

# Standard Terms & Conditions of Sale

Version 5  
3 April 2019



- 1) **Scope** – these Terms & Conditions (“the Terms”) shall apply to all quotations and offers made by SIGMA Technology Solutions and any purchase orders accepted by SIGMA Technology Solutions. The Terms shall apply to all sales made by SIGMA Technology Solutions to the extent that the Terms do not conflict with any express terms incorporated into any contractual undertaking between SIGMA Technology Solutions and any person, firm, company or other legal entity (“the Customer”) placing an order with SIGMA Technology Solutions. The Terms shall prevail over all other terms & conditions which the Customer seeks to impose or incorporate either within any communication from the Customer or implied by trade, custom or practice or course of dealing unless otherwise expressly agreed in writing by SIGMA Technology Solutions.
- 2) **The Contract** – by placing an order with SIGMA Technology Solutions, either directly or via their website [www.sigmatechnology.co.uk](http://www.sigmatechnology.co.uk) or the websites linked therein the customer is offering to purchase Products and/or Services from SIGMA Technology Solutions on the basis of these Terms. The contract shall only be formed when SIGMA Technology Solutions acknowledges acceptance of the order in writing or upon delivery of the Products or the commencement of delivery of the Services whichever occurs first. No pricing made available by SIGMA Technology Solutions shall constitute an offer capable of acceptance and SIGMA Technology Solutions expressly reserves the right to amend its prices at any time. Any images, drawings or descriptions made available by SIGMA Technology Solutions in any form or via any medium whatsoever are produced for guidance only and do not constitute part of an offer or part of the contract unless expressly agreed in writing. The Customer is responsible for checking that the terms and details of any order are correct and accurate.
- 3) **Contract Variations** –
  - i. SIGMA Technology Solutions reserves the right to vary or alter the specifications of its Products and/or Services at any time and without notice unless otherwise agreed in writing with the Customer.
  - ii. Any contract variation by the Customer must be submitted in writing to SIGMA Technology Solutions for assessment as to impact on price and delivery. Such variation will not have contractual legal effect until agreed in writing by both parties.
- 4) **“Products”** – Products governed by these Terms means any Products produced or sourced by SIGMA Technology Solutions as listed in the order and may include:
  - i. **Standard list Products** – these are part of SIGMA Technology Solutions’ standard range of Products which are available for purchase by all customers and are publicised as being for general sale in company marketing documents and/or on the company website;
  - ii. **Bespoke Products** – these are non-standard Products designed and produced by SIGMA Technology Solutions to the explicit instructions and requirements of the Customer;
  - iii. **Sourced Products** – these are Products sourced by SIGMA Technology Solutions from third party suppliers and made available for sale under lawful agreement either in their sourced form or incorporated into SIGMA Technology Solutions’ own Products;
  - iv. **Customer Nominated Sourced Products** – these are Products sourced from a third party supplier at the Customer’s request and supplied to the customer either in the sourced form or incorporated into SIGMA Technology Solutions’ own Products. SIGMA Technology Solutions accepts no responsibility or liability for the performance, quality or delivery of these Products.
- 5) **“Services”** – Services governed by these Terms means any Services produced or sourced by SIGMA Technology Solutions as listed in the order and may include:
  - i. **Standard Services** – these are part of SIGMA Technology Solutions’ standard range of Services which are available for purchase by all customers and are publicised as being for general sale in company marketing documents and/or on the company website;
  - ii. **Bespoke Services** – these are non-standard Services designed and produced by SIGMA Technology Solutions to the explicit instructions and requirements of the Customer;
  - iii. **Sourced Services** – these are Services sourced by SIGMA Technology Solutions from third party suppliers and made available for sale under lawful agreement either in their sourced form or incorporated into SIGMA Technology Solutions’ own Services;
  - iv. **Customer Nominated Sourced Services** – these are Services sourced from a third party supplier at the Customer’s request and supplied to the customer either in the sourced form or incorporated into SIGMA Technology Solutions’ own Services. SIGMA Technology Solutions accepts no responsibility or liability for the performance, quality or delivery of these Services.
- 6) **Pricing** –
  - i. All pricing quoted is exclusive of VAT and any other applicable taxes or duties which will be charged at the prevailing rate where applicable.
  - ii. Unless otherwise agreed in writing all pricing is exclusive of any delivery charges.
- 7) **Delivery** –
  - i. Although SIGMA Technology Solutions shall try in all good faith to meet Product and/or Services delivery dates they are not guaranteed but are estimates based upon the information available to SIGMA Technology Solutions at the time of order confirmation. Under no circumstances shall SIGMA Technology Solutions be liable for any damages or losses whatsoever arising from any delay in delivery, even if caused by SIGMA Technology Solutions’ negligence, unless there is specific written agreement between SIGMA Technology Solutions and the Customer. Liability of SIGMA Technology Solutions shall be limited at SIGMA Technology Solutions’ sole discretion to;
    - a) Delivering the Products and/or Services within a reasonable time;
    - b) Refunding (including issuing a credit note against a raised invoice) the pro-rata price based on the quantity of the Products and/or Services that are undelivered.

