

## MCLCREATE LTD - TERMS OF PURCHASE

### **1 Interpretation**

- 1.1 In these Terms unless the context otherwise requires:  
“mclcreate” means MCLCREATE LTD;  
“Goods” mean the goods (including any instalment or parts) which Supplier is to supply in accordance with this Order;  
“IPR” means all industrial and intellectual property rights including, without limitation, patents, trade marks, service marks, design rights, copyright, lending and rental rights, technical knowledge, know-how, trade secrets, confidential information and any other commercial monopoly rights, and any applications and rights to apply for any of the foregoing in any part of the world;  
“Services” means services or any of them (including provision of any necessary or ancillary equipment) which Supplier is to supply in accordance with this Order;  
“Supplier” means the person, firm or company identified as such in this Order;  
“Supply” means the provision of the Goods and/or Services;  
“Terms” means the terms and conditions set out in and to which this Order is subject and any amendments expressly agreed in writing between mclcreate and Supplier.
- 1.2 Headings are for convenience only and shall not affect interpretation.
- 1.3 Any typographical or clerical error or omission in documents issued by mclcreate shall be subject to correction without liability on the part of mclcreate.

### **2 Basis of Order**

- 2.1 mclcreate engages Supplier to provide and Supplier agrees to provide the Services and/or Supplier agrees to sell or hire and mclcreate to purchase or take on hire, as case may be, the Goods, subject to these Terms, which shall govern the Order to the exclusion of any other terms and conditions contained in any document or implied by course of dealing and shall not be varied except in writing signed by mclcreate and Supplier.
- 2.2 Description, specification and quantity of Supply shall be as set out or referred to in this Order and no variation shall be made except for non-material changes to meet safety or legal requirements.

### **3 Delivery and Cancellation**

- 3.1 Supplier shall deliver Supply at the address(es) and on date(s), if any, specified in this Order or otherwise as directed by mclcreate in writing.
- 3.2 Time for delivery, installation, testing, operation and removal of Goods and for commencement, performance and completion of Services and each stage thereof by Supplier shall be of the essence.
- 3.3 Supplier shall be responsible for properly labelling, addressing, packing and securing Supply so as to be delivered in the normal course of transit in an undamaged condition.
- 3.4 Claims by mclcreate based on shortage or damage in transit will be notified to Supplier within reasonable time of discovery.
- 3.5 mclcreate may without liability to Supplier cancel Supply in whole or part before scheduled delivery date:
- 3.5.1 in the case of a hire, on giving at least three days’ notice; or
- 3.5.2 in the case of a purchase, on giving at least 14 days’ notice (or, if on less than 14 days’ notice) subject to reimbursement of Supplier’s reasonable costs incurred (not to exceed price of the Supply), in which case, if mclcreate requires, Supplier shall deliver to mclcreate Supply and other materials (complete or incomplete) for which costs are paid.

### **4 Price and Payment**

- 4.1 In consideration of the Supply and the obligations of Supplier in these Terms, mclcreate will subject to these Terms pay Supplier the price (and any VAT thereon) as set out in this Order, which price shall be fixed for the duration of this Order and inclusive of all fees, customs, import and export duties, insurance, salaries, employment-related expenses and all other out-of-pocket expenses incurred in the performance of the Services.
- 4.2 Unless otherwise agreed in writing, mclcreate shall make payment at the end of the month following the later of delivery and acceptance of Goods or completion of the Services and receipt of Supplier’s valid invoice. Supplier’s invoice must specify mclcreate’s order number, description of Supply and, if applicable, quantity of Supply and unit price and delivery date and fully itemise all expenses claimed.
- 4.3 The price for Services is inclusive of provision for holiday pay (for which an allowance of 8% of the basic labour rate has been made), pension and other social benefits to which the person(s) through whom the Services are provided by the Supplier may be entitled in law. Supplier shall be responsible for the provision of holiday and the administration and payment of all such payments, benefits and taxes to the persons so entitled.
- 4.4 Supplier shall keep and mclcreate shall be entitled on notice to inspect and take copies of all books and records evidencing the cost of the Supply.
- 4.5 mclcreate shall be entitled to set-off against the price any amounts due by Supplier to mclcreate under this or any other agreement.

