

**STANDARD TERMS AND CONDITIONS OF SALE  
OF AGI WORLD LIMITED T/A (ASG), (Spark)**

**1. DEFINITIONS AND INTERPRETATION**

1.1 In these Terms and Conditions of Sale ("Terms"):

- "Buyer" means the buyer of Goods and/or Services from ASG
- "Affiliate" means in relation to a party any subsidiary or holding company of such party and any subsidiary of any such holding company for the time being (each as defined in section 1159 Companies Act 2006) and any company or unincorporated undertaking which is under the same control as that party (control being the ability directly or indirectly to exercise or control the exercise of more than one-half of the voting rights exercisable on ordinary business in meetings of members or proprietors of the person concerned)
- "ASG" means whichever of AGI World Limited, its subsidiaries or Affiliates that enters into the Contract
- "Contract" means the agreement between the Buyer and ASG for the supply of Goods and/or Services
- "Goods" means the goods agreed to be supplied to the Buyer by ASG
- "Order" means the order form, including any applicable specification, submitted by the Buyer to ASG for Goods and/or Services
- "Services" means the services agreed to be provided to the Buyer by ASG
- "Supplies" means the Goods and/or Services to be supplied under the Contract
- "Writing" means by letter, fax or by email (which shall include by EDI)

- 1.2 Any typographical or other error or omission in any document issued by ASG shall be subject to correction without any liability on the part of ASG
- 1.3 Clause headings shall be ignored in interpretation; the singular includes the plural and vice versa
- 1.4 Any provision of these Terms which is invalid or unenforceable for any purpose shall be removed from these Terms for that purpose but shall otherwise remain valid and enforceable and shall not affect the validity of the remainder of the Contract

**2. BASIS OF SALE**

- 2.1 ASG shall sell and the Buyer shall purchase the Supplies in accordance with Orders accepted by ASG subject to these Terms to the exclusion of any other terms and conditions purported to be applicable to the Contract by the Buyer
- 2.2 No variation to these Terms shall be binding unless agreed in writing between the authorised representatives of the Buyer and ASG
- 2.3 ASG's employees or agents are not authorised to make any representations concerning the Supplies unless confirmed by ASG in writing. In entering into the Contract the Buyer acknowledges that it does not rely on any representations which are not so confirmed

**3. ORDERS AND SPECIFICATIONS**

- 3.1 No Order shall be deemed to be accepted by ASG unless and until it is either confirmed in writing by ASG's authorised representative or ASG commences work on such Order
- 3.2 The Buyer shall be responsible to ASG for ensuring the accuracy of the terms of any Order (including any applicable specification) submitted by the Buyer, and for giving ASG any necessary information relating to the Supplies within a sufficient time to enable ASG to perform the Contract in accordance with its terms
- 3.3 The quantity, quality and description of and any specification for the Supplies shall be those set out in ASG's confirmation of Order or, if no such confirmation is sent, in the Order
- 3.4 If the Supplies are to be provided by ASG in accordance with a specification submitted by the Buyer, the Buyer shall indemnify ASG against all loss, damages, costs and expenses awarded against or incurred by ASG in connection with or paid or agreed to be paid by ASG in settlement of any claim for infringement of any patent, copyright, design, trade mark or other intellectual property rights of any other person which results from ASG's use of the Buyer's specification
- 3.5 ASG reserves the right to make any changes in the specification of the Supplies which are required to conform with any applicable legal requirements or which do not materially affect their quality or performance. If any variation in the Supplies or the Contract terms is agreed or is required for compliance with any applicable law, regulation or safety recommendation, the Buyer shall pay such additional amount as is fair and reasonable and ASG shall have reasonable additional time to perform the Contract
- 3.6 No Order which has been accepted by ASG may be cancelled by the Buyer except with the agreement in writing of ASG and on terms that the Buyer shall indemnify ASG in full against all loss (including loss of profit), costs (including the cost of all labour and materials used or appropriated to the Contract), damages, charges and expenses incurred by ASG as a result of cancellation