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- ii. Delivery shall be made by SIGMA Technology Solutions to the delivery location specified by the Customer and shall require the Customer to have a responsible person at that location to accept and sign for the Products and/or Services. If there is no such person available at the specified delivery location then the Customer consents to either:
          - a) SIGMA Technology Solutions leaving the Products at that location and in this case risk in the Products will pass to the Customer at that time and no further liability shall remain with SIGMA Technology Solutions with respect to the Products to the limit permitted by applicable law and/or
          - b) SIGMA Technology Solutions refusing to perform the Services at that location.
      - iii. If the Customer fails to take delivery of either Products and/or Services, delivery fails because of inaccurate delivery location information provided by the Customer or any other reason due to the negligence or fault of the Customer then SIGMA Technology Solutions can, at its sole discretion and without limitation to any other rights and remedies:
        - a) Charge the Customer for any delivery and recovery costs of the Products to and from the delivery location together with a £50 administration fee
        - b) Charge the Customer for any costs associated with the Services delivery failure together with a £50 administration fee.
        - c) Charge the Customer for any storage costs in order to store the Products for future delivery.
        - d) Invoice at full value for any Bespoke Products and or Services
        - e) Invoice at full value for any Sourced or Customer Nominated Sourced Products where such products cannot be sold elsewhere or returned for full refund to the original supplier within 15 days of the failed delivery.
        - f) Invoice at full value for any Sourced or Customer Nominated Sourced Services within 15 days of the failed delivery where such Services incur any charges from the original supplier.
- 8) **Delivery in Instalments** – if the Products and/or Services are delivered in instalments then each delivery shall constitute a separate contract. Any failure by SIGMA Technology Solutions to deliver any one or more instalment in accordance with these Terms shall not entitle the Customer to repudiate the entire contract.
- 9) **Inspection of the Products** –
  - i. It is the Customer's responsibility to check that either:
    - a) That the quantities and specifications of the Products correspond to the contract and that there is no visible signs of damage before accepting and signing for delivery and/or
    - b) That the delivery of the Services complies with the specifications within the contract
  - ii. Claims for damaged or faulty Products and/or non-compliance with the Services specification will only be accepted if made within 48hrs of delivery unless otherwise agreed in writing. The Customer must retain and store the disputed Products in good condition for inspection and collection.
- 10) **Payment** –
  - i. SIGMA Technology Solutions will grant credit at its absolute discretion and reserves all rights to refuse credit to the extent of applicable law.
  - ii. SIGMA Technology Solutions will, unless otherwise agreed in writing, require a non-refundable deposit to be paid at the time of order.
  - iii. Unless otherwise agreed in writing payment for all Products and/or Services must be made in full, without any deductions unless agreed in writing, within 14 days from date of invoice. Time for payment shall be of the essence.
  - iv. Failure to pay any overdue invoices or charges shall entitle SIGMA Technology Solutions to suspend any unexecuted or future orders without further notice and at their sole discretion.
  - v. Failure to pay according to these terms, or as otherwise agreed in writing, shall entitle SIGMA Technology Solutions to, at its sole discretion and without further notice, to charge Statutory Interest on any overdue balances together with a late payment fee of £50. Statutory Interest will be charged for the period from the payment due date until the date the date on which payment is made. Failure to pay any Statutory Interest and late payment fees shall also invoke clause 10(iv).
  - vi. If failure to pay is due to any cheques, standing orders or direct debits in the Customer's name being dishonoured then this will invoke clause 10(iv) together with a further charge of £80 to cover bank and administrative costs.
  - vii. Set-off – SIGMA Technology Solutions reserves the right to, at any time and without limiting any other rights and remedies that it has, set-off any amount owed to it by the Customer against any amount owed by SIGMA Technology Solutions to the Customer.
- 11) **Risk, Title and Ownership** – risk in the Products will pass to the Customer upon delivery. Ownership is established by the transfer of title which shall not pass to the Customer until payment has been made in full and the funds have been cleared. Until title has passed the Customer must act in his capacity of fiduciary owner and hold the Products as SIGMA Technology Solutions' Bailee and, at no cost to SIGMA Technology Solutions, must also:
  - i. Store the Products safely in suitable conditions separately from other Products such that they remain easily identifiable as SIGMA Technology Solutions' property
  - ii. Maintain in good condition and do not destroy or deface any labelling, identifying marks or packaging associated with the Products
  - iii. Maintain adequate insurance on SIGMA Technology Solutions' behalf for full value/price against all risks and to hold any proceeds of such insurance on trust for SIGMA Technology Solutions and not mix them with other monies or pay them into an overdrawn bank account.

