

## ATOMIC TYPE LIMITED (atomictype.co.uk): BUSINESS TERMS AND CONDITIONS OF SALE

Last updated January 1, 2011

The following Terms and Conditions (the "Terms") will apply exclusively to any current or future business relationship or transaction between Atomic Type Limited, a company registered in England and Wales (company number 0467513) whose registered office address is CPS House, St. James Place, Knapp Road, Cheltenham, Gloucestershire, GL50 3QR trading as Atomic Type or atomictype.co.uk ("Atomic", "Atomic Type" or the "Company") and you ("you" or the "Customer"). These Terms will exclusively govern all contracts for the supply of goods formed by Atomic's acceptance of a customer order or a customer's acceptance of an Atomic quotation. Any additional or inconsistent terms, including any terms and conditions set forth on a customer purchase order, will not be binding upon Atomic unless Atomic provides its express agreement in writing. PLEASE READ ALL OF THESE TERMS CAREFULLY.

### 1. General and Definitions

- 1.1 In these Conditions:
  - 1.1.1 "Company", "we", "us" and "our" means Atomic Type Limited;
  - 1.1.2 "Customer", "you" and "your" means any person or legal entity that submits an order to the Company subject to these Terms;
  - 1.1.3 "Contract" means any agreement made subject to these Terms;
  - 1.1.4 "Goods", "Product" or "Products" means the subject matter of the Contract, or any part thereof and may be downloadable products, physical products and/or Services provided by the Company;
  - 1.1.5 "Services" means any manufacture, audit, commercial advice, installation service, service visit, maintenance visit, troubleshooting visit, repair, technical support (whether by telephone, e-mail or on-site), training or any other service provided by the Company;
  - 1.1.6 "Supplier" means any organisation or manufacturer that supplies or licences any Goods to the Company (in the form of physical products, non physical products, services or otherwise) for onward sale or resale;
  - 1.1.7 "Additional Terms" means, but is not limited to, Website Terms and Conditions of Use, any End User Licence Agreement, conditions applicable to certain Goods, terms associated with on-line credit accounts provided by the Company, terms associated with any Extended Warranty, Service Contract, Repair or Service Visit provided by the Company, terms associated with any Promotions and our Privacy Policy (collectively, the "Additional Terms"). If there is any conflict between the Additional Terms and these Terms, the Additional Terms shall prevail with respect to the subject matter of such Additional Terms, in all other cases these Terms shall prevail.
- 1.2 The Contract for supply of Goods will be formed upon your acceptance of our quotation or our acceptance of your order. However we only agree to sell Products to you subject to their availability and accordingly the contract may be cancelled by us in writing without liability to you if Products cannot within a reasonable period be acquired by us for resale. Acceptance of an order by us can only be made in writing whether in hard form or electronically by e-mail.
- 1.3 Any offer made by the Company is without obligation and subject to change without notice unless the offer has been designated as binding in the text of the offer. A Contract will only become valid when it has been accepted in writing by the Company (confirmation of order) or until the order is completed or performed (e.g. delivery, download or connection). Written confirmation of the order will be final for the contents of the Contract. Oral understandings or arrangements will require written confirmation from the Company to become valid and binding.
- 1.4 These Terms and any specific terms referred to in our quotation or order acknowledgement (and the terms and conditions of any licence under which Goods are supplied) constitute the entire understanding of the parties and shall apply to the Contract and no other contractual terms or conditions shall be of any effect with respect to the Contract unless expressly accepted by the Company in writing. The holding, banking, negotiation or other use of any deposit shall not constitute acceptance by the Company of an order.
- 1.5 The Customer acknowledges that certain Products purchased are subject to separate license agreements and agrees to be bound thereby.
- 1.6 The provisions of the Contracts (Rights of Third Parties) Act 1999 and all non-mandatory provisions of the Electronic Commerce (EC Directive) Regulations 2002 are expressly excluded from the Contract.
- 1.7 Clause headings are for convenience only and do not affect the interpretation of these Terms. Reference in these Terms to a statutory provision will be construed as a reference to that provision as amended, re-enacted or extended at the relevant time. Words in the singular include the plural and vice versa.
- 1.8 The Company reserves the right to correct errors in its offers, invoices and communications such as spelling or arithmetical errors.
- 1.9 These Terms may not be varied or waived except with the express written agreement of the Company.