**4. PRICE OF THE GOODS AND SERVICES**

- 4.1 The price of the Supplies shall be that stated in ASG's confirmation of Order (or if no such confirmation is sent it shall be as stated in the Order) and shall be Ex Works Incoterms 2000. ASG reserves the right to make an additional charge for packaging, carriage, insurance and other such items as are not listed on the Order
- 4.2 ASG reserves the right prior to delivery or final performance to increase the price of the Supplies to reflect any increase in labour or material costs or other costs of production, any foreign exchange fluctuation, currency regulation, alteration of duties or any change in delivery dates, quantities or specifications for the Supplies which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give ASG adequate information or instructions or to perform its obligations for the Supplies

**5. TERMS OF PAYMENT**

- 5.1 Unless otherwise stated in the Order, or otherwise agreed in writing between the Buyer and ASG, payment shall be made in sterling in cleared funds within 30 days of invoice and without any withholding, deduction, set-off, counterclaim or cross demand (whether in respect of the Contract or any other contract whatsoever)
- 5.2 The time of payment of the price shall be of the essence of the Contract
- 5.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to ASG, ASG shall be entitled to:
- 5.3.1 cancel the Contract in whole or in part or suspend any further deliveries to the Buyer or other performance;
- 5.3.2 appropriate any payment made by the Buyer to such of the Goods or Services (or the goods or services supplied under any other contract between the Buyer and ASG) as ASG may think fit (notwithstanding any purported appropriation by the Buyer); and
- 5.3.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the same rate as would apply were the debt a qualifying debt under the Late Payment of Commercial Debts (Interest) Act 1998 calculated from the date payment fell due until the date of actual payment (or such lesser amount as is the maximum rate permissible by law)

**6. DELIVERY**

- 6.1 ASG shall effect delivery by making the Goods available for collection from its premises and so informing the Buyer or, if some other place for delivery is stated in ASG's written confirmation of Order (or if no such confirmation is sent, in the Order), by ASG despatching the Goods from its premises in accordance with the Buyer's instructions
- 6.2 Delivery times are approximate and shall not be of the essence. The Goods may be delivered by ASG in advance of the quoted delivery date upon giving reasonable notice to the Buyer
- 6.3 If the Buyer fails to take delivery or to give adequate delivery instructions then, without prejudice to its other rights and at the Buyer's expense, ASG may store and/or dispose of the Goods or any goods the subject of any Services performed by ASG. Any shortfall in disposal proceeds below the Contract price shall be paid by the Buyer to the Seller
- 6.4 ASG may deliver the quantity of Goods contracted for within a range of plus or minus 5% without thereby being in breach, subject to an appropriate price

adjustment being made

6.5 ASG may deliver in instalments constituting separate Contracts and any delay in delivery or termination of any instalment will not entitle the Buyer to terminate the Contract as a whole, nor permit the set off of any payments in respect of one delivery against any claim in respect of any other delivery whether under one Contract or any related contract. Where Goods are delivered in instalments ASG may issue separate invoices

## 7. INSPECTION AND ACCEPTANCE

7.1 Within 3 days of delivery of the Goods and/or completion of the Services the Buyer shall inspect and test the same and immediately give notice to ASG of any damage or non-conformity with the Contract. In the absence of such notice, the Supplies shall be deemed to comply with the terms of the Contract and the Buyer bound to accept them

7.2 The Buyer will indemnify ASG against any loss which it suffers because any notification pursuant to sub-clause 7.1 is received too late to enable it to claim against carriers or insurers in respect of such damage or loss in transit

## 8. RISK AND PROPERTY

8.1 Risk of damage to or loss of the Goods shall pass to the Buyer at the earlier of the time when ASG notifies the Buyer that the Goods are available for collection or upon ASG first despatching the Goods from its premises in accordance with the Contract or the Buyer's instructions

8.2 If for any reason the Buyer fails to accept delivery of any of the Supplies when they are delivered by ASG, or ASG is unable to deliver the Supplies on time because the Buyer has not provided appropriate instructions or deliverables under the Contract the following shall apply:

8.2.1 risk in the Goods shall pass to the Buyer (including for loss or damage caused by ASG's negligence);

8.2.2 the Goods shall be deemed to have been delivered; and

8.2.3 ASG may deal with the Goods in accordance with clause 6.3

8.2 All other materials or goods, including but not limited to items referred to in clause 14, in the possession of ASG or otherwise shall be held, worked on and carried at the Buyer's risk in every respect and the Buyer is advised to retain duplicates or copies of any master, artwork, films, tapes, discs and other materials provided to ASG

