller shall immediately effect correct delivery and shall be responsible for any additional costs and expenses incurred by both parties in so doing.

4.4 The Buyer shall have the right exercisable during the performance of the Services to suspend any payment obligations in respect of the Services if the performance does not conform in quality with any stipulations in the Agreement or if the performance is delayed.

4.5 If the Services do not conform to the Order, the Buyer shall have the right to purchase Services from elsewhere which nearly as practicable conform to the Order, and any extra expense incurred shall be paid by the Seller to the Buyer. Before exercising such right to purchase the Services from an alternative supplier, the Buyer shall give the Seller an opportunity to replace the Services in respect of which payment was cancelled with Services which conform with the Order.

#### **5. INDEMNITY**

The Seller shall keep the Buyer indemnified in full against all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury,

costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the Buyer as a result of or in connection with:

- (a) defective workmanship, quality or materials;
- (b) an infringement or alleged infringement of any intellectual property rights caused by the use, manufacture or supply of the Goods or Services; and
- (c) any claim made against the Buyer in respect of any liability, loss, damage, injury, cost or expense sustained by the Buyer's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Goods or Services as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the terms of the Contract by the Seller.

## **6. DELIVERY OF GOODS AND PROVISION OF SERVICES**

- 6.1 The Goods shall be delivered, carriage paid, and Services performed at the Buyer's place of business or to such other place of delivery as is agreed by the Buyer in writing prior to delivery of the Goods or Services.
- 6.2 The date for delivery or performance shall be specified in the Order, or if no such date is specified then delivery shall take place within 28 days of the Order.
- 6.3 The Seller shall invoice the Buyer upon, but separately from, despatch of the Goods or provision of the Services to the Buyer.
- 6.4 The Seller shall ensure that each delivery is accompanied by a delivery note which shows, among other things, the Order number, date of Order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.
- 6.5 Time for delivery or performance shall be of the essence in relation to any and all of the Seller's obligations pursuant to these Terms.
- 6.6 Unless otherwise stipulated by the Buyer in the Order, deliveries shall only be accepted by the Buyer in normal business hours.
- 6.7 If the Goods are not delivered or Services not performed on the due date then, without prejudice to any other rights which it may have, the Buyer reserves the right to:
  - (a) cancel the Contract in whole or in part;
  - (b) refuse to accept any subsequent delivery of the Goods or performance of the Services which the Seller attempts to make;

- (c) recover from the Seller any expenditure reasonably incurred by the Buyer in obtaining the Goods or Services in substitution from another supplier; and
- (d) claim damages for any additional costs, loss or expenses incurred by the Buyer which are in any way attributable to the Seller's failure to deliver the Goods or perform the Services on the due date.

6.8 If the Seller requires the Buyer to return any packaging material to the Seller that fact must be clearly stated on any delivery note delivered to the Buyer and any such packaging material shall only be returned to the Seller at the cost of the Seller.

6.9 Where the Buyer agrees in writing to accept delivery by instalments the Contract shall be construed as a single contract in respect of each instalment. Nevertheless failure by the Seller to deliver any one instalment shall entitle the Buyer at its option to treat the whole Contract as repudiated.

6.10 If the Goods are delivered or Services performed in excess of the quantities ordered the Buyer shall not be bound to pay for the excess and any excess shall be and shall remain at the Seller's risk and shall be returnable at the Seller's expense.

6.11 The Buyer shall not be deemed to have accepted the Goods or Services until it has had a reasonable time to inspect them following delivery or if later, within a reasonable time after any latent defect in the Goods has become apparent.

**7. PASSING OF PROPERTY AND RISK IN GOODS**

The Goods shall remain at the risk of the Seller until delivery to the Buyer is complete (including off-loading and stacking) when ownership of the Goods shall pass to the Buyer.

**8. PRICE**

8.1 The price of the Goods and Services shall be stated in the Order and unless otherwise agreed in writing by the Buyer shall be exclusive of value added tax but inclusive of all other charges.

8.2 No variation in the price nor extra charges shall be accepted by the Buyer.

**9. PAYMENT**

9.1 The Buyer shall pay the price of the Goods or Services within 30 days of delivery of the Goods to the Buyer or performance of the Services, but time for payment shall not be of the essence of the Contract.

- 9.2 Without prejudice to any other right or remedy, the Buyer reserves the right to set off any amount owing at any time from the Seller to the Buyer against any amount payable by the Buyer to the Seller under the Contract.

**10. CONFIDENTIALITY**

The Seller shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Seller by the Buyer or its agents and any other confidential information concerning the Buyer's business or its products which the Seller may obtain and the Seller shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Seller's obligations to the Buyer and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Seller.

**11. TERMINATION**

- 11.1 The Buyer shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Seller written notice whereupon all work on the Contract shall be discontinued and the Buyer shall pay to the Seller fair and reasonable compensation for work-in-progress at the time of termination but such compensation shall not include loss of anticipated profits or any consequential loss.

- 11.2 The Buyer shall have the right at any time by giving notice in writing to the Seller to terminate the Contract forthwith if:

- (a) the Seller commits a material breach of any of the terms and conditions of the Contract; or
- (b) any distress, execution or other process is levied upon any of the assets of the Seller; or
- (c) the Seller 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 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 Seller or notice of intention to appoint an administrator is given by the Seller 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 Seller or for the granting of an

administration order in respect of the Seller, or any proceedings are commenced relating to the insolvency or possible insolvency of the Seller; or

- (d) the Seller ceases or threatens to cease to carry on its business; or
- (e) the financial position of the Seller deteriorates to such an extent that in the opinion of the Buyer the capability of the Seller adequately to fulfil its obligations under the Contract has been placed in jeopardy.

11.3 The termination of the Contract, however arising, shall be without prejudice to the rights and duties of the Buyer accrued prior to termination. The terms which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

## **12. REMEDIES**

Without prejudice to any other right or remedy which the Buyer may have, if any Goods are not supplied in accordance with, or the Seller fails to comply with, any of the terms of the Contract the Buyer shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods or Services have been accepted by the Buyer:

- (a) to rescind the Order;
- (b) to reject the Goods or Services (in whole or in part) and return them to the Seller at the risk and cost of the Seller on the basis that a full refund for the Goods so returned shall be paid forthwith by the Seller;
- (c) at the Buyer's option to give the Seller the opportunity at the Seller's expense either to remedy any defect in the Goods or Services or to supply replacement Goods or Services and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;
- (d) to refuse to accept any further deliveries of the Goods or performance of Services but without any liability to the Seller;
- (e) to carry out at the Seller's expense any work necessary to make the Goods or Services comply with the Contract; and
- (f) to claim such damages as may have been sustained in consequence of the Seller's breach or breaches of the Contract.

## **13. ASSIGNMENT**

13.1 The Seller shall not be entitled to assign the Contract or any part of it without the prior written consent of the Buyer.

13.2 The Buyer may assign the Contract or any part of it to any person, firm or company.

**14. FORCE MAJEURE**

The Buyer reserves the right to defer the date of delivery of Goods or performance of Services or payment or to cancel the Contract or reduce the volume of the Goods or Services ordered if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Buyer including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

**15. GENERAL**

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

15.2 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.

15.3 Failure or delay by the Buyer 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.

15.4 Any waiver by the Buyer of any breach of, or any default under, any provision of the Contract by the Seller shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

15.5 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.

15.6 This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law, and the parties submit to the exclusive jurisdiction of the English courts.