## **2. Price Lists, Promotional Material and Description of Goods**

- 2.1 Information provided on our websites, PDF downloads, PDF documents, price lists, catalogues, brochures and all promotional material are subject to alteration without notice and are only an indication of the type of goods and services offered and shall not constitute representations to be relied upon in entering into Contracts or be binding on the Company nor be deemed in any way to modify these Terms.
- 2.2 All drawings, illustrations, specifications, performance data, particulars of weight and dimensions and the like published by the Company in sales literature, on web pages or other documentation have been provided in the belief that they are accurate, however, they do not constitute a description of the Products, are not binding, shall not be taken to be representations made by the Company and are not warranted to be accurate.
- 2.3 The Supplier of any Goods to the Company is wholly responsible for the description and specification of such Goods. Product specifications may be changed by the manufacturer or Supplier of Goods to the Company at any time up to delivery and provided such change does not materially alter the functionality of the Products you may not cancel your order. The Company will not be liable for any loss or damage suffered in connection with any change. We will endeavour to notify you of any material changes to Product specification as soon as we become aware of or receive notification of the same. You are advised to check Product specifications prior to placing an order.

## **3. Quotations, Prices and Delivery Charges**

- 3.1 All prices are quoted in GBP (unless otherwise stated in writing) and exclude VAT, all other taxes and duties, handling, freight, shipping charges and any insurance premiums, all of which will be added to or charged on invoices at the appropriate rates and paid by you.
- 3.2 The prices for Products will be that stated on our quotation or order acknowledgement. We may vary the prices quoted if between the date of quotation or order acknowledgement and delivery there is an increase in the cost of acquiring or supplying Products, including, without limitation, increases in the costs of carriage, packaging or insurance or arising from a change in exchange rate, a change in delivery dates, quantities or specifications for Products requested by you or delay caused by your instructions.
- 3.3 All quotations are generally valid for a period of 30 days from the date of quotation unless otherwise stated. Once 30 days has elapsed the Company may extend the period of validity or provide a new quotation.

## **4. Orders**

- 4.1 We reserve the right to accept or refuse orders for any reason and may, prior to accepting your order, carry out a credit check. No order shall be deemed to be accepted until confirmed in writing by the Company.
- 4.2 The Company may without prejudice to any rights or remedies terminate or suspend delivery under the Contract without notice in the event of any failure by the Customer to observe or perform any of its obligations under any agreement (including the Contract) between the Customer and the Company or if it appears to the Company that the Customer will or is likely to fail to observe or perform any such obligation.
- 4.3 Orders must be accompanied by sufficient information to enable the Company to proceed with the order forthwith.

## **5. Cancellation of Orders**

You shall have no right to cancel an order without our prior written consent and then only on the condition that, without prejudice to any other rights we may have, you forfeit any deposit or part payment made for the Products and reimburse any losses we may suffer as a consequence of or in connection with the cancellation.

## **6. Rejection**

- 6.1 All font software Products and any other type of software Product supplied as downloads or otherwise are subject to the terms of the applicable End User Licence Agreement and once downloaded or the physical package has been opened, the Product in question will be deemed to have been used and accepted as non-returnable and non-refundable.
- 6.2 In the case of hardware Products, if no written notice is received by us within seven (7) days of delivery of the Goods to you, the Goods shall be deemed to have been accepted by you as in good order and in conformity with the Contract, you shall have no right to reject the Goods and subject to clause 11., no claims will be accepted by us thereafter.

## **7. Delivery and Performance**

- 7.1 Any time or date quoted by us for delivery or performance is an estimate only and is not binding upon the Company. We shall not be liable for any loss or damage whatsoever arising from failure to meet any time or date quoted for delivery or performance even in the case of an expressly guaranteed delivery deadline.
- 7.2 We reserve the right to make partial shipments or to deliver in instalments. You agree to accept such deliveries and to pay for the corresponding partial amounts due including any shipment costs. Late or non-delivery of any partial shipment or instalment shall not relieve you of the obligation to pay for and accept deliveries of any remaining Goods or instalments.

## **8. Payment**

- 8.1 Payment in full is due to the Company no later than thirty (30) days from the date of invoice or delivery of the Goods to you unless special credit terms have been agreed and confirmed by us in writing.
- 8.2 We accept payments via most major credit cards, such as Visa and MasterCard and via payment systems such as PayPal.
- 8.3 Where payment under the Contract is not made by the due date, without prejudice to any other rights and remedies, we may:
  - 8.3.1 charge interest on a daily basis against the outstanding amount at the statutory rate from time to time applicable until the sum due is paid;
  - 8.3.2 withhold further deliveries, credit, guarantees and/or suspend performance of the Contract until the sum due is paid.
- 8.4 You will be liable for all and any collection costs that we incur for retrieving any payment or amount that is overdue.

## **9. Risk and Storage**

- 9.1 Risk in the Goods (including risk of transport delays and losses) shall pass to you upon delivery to your premises (but not into your premises) or, in circumstances where you instruct your own carrier or if you provide your own transport, upon delivery to your carrier or own transport.
- 9.2 Until payment has been received in full by the Company, you must insure the Goods for their full replacement value against all risks between risk and title passing to you and must on demand produce evidence of such insurance to the Company. Until the full price for the Goods has been paid, you shall hold on trust for the Company the policy and proceeds of insurance to the extent of the unpaid amount.
- 9.3 If by reason of instructions or lack of instructions from you, despatch of the Goods is delayed for seven days after you have been notified that the Goods are ready for despatch, the risk in the Goods shall thereupon pass to you, you shall pay reasonable storage charges to the Company and the Goods shall be deemed to have been delivered to you for the purposes of clauses 8.1, 9.1 and 9.2.

## **10. Title**

- 10.1 Title in the Goods shall remain with the Company until the Company has received payment in full of all amounts due for the Goods from the Customer including any interest (if any) for such Goods.
- 10.2 Until such receipt by the Company the Customer shall be deemed to be a bailee of the Goods. Under the terms of this bailment if payment of the total price for the Goods or any other sums owing from the Customer to the Company is not made by the due date, the Company shall have the right, with or without prior notice and at any time, to retake possession of the whole or any part of the Goods (that you will hand over to the Company on demand) and for that purpose to enter your premises without prejudice to any other remedy that the Company might have.
- 10.3 If you fail to pay for the Products in accordance with these Terms, the Company shall be entitled forthwith to suspend any further deliveries, under the Contract or otherwise and may instigate action against you for the full price of the Products and all related costs even though the title in the Products has not passed to you.

## **11. Warranty**

- 11.1 The Company undertakes to pass on to you the benefit of the standard warranty conditions provided by the manufacturer or Supplier of Goods to the Company, where applicable, for the period stipulated by such manufacturer or Supplier.
- 11.2 If any Goods or Services provided by the Company are not satisfactory, the Company will at its discretion either remedy the cause of dissatisfaction in question, replace defective Goods, refund or partially refund the price of the Goods or Services or offer an alternative remedy. This remedy is the only remedy available to you for a breach of this warranty and is only available on condition that:
  - 11.2.1 you notify the Company in writing of any problem within 7 days from receipt of Goods or Services;
  - 11.2.2 defective Goods are returned to the Company within 7 days of the written notification referred to in condition 11.4.1;
  - 11.2.3 we are satisfied that after examining the alleged defective Goods that the defect has not been caused by your mis-use, neglect, accident, inadequate maintenance, improper storage, installation, handling, or repair or alteration by a third party; and
  - 11.2.4 in cases where you are found to be responsible for causing any defect for any reason you will refund to the Company the cost of any such examination, the Company's administrative expenses and at the Company's option and discretion a restocking fee of up to 25% of the price of the Goods or a percentage of the entire cost of the Goods or the entire cost of the Goods depending on the re-sale value that can be obtained by the Company for the sale of the returned Goods or the loss incurred by the Company for replacing the returned Goods.
- 11.3 With regard to any repair work provided by the Company, the Company reserves the right to use such parts and materials as it thinks fit and to substitute without notice to the Customer any parts, materials, components and units in place of those mentioned in any catalogue, brochure or quotation which is available to the Customer. Generally, all parts used will be provided by or recommended by the relevant manufacturer.