8.3 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of the Contract, title to and ownership of the Goods shall not pass to the Buyer until ASG has received in cash or cleared funds payment in full for the Goods and any other monies then due for payment by the Buyer to ASG on any account

8.4 Until such time as property in the Goods passes to the Buyer, the Buyer shall:

8.4.1 hold the Goods as ASG's fiduciary agent and bailee;

8.4.2 keep the Goods separate from those belonging to the Buyer and to third parties and properly stored, insured and identified as ASG's property; and

8.4.3 ASG shall have a lien over any of the Buyer's assets in its possession or control

## 9. DIGITAL AND ELECTRONIC TRANSMISSIONS

9.1 Supplies and or materials may be delivered by digital or electronic transmission ("Transmission") where the Order so provides or the parties otherwise agree. Where any Supplies or material are sent by one party ("the Sender") to the other party ("the Receiver") by means of Transmission:

9.1.1 the Sender shall give the Receiver reasonable notice of any intended Transmission and transmission shall be deemed effected (and delivery taken place) when the Transmission is sent by the Sender to the Receiver's agreed address

9.1.2 the Sender shall not be liable for late or non-delivery which is a result of the Receiver's failure to comply with this clause 9 or of failure of any connection, technical failure or corruption of material, or any virus passed on in the course of Transmission outside the control of the Sender and the parties acknowledge that such Transmissions may not be secure

## 10. EXCLUSION OF LIABILITY

10.1 Nothing in these Terms shall limit or exclude any liability of either party which may not be limited or excluded by law, including without limitation liability for death or personal injury caused by the negligence of either party or for fraudulent misrepresentation

10.2 Subject to clause 10.1, if ASG fails to provide the Supplies in compliance with the Contract or they are proven defective by reason of ASG's default, its liability shall be limited to their repair or replacement or if this is not possible, to refunding any monies paid in respect of the faulty Goods and/or Services and cancellation of any unpaid price otherwise payable for them, in each case plus twenty-five per cent (25%) of such monies

10.3 Subject to clause 10.1, neither party shall be liable (whether in compensation for any breach or under any indemnity or otherwise and whether in contract, tort, for breach of statutory duty or otherwise) for any loss of anticipated savings, loss of revenue, loss of data, loss of goodwill or reputation, business interruption, management time, third party liability, loss of use of any asset or any loss which procedures and precautions (or which would generally be implemented by a person exercising a degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a reasonably and appropriately skilled and experienced person in the same or similar circumstances) could have prevented or reduced, or any special incidental or consequential losses or damages

10.4 Clauses 10.2 and 10.5 shall apply even if the failure or default is deliberate or results from deliberate conduct

10.5 No statutory or other warranty, condition or representation of any kind whatsoever (including without limitation any relating to satisfactory quality, suitability or fitness for any purpose of the Buyer) is given or to be implied. The only warranties, conditions or representations made are those expressly stated to be such and contained within the Contract documents

## 11. TERMINATION OF CONTRACT

11.1 Either party ("the First Party") shall be entitled to terminate the Contract forthwith by notice in writing to the other ("the Second Party") if:

11.1.1 the Second Party fails to pay to the First Party any sum when due; or

11.1.2 the Second Party fails to remedy any breach or non-performance within seven days' notice from the First Party to do so or commits any material breach or non-performance which is not capable of remedy; or

11.1.3 the Second Party is, or is deemed for the purposes of any law to be insolvent or steps are taken to:

(a) propose any composition, scheme or arrangement involving the Second Party and its creditors;

(b) obtain an administration order or appoint any administrative or other receiver or manager of the Second Party or any of its property or otherwise enforce any security over the Second Party's property, or repossess its assets; or

(c) file a petition in bankruptcy or to wind up or dissolve the Second Party, or sequester its estate

(d) or outside England anything corresponding to any of the above occurs

11.2 If the Contract is terminated, ASG (without prejudice to its other rights but subject to any relevant mandatory laws) may do any of the following:

11.2.1 declare immediately payable (and so interest-bearing under clause 5.3.3) any sums owed by the Buyer, proceed against the Buyer for the same and/or damages, and appropriate any payment by the Buyer as ASG thinks fit (notwithstanding any purported appropriation by the Buyer);

11.2.2 suspend further performance of the Contract and/or any other contract with the Buyer (and the time for delivery by ASG shall be extended by the period of such suspension);