### **5 Obligations of Supplier**

- 5.1 Without prejudice to any warranty implied by law, Supplier warrants and represents that:
- 5.1.1 the Supply will on delivery correspond to the requirements of this Order and to specification and any sample and will comply with all applicable laws;
- 5.1.2 all Goods sold or hired will be of satisfactory quality, fit for their intended purpose, comply with all relevant laws and standards and be free from defects

- in design, material and workmanship for 12 months from later of delivery or first use (or for the duration of their hire, if shorter);
- 5.1.3 all Services will be carried out in a proper, timely, safe and workmanlike manner to the highest standard reasonably expected and with reasonable care and skill by persons of appropriate training and experience acting without supervision and any product of such Services will be of satisfactory quality and fit for its intended purpose.
- 5.1.4 all Services will be performed without risk to health and safety in accordance with good practice and in compliance with all relevant health and safety laws (and Supplier shall at its cost conduct all necessary risk assessments and provide all personal protective equipment). Supplier shall familiarise itself with all health and safety documentation relating to the Services and, on request, shall provide mclcreate with copies of all such documents prepared by the Supplier.
- 5.1.5 all tools and equipment provided by Supplier will be in good working order and of satisfactory quality and, in the case of IT hardware or software, licensed, secure and free of viruses.
- 5.1.6 Supplier is skilled and knowledgeable in provision of the Supply and acknowledges that mclcreate relies on Supplier’s skill and judgment and all recommendations or advice given by Supplier in negotiation of this Order concerning Supply, the fitness for purpose, functionality, use or storage of any Goods and the performance and product of any Services.
- 5.2 Supplier shall be liable in full for the acts and omissions of its employees, agents or sub-contractors and undertakes to ensure the proper and safe performance and discharge of the Services by such persons in accordance with these Terms; and that such persons are aware of and agree to be bound by these Terms.
- 5.3 Supplier shall and shall procure that its personnel comply with all rules regulations and procedures in force at any venue where Services are to be provided and with any code of conduct (including dress code) notified to it. Supplier will ensure that its personnel at all times behave in a proper and respectful manner and do not attempt to carry out the Services while under the influence of alcohol or non-prescribed drugs or similar substances.
- 5.4 Supplier shall co-operate with all reasonable requests made by mclcreate in relation to the Supply including attending meetings and supplying information. mclcreate has right, with its client and on notice, to inspect any part of the Supply at Supplier’s premises or elsewhere
- 5.5 If the Services are to be performed (whether alone or jointly) by any person other than as identified in this Order, the identity of such person shall be notified to mclcreate in writing as soon as practicable prior to commencement of Services and such person shall be subject to the prior approval of mclcreate (not to be unreasonably withheld or delayed). mclcreate may withhold approval if mclcreate’s client objects for any reason to the person concerned or if there is insufficient evidence of competence and training. If approval is withheld, Supplier at its expense shall procure performance of Services by person(s) reasonably acceptable to mclcreate.

### **6 Risk and Title**

- 6.1 Goods shall be sold by Supplier as beneficial owner free of any lien, charge or encumbrance except that third party software shall be supplied with all licences consents and authorities (fully paid-up) required for its intended or normal use. Risk and title in Goods for sale shall pass to mclcreate on delivery (except that any Supply rejected by mclcreate is returned to Supplier at Supplier’s risk and expense).
- 6.2 Risk in Goods on hire remains with Supplier at all times unless otherwise agreed in writing. If mclcreate accepts risk, mclcreate’s liability shall be limited to the market value of the Goods in their condition immediately prior to loss or damage or to the reasonable cost of their repair, whichever is the lesser, provided that mclcreate shall not be liable:
- 6.2.1 for loss or damage due to act of terrorism (or to take out terrorism insurance); or
- 6.2.2 for electrical or mechanical breakdown, wear and tear or existing damage.
- 6.3 IPR in the product, if any, of Services commissioned by or specifically produced for mclcreate shall be the exclusive property of mclcreate and Supplier shall assign to mclcreate (or as mclcreate may direct) for no additional consideration all such IPR with full title guarantee and waives all moral rights.
- 6.4 Risk in Supplier’s equipment and materials provided in course of Services remains with Supplier at all times.
- 6.5 All equipment and materials provided by mclcreate to Supplier in connection with this Order (including all IPR in such materials) remain property of mclcreate or its legal owner and shall be returned to mclcreate forthwith on request. Supplier shall take all reasonable care of such equipment and materials to ensure their safety and security. Such materials shall be at risk of Supplier until return to mclcreate and Supplier shall indemnify mclcreate against any loss or damage thereto. Supplier shall upon request submit stock returns of such materials to mclcreate.

### **7 Confidentiality and Marketing**

- 7.1 All details of any event to which this Order relates (including the end-client, participants, event content and funding, venue, date, time and value of this Order) are strictly confidential. Materials and other information supplied by mclcreate may be proprietary or confidential to mclcreate or its client. Unless already in the public domain (other than by reason of Supplier’s breach), Supplier agrees without limit of time to keep confidential and secure all such

information and materials, which may come into Supplier's possession in the performance of this Order and Supplier shall not use or disclose the same other than for the purposes of this Order without mclcreate's written consent.

- 7.2 Supplier shall not, without the express written consent of mclcreate, mention mclcreate or the Supplier's involvement in the project or event to which this Order relates (including the end-client, other participants or event content) in any advertising or promotional materials, including interviews, articles or web sites.

## 8 Liability of Supplier and Insurance

- 8.1 If on delivery the Supply is defective or does not materially conform with this Order, mclcreate may without prejudice to any other right or remedy reject the Supply in whole or part (and may do so notwithstanding commercial use by mclcreate in order to meet pre-existing obligations, which use shall not constitute acceptance). On rejection mclcreate may at its discretion require Supplier:

- 8.1.1 at its cost forthwith to repair or replace defective Supply; or  
8.1.2 to reimburse mclcreate the price paid and to pay mclcreate all additional costs over and above the Price reasonably incurred by mclcreate in obtaining a replacement.

- 8.2 Except as provided in clause 8.1, if Supply fails during the warranty period, Supplier shall at its cost forthwith repair or replace defective Supply. Repair or replacement shall have benefit of remainder of initial warranty period or, if longer, an extended 3 months warranty from its delivery to mclcreate.

- 8.3 Supplier shall indemnify mclcreate in full against all liability loss damages costs and expenses (including loss of profit, additional costs of working, legal costs and expenses) incurred or awarded against or paid by mclcreate as a result of or arising from breach of any of these Terms by or negligent act or omission of Supplier (or any person for whom Supplier is responsible) or any claim that the Supply infringes any IPR of any other person (except to extent claim arises from material supplied by mclcreate).

- 8.4 Supplier warrants and represents that Supplier maintains adequate Public and Product Liability Insurance (providing cover of not less than £2,000,000 per claim), Employer's Liability insurance and, if applicable, travel, medical and motor insurance in respect of the Supplier and all personnel provided by Supplier to perform this Order.

## 9 Contractor Status and Taxation

- 9.1 Status of Supplier is of an independent contractor and, if an individual, a self employed person. Nothing in these Terms shall create or be deemed to create an agency, partnership or employment relationship between the parties.

- 9.2 Unless mclcreate notifies Supplier in writing to the contrary, Supplier shall be responsible for all income tax, national insurance and similar liabilities in respect of sums payable under these Terms and the Supplier agrees to indemnify mclcreate against all demands for any income tax, national insurance contributions, penalties and interest (or similar payments in any relevant jurisdiction) made against it in respect of the Supplier's services (including the services of any person through whom Supplier performs Services).

## 10 Termination

- 10.1 If: Supplier makes any voluntary arrangement with its creditors; (being an individual or firm) becomes bankrupt; (being a company) has petition for administration order presented against it, goes into liquidation (other than for purposes of amalgamation or reconstruction); or an encumbrancer takes possession or receiver is appointed of any property or assets of Supplier; Supplier ceases or threatens to cease to carry on business; mclcreate reasonably apprehends that any of the above is about to occur (or anything analogous under laws of any relevant jurisdiction) and so notifies Supplier; or Supplier is in breach of these Terms and if capable of remedy fails to remedy breach within 7 days of notice by mclcreate, then (without prejudice to any other right or remedy) mclcreate may cancel or suspend Order in whole or part without liability to Supplier who shall be liable for additional costs incurred by mclcreate in completing Order or obtaining alternative Supply.

- 10.2 Completion of performance of any Order or its termination for any reason shall not affect the accrued rights of the parties under these Terms.

## 11 Force Majeure

mclcreate shall not be liable to Supplier for cancellation or postponement of Supply or other delay or failure due to any cause beyond mclcreate's control (including, without limitation, in relation to any event, due to material adverse weather conditions, trade disputes or industrial actions, actual or threatened act of war, terrorism or civil disturbance) and in such circumstances mclcreate reserves right to terminate this Order or require Supplier to suspend further performance.

## 12 General

- 12.1 If Supplier is more than one person, they shall be liable both individually and together.

- 12.2 No person other than mclcreate and Supplier shall have any rights under or to enforce these Terms and The Contracts (Rights of Third Parties) Act 1999 shall not apply to these Terms.

- 12.3 The obligations on part of Supplier under this Order shall not be assigned without mclcreate's written consent.

- 12.4 Any notice under these terms shall be in writing and may be served by hand, pre-paid first class post or airmail, electronic mail or facsimile to its address or facsimile number set out in this Agreement or such other address as is notified for the purpose.

- 12.5 Delay shall not prevent mclcreate enforcing any provision of this Order. Any waiver of a breach of this Order shall not operate as a waiver of a later breach of the same or any other provision. If any provision of these Terms is held to be

invalid or unenforceable in whole or in part, the validity of the remaining provisions shall not be affected.

- 12.6 This Order shall be governed and construed in accordance with English law. The parties agree to submit to the non-exclusive jurisdiction of the English Courts.