## **12. Disclaimer of Warranties**

Unless otherwise agreed in writing between you and the Company or as required by law, the Goods and Services purchased by you are provided by the Company on an "as is" basis without any representation or warranties of any kind whatsoever, express or implied, including without limitation, warranties of non-infringement, merchantability or fitness for a particular purpose.

### **13. Third Party Liability**

- 13.1 You shall indemnify and hold the Company harmless from and against all losses, claims, costs, expenses, damages and liabilities, including legal fees on a full indemnity basis, that the Company may suffer or be held liable to pay by any third party in respect of death or personal injury resulting from negligent use or operation or deliberate misuse of the Products by the Customer or its employees, agents, licensees or invitees.
- 13.2 You shall indemnify and hold the Company harmless from and against all losses, claims, costs, expenses, damages and liabilities, including legal fees on a full indemnity basis, that the Company may suffer or be held liable to pay by any third party for the provision or non-provision of the Services pursuant to this Agreement.

### **14. Limitation of Liability**

- 14.1 Nothing in these Terms affects the statutory rights of a consumer as defined under the unfair contract terms act 1977. All conditions, warranties or representations not contained in these conditions and implied by statute or law are excluded to the fullest extent permitted.
- 14.2 Condition 11., 12. and 14. state the entire liability of the Company to you under or in connection with the Contract.
- 14.3 All express or implied conditions, warranties or representations statutory or otherwise, as to the quality or fitness of materials used, Goods supplied, work or design done, Services performed or any other matter are hereby excluded or restricted to the fullest extent permitted by law.
- 14.4 In no event shall the Company and/or its subsidiaries, affiliates, licensors or Suppliers or their directors, officers, employees, agents or representatives be liable for any special, indirect, exemplary, incidental, consequential or punitive damages or any damages whatsoever or any economic loss (including loss of profit) resulting from the Company's performance or failure to perform under the Contract or the furnishing, performance, or use of any Products or Services sold pursuant to the Contract whether due to a breach of contract, breach of warranty, the negligence of the Company, tort (including negligence) or otherwise even if the Company had been advised of such damages or losses.
- 14.5 The Company and/or its subsidiaries, affiliates, licensors or Suppliers or their directors, officers, employees, agents or representatives shall not be liable in any action, contract or tort (including negligence or breach of statutory duty), misrepresentation or otherwise, and whatever the cause thereof for any loss of business, contracts, revenues, savings, increased costs or expenses even if the Company had been advised of the possibility of such damages.
- 14.6 The Company and/or its subsidiaries, affiliates, licensors or Suppliers or their directors, officers, employees, agents or representatives shall not be liable in any action, contract or tort (including negligence or breach of statutory duty), misrepresentation or otherwise, and whatever the cause thereof for any special, direct, indirect or consequential damage of any nature whatsoever suffered by you or any third party arising from the provision of the Services even if the Company had been advised of the possibility of such damages.
- 14.7 We shall accept no liability whatsoever for any injury, loss, loss of data or damage suffered by the Customer arising from the negligence of the Company, its employees, agents or subcontractors or arising in any other manner whatsoever.
- 14.8 Claims for compensation for idle time, loss of production, waste of material, or any other indirect damage claim are explicitly excluded.

### **15. Intellectual Property Rights**

No right of intellectual property in any Product is granted to or vested in you other than the right to use the same. You will fully indemnify the Company against all liabilities, costs and expenses resulting from any claim that our use of any specification provided by you in connection with the Contract infringes the rights of any third party.