11.2.3 take possession of and deal with (including the sale of) any materials and other assets of the Buyer held by or on behalf of ASG and apply any proceeds of sale in payment of any sums owing under or damages arising in connection with the Contract and/or any other contract with the Buyer including any interest and costs arising thereon;

11.2.4 without limitation to the generality of the foregoing ASG may retain any original or copy artwork, films, tapes, discs and other materials of the Buyer and produce duplicates of and from the same (whether in whole or in part) for resale at such price as ASG shall in its discretion determine and in such quantities so as to realise sufficient funds to compensate ASG for all loss and damage suffered by it (including interest and costs thereon) by reason of the Buyer's breach; the Buyer hereby grants ASG an irrevocable non-exclusive royalty-free licence to copy, use, produce, sell and distribute such works and materials and shall indemnify ASG against any claim, loss, damage, cost or expense suffered by it as a result of any such actions being in breach of the Buyer's or a third party's rights or entitlements

## 12. POST-TERMINATION RESTRICTION

For the duration of the Contract and for a period of six (6) months after its termination the Buyer shall not and shall procure that no person under the same control as itself will seek to cause any person employed or engaged (directly or through a personal service company) by ASG and with whom the Buyer had contact in the course of the Contract (a "Relevant Person") to cease to be so employed or engaged and shall not offer to or enter into with any Relevant Person any form of direct or indirect engagement and if it or any such person acts in breach of this clause and the Relevant Person's engagement with ASG terminates it shall pay to ASG (as an agreed pre-estimate of the loss which ASG would suffer) a sum equal to the total remuneration of the Relevant Person from ASG

during the twelve months immediately preceding termination of his engagement with ASG. This clause shall not prohibit general advertisements in the ordinary

course of business which are not informed by knowledge of the Relevant Person provided that if a Relevant Person responds to any such advertisement no personnel of the Buyer who had contact with or material knowledge of the Relevant Person shall be in any way involved in the recruitment process

### **13. LICENCES AND COPYRIGHT CLEARANCES**

- 13.1 The Buyer warrants that it has obtained any and all necessary licences, permits, consents or approvals for the import/export, copying, use, production, reproduction, distribution, sale or supply by ASG of the Goods or its provision of the Services (including without limitation all necessary copyright, design right, registered design, trade mark, patents and other applicable intellectual property right consents, clearances, licences or approvals and any necessary waivers of moral rights) and will indemnify ASG and keep it fully and effectively indemnified on demand against any cost, claim, liability or expense ASG incurs as a result of any failure or delay so to do
- 13.2 ASG may (without incurring liability) withhold performance of the Contract until such consents or approvals are provided and/or such registration or specific licence is complete and shall be entitled to further time for performance in the event of delay
- 13.3 ASG may at any time refuse to produce any Goods or provide any Services which it considers may be illegal or defamatory or might infringe any third party's rights or create any criminal or civil liability or otherwise bring ASG into disrepute in the minds of right thinking people
- 13.4 If any claim is made or action brought against ASG concerning the Supplies (and whether settled, litigated, discontinued or otherwise dealt with by ASG) and ASG thereby incurs any cost, loss, liability or penalty of any kind the Buyer shall upon demand pay to ASG on a full indemnity basis the full amount of such cost, loss, liability, expense or penalty without enquiry, deduction, withholding, set-off, counterclaim or cross demand (whether in respect of the Contract or any related contract)
- 13.5 The Buyer agrees that ASG may include the Supplies, the Contract and the Buyer's name and marks in its promotional material

### **14. INTELLECTUAL PROPERTY AND CONFIDENTIALITY**

- 14.1 ASG retains ownership of all inventions, designs, copyrights and processes relevant to the Supplies and not provided by the Buyer. Copyright exists in all documents, designs, programs, or other material issued by or on behalf of ASG, which the Buyer shall keep confidential and not disclose or use the same (other than for the particular purpose for which it was disclosed) for his or another's benefit without ASG's prior written consent
- 14.2 All film negatives and positives, discs, sketches, samples and original designs of any kind, moulds, tapes, designs and other materials created or acquired for the performance of the Contract shall remain the exclusive property of ASG including any items subject to an extra charge. ASG shall not be obliged to preserve any of the same unless expressly agreed in ASG's confirmation of Order and the cost of storage of which shall be an extra charge unless otherwise stated in such confirmation to be included within the price