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The Customer shall not be entitled to resell the Products until title has passed to the Customer.

Where title has not yet passed to the Customer and the Customer commits a material breach of any of the obligations contained within these Terms or any contract governed by these Terms is terminated under clause 22 then SIGMA Technology Solutions shall be entitled to recover payment for the Products notwithstanding that the Customer does not have title to them.

The Customer grants SIGMA Technology Solutions, its agents, sub-contractors and employees an irrevocable licence to enter premises where the Products are known to be or believed to be stored to inspect and where the Customer has never had or no longer has title to recover the Products.

On termination of any contract governed by these Terms, the Customers obligations and SIGMA Technology Solutions' rights under this clause 11 shall remain in effect.

## 12) Intellectual Property –

- i. All rights, title and interest in any Intellectual Property created by SIGMA Technology Solutions during the performance of this Agreement is and shall remain the property of SIGMA Technology Solutions. Unless confirmed in writing and signed by an authorised representative of SIGMA Technology Solutions nothing in the terms of this agreement shall vest any ownership rights in the Client.
- ii. SIGMA Technology Solutions hereby grants, for the sum of £1, a sole, non-exclusive licence to the Client to use the Intellectual Property created by SIGMA Technology Solutions during the performance of this Agreement for the purposes for which it was created as part of the Agreement subject to the following conditions:
  - a) Full payment has been made by the Client for the work completed according to the terms of this agreement
  - b) The Intellectual Property cannot be used for any purposes which are libellous, defamatory, pornographic, obscene or otherwise unlawful in the jurisdiction in which they are used.
  - c) The Client may not sub-licence the Intellectual Property without the prior written consent of SIGMA Technology Solutions.
- iii. The use of the Intellectual Property other than for the purposes for which it was created as part of the Agreement will require further written licence, the terms of which will be determined and agreed in writing at that time by SIGMA Technology Solutions and the Client.
- iv. This licence, granted to the Client, shall be automatically revoked if any of the terms in clause 12(ii) are breached.
- v. SIGMA Technology Solutions warrants that it does not hold any intellectual property rights which may affect its ability, either directly or indirectly to perform its obligations under this agreement.
- vi. SIGMA Technology Solutions may use material created during the performance of this Agreement for their own publicity campaigns.

## 13) Limitation of liability – SIGMA Technology Solutions limits its liability to the maximum extent permitted by applicable law and we expressly exclude:

- i. All representations, warranties and conditions relating to the supply of the Products and the use of them including, without limitation, any warranties implied by law in respect of satisfactory quality or fitness for purpose.
- ii. Any liability for any direct, indirect or consequential loss or damage incurred by you in connection with use of the Products. This includes, but is not limited to, liability in respect of the Customer and/or any 3<sup>rd</sup> party for: Loss of income or revenue; Loss of profits; Loss of business; Loss of data; Loss of goodwill; Loss of opportunity; Customer-generated content, or lack thereof, that results in a breach of legal requirements such as but not limited to the General Data Protection Act and European Accessibility Act; Any indirect, consequential or special loss or damage; Wasted management or staff time;

Nothing in this disclaimer will:

- i. Limit or exclude our or our liability for death or personal injury resulting from negligence;
- ii. Limit or exclude our or our liability for fraud or fraudulent misrepresentation;
- iii. Limit any of our liabilities in any way that is not permitted under applicable law;
- iv. Exclude any of our liabilities that may not be excluded under applicable law.

Subject to the preceding provisions the limitations and exclusions of liability govern all liabilities arising from the supply of the Products and/or Services under contracts governed by these Terms including all liabilities arising in contract, tort (including negligence) and for breach of statutory duty.

## 14) Confidentiality - The Customer agrees that they will not disclose SIGMA Technology Solutions' Confidential Information to anyone other than an employee or consultant with the Customer, nor will they use any Confidential Information for any purpose other than for the execution of any contract governed by these Terms. Upon termination of this Agreement the Customer agrees to return all Confidential Information in their possession to SIGMA Technology Solutions. For the purposes of this clause Confidential Information includes any information that is not already in the public domain that is:

- i. Information specifically designated by SIGMA Technology Solutions as confidential
- ii. Information relating to the components, costs, Production processes, profitability, development programmes or any information identified by SIGMA Technology Solutions as "trade secret" of any Product produced by SIGMA Technology Solutions

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- iii. Information relating to business and marketing plans, customers or clients, associates, agents, partners or affiliates of SIGMA Technology Solutions
  - iv. Information relating to business structure, processes, turnover, profitability or forward strategy of SIGMA Technology Solutions.
- The obligations of this clause shall survive the termination of the Agreement in perpetuity.