### **16. Termination**

If you pass or have a resolution passed for your winding-up, or a receiver is appointed over the whole or any part of your assets, or an administration order is made against you, or you enter into or propose to enter into any arrangement with your creditors, become unable to pay your debts (or have no reasonable prospect of so doing), suffer a bankruptcy order or commit a material breach of the Contract, then we may without prejudice to any other right immediately terminate the Contract, suspend or cancel further delivery and/or recover Products from you for which payment in full has not been received.

### **17. Force Majeure**

Without prejudice to the generality of these Terms, the Company shall not be liable for any failure on its part to perform any of its obligations under the Contract where such failure is due to circumstances beyond the direct control of the Company. Such circumstances include, but are not limited to, any acts or failures on the part of the Company's Suppliers or sub-contractors or any other third party (including your bank), your failure to furnish necessary instructions, act of God, government action or legislation, lightning, fire, storm, flood, earthquake, war or civil commotion, terrorist act, sabotage, act of vandalism, interruption of transport, strike, lock out or other form of industrial action, accidents or stoppages to works, shortage of labour, materials, equipment, fuel or power, breakdown of machinery or any other cause whatsoever beyond the reasonable control of the Company or its sub-contractors, whether or not such cause exists at the date of the order or Contract. In the event of such failure the Company may terminate the Contract.

## **18. Restrictions on Export**

You acknowledge that the Goods may be subject to export licensing requirements of the United Kingdom and other jurisdictions and are wholly liable for obtaining any required licences from UK authorities and the authorities of the country to which the goods are to be exported and are wholly liable for complying with all relevant export control laws and regulations. The Customer indemnifies and holds the Company harmless against any action, proceeding, judgement, penalty, fine, loss, liability, cost or expense (including reasonable legal fees) arising out of or relating to any violation by the Customer or any of its customers of any UK or other applicable export control law or regulation. These obligations and indemnities shall survive the term or termination of this Contract.

## **19. Governing Law**

The construction, validity and performance of these Terms (including any Additional Terms referred to herein) shall be governed and construed in all respects by the laws of England and Wales and the exclusive forum for settling any disputes arising under or in connection with these Terms (including any Additional Terms referred to herein) shall be the English and Welsh courts. The United Nations Convention on the International Sale of Goods is specifically excluded from these Terms.

## **20. Notices**

Notices to the Company under these Terms shall only be accepted if made in writing and sent by recorded delivery, registered post, courier or hand delivered to: Atomic Type Limited, CPS House, St. James Place, Knapp Road, Cheltenham, Gloucestershire, GL50 or if sent by electronic mail and the Company acknowledges receipt. Notices to the Customer will be sent to your registered office, principal place of business or other address notified by you or by electronic mail at our discretion.

## **21. No Waiver**

Any failure to enforce any rights or provision of these Terms or Additional Terms shall not constitute a waiver or forfeiture of such rights or Terms or of any other right or provision hereof. No express or implied waiver by the Company shall be construed as a continuing waiver nor shall it prevent the Company from acting upon that or any subsequent breach or from enforcing any right, term or condition of these Terms.

## **22. Severance**

If any provision of these Terms is found to be unlawful or unenforceable in whole or in part, that provision or part provision shall be enforced to the maximum extent permissible and will be deemed severable from the remaining provisions of these Terms and will not affect the validity or enforceability of any remaining provision. Should one or more provisions in these Terms be or become wholly or partially invalid, it will be replaced by a clause that comes as close as possible to the intention of the invalid provision; the same will apply in the case of an omission.

## **23. Assignment**

We may assign, sublet, sub-contract or otherwise transfer the Contract in whole or in part. This Contract may not be assigned, transferred, sublet or pledged, in whole or in part, by you without the prior written consent of the Company.

## **24. Survival of terms**

The expiration or termination of the Contract, howsoever arising, shall be without prejudice to any provisions of the Contract (including these Terms) which are to have effect after the date of such expiration or termination.

## **25. Entire Agreement**

These Terms constitute the entire agreement between you and the Company and supersede all previous or contemporaneous agreements made whether electronic, oral or written.