### **15. BUYER'S MATERIALS AND OTHER ITEMS**

- 15.1 ASG may reject any materials and other items supplied or specified by the Buyer but acceptance of them shall not constitute a warranty that they are suitable or comply with the Contract
- 15.2 ASG shall not be liable for any defect, wastage or other loss whatsoever arising from such materials or other items, all of which shall be held and used at the Buyer's risk. Quantities of materials or other items supplied by the Buyer shall allow for normal spoilage
- 15.3 ASG shall not be responsible for any loss, damage, cost or expense arising from, or from any mistake, defect or inaccuracy in, any artwork, tapes, films, discs, or other materials or items specified or supplied by the Buyer. Any loss, damage, cost or expense arising therefrom or from ASG's reproduction of such mistakes, defects or inaccuracies shall be for the sole account of the Buyer who shall indemnify ASG accordingly
- 15.4 ASG's liability for discs, tapes, films, artwork and other materials or items specified or provided to ASG by or otherwise held by ASG on behalf of the Buyer shall be limited to the basic raw material cost of the media and not any production, artistic, aesthetic or rarity cost or value in the material or its content
- 15.5 Any materials and other items of the Buyer held by ASG may be dealt with by ASG in the manner and circumstances provided for under clause 11.2.3
- 15.6 Prior to their delivery to ASG the Buyer shall notify ASG of the nature of any materials or other items to be held by ASG on the Buyer's behalf, shall provide adequate warnings and instructions where such materials or other items are or may be hazardous to safety and shall ensure that they comply with any requirements or descriptions in the Contract or Contract documents
- 15.7 The Buyer shall indemnify ASG for any loss, damage or claim which arises from or relates to such materials or other items whilst in ASG's possession and which could not have been prevented by ASG acting in accordance with the Buyer's reasonable written instructions and which was not caused by the negligence or wilful default of ASG or its employees
- 15.8 Any materials supplied by the Buyer will be stored by ASG for up to twelve months after the last order submitted in relation to the relevant Supplies and will then either be returned or destroyed at the Buyer's request and expense.

### **16. PROOFS AND SAMPLES**

ASG may submit proofs for the Buyer's approval and shall not be liable for any error not corrected by the Buyer. The Buyer's corrections (including alterations in style, composition and layout) and the cost of additional proofs in relation thereto shall be an extra charge. Every effort will be made to see that the Supplies comply substantially with any samples previously supplied but ASG shall not be liable if they do not comply save in circumstances where there is a material non-compliance but subject always to the provisions of clause 10

### **17. GENERAL**

- 17.1 Neither party shall be liable for any failure to perform any or all of its obligations under the Contract by reason of any fire, flood or other Act of God, armed conflict, civil unrest, terrorist act, pandemic, industrial action, equipment or supply difficulties or failure, order of public authority, or any cause whatsoever beyond its control. In such circumstances either party may terminate the Contract whereupon the Buyer shall pay a sum equal to the costs to ASG to date of performing the Contract and ASG's liability shall be limited to repayment of any sums paid for undelivered Goods or unperformed Services, less such costs
- 17.2 ASG's rights shall not be prejudiced by any indulgence, forbearance or previous waiver extended to the Buyer. The Buyer shall not assign, charge, or otherwise dispose of any Contract or any of its rights thereunder without ASG's prior written consent; ASG may sub-contract, delegate or assign in any manner any or all of its obligations under the Contract to any third party or agent.
- 17.3 All notices or other communications under the Contract shall be in writing in English addressed to the addressee's registered office or email address stated in the Order (or other postal or email address notified to the other party) and shall be sent by hand (and thereby be deemed served when properly left at such address) or by first class pre-paid post (and thereby be deemed served 48 hours after posting) or by email (and thereby deemed served at the time of transmission)
- 17.4 Clauses 1, 3.6, 4, 5, 8, 10, 11,, 12 13.1, 13.5, 14, 15.3, 15.7, 16 and 17 shall survive termination of the Contract
- 17.5 No person who is not a party to the Contract shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract but this does not affect any right or remedy which is available apart from that Act
- 17.6 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed and construed in accordance with English law and the parties irrevocably submit to the exclusive jurisdiction of the courts of England provided that (and without prejudice thereto) ASG shall be entitled to apply for any provision of conservatory measures or interim relief in any other court having jurisdiction