## 15) Unlawful software or content – SIGMA Technology Solutions reserves the right:

- i. To refuse to handle any software or content material that is unlawful because of copyright or licensing infringements or any content material that under the laws of England & Wales is deemed to be discriminatory, obscene (including material in breach of the Obscene Publications Act 1959, the Protection of Children Act 1978, the Sexual Offences Act 2003), blasphemous, offensive to religion or defamatory towards any person living or dead and contains material that has been obtained in violation of the Data Protection Act 1998, the Freedom of Information Act 2000, the Regulation of Investigatory Powers Act 2000, the Privacy and Electronic Communication Regulations 2003, the Official Secrets Act or any analogous domestic or foreign legislation and contains any material that will constitute a contempt of court. If any such material is found on any equipment then SIGMA Technology Solutions, at its sole discretion, may report this fact to the relevant authorities.

## 16) Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013

- i. If the Customer is a consumer and if SIGMA Technology Solutions has agreed your requirements at a face to face meeting away from our premises and the Customer has either confirmed the contract at that meeting or immediately after that meeting or has purchased services from SIGMA Technology Solutions via an organised distance selling operation then the above Regulations may apply.
- ii. **Right to cancel:** If these Regulations apply, the Customer has the right to cancel the order within 14 days of SIGMA Technology Solutions receiving the confirmation of order. In order to do so the Customer must cancel the agreement in writing or by fax or email to SIGMA Technology Solutions. In the case of contracts for service SIGMA Technology Solutions cannot start to supply the service until the 14 days cancellation period has expired unless we receive a request in writing from the Customer to start the service within the 14 day cancellation period. **PLEASE NOTE: In requesting an early start to the service the Customer agrees to forfeit their right to cancel within 14 days as provided for in the Regulations.**
- iii. SIGMA Technology Solutions shall carry out the agreed services as efficiently as possible, but the nature of the services may mean that we are unlikely to be able to perform the contract within the maximum period of 30 days laid down by the Regulations. **PLEASE NOTE: By accepting these terms of business the Customer is agreeing that we need not perform the contract within a maximum of 30 days.**

## 17) Bribery and ethics - Neither party shall, at any time, engage in, nor require the other party to engage in, activities which are contrary to The Bribery Act 2010, The Competition Act 1998 or any other analogous local laws including but not limited to:

- i. The offering of any inducement or reward whether financial or otherwise to any 3<sup>rd</sup> party whatsoever in relation to the activities covered by this agreement.
- ii. Any attempt to manipulate markets or engage in any activity that constitutes a restraint of free trade including, but not limited to, market share agreements, pricing fixing, predatory pricing or resale price maintenance.
- iii. Both parties agree to uphold the highest standards of business ethics in their dealings with each other and 3<sup>rd</sup> parties associated with the activities covered by any contract governed by these Terms.

## 18) Health and Safety – Both parties shall ensure that any employees, associates, consultants or anyone else for whom they are vicariously liable shall at all times comply with any existing health and safety requirements on either party's premises and will at all times conduct themselves in a way that is in accordance with safe working practices whilst performing their duties under any contract governed by these Terms.

## 19) Data Protection – Both parties undertake and agree that they will comply fully with the requirements of the Data Protection Act 2018, General Data Protection Regulation 2018 and any other relevant analogous local legislation during the performance of their duties under any contract governed by these Terms. In this respect both parties will indemnify and hold harmless the other party from any of their actions in breach of data protection that lead to the other party being sued by a 3<sup>rd</sup> party.

## 20) Equality Act – Both parties undertake and agree that they will comply with all aspects of the Equality Act 2010 and will not directly or indirectly discriminate against any person during the performance of their duties under any contract governed by these Terms.

## 21) Privacy – Neither party will, under any circumstances, share or sell any of the other party's details or information to any 3<sup>rd</sup> party without that party's prior written consent.

## 22) Waiver – No waiver, by either party, whether implied or express, of any particular provision of these Terms, or of any breach or default of either party, shall constitute either a continuing waiver of such provisions or a waiver of any other provisions of the Terms.

## 23) Termination of Contract –

- i. **Cancellation by Customer** - any contract governed by these Terms may not be cancelled by the Customer without the SIGMA Technology Solutions' prior written consent. Upon giving consent SIGMA Technology Solutions reserves the right to charge a cancellation fee relating to Products that are the subject of the contract in order to cover liquidated losses by SIGMA Technology Solutions arising from the cancellation.

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- ii. **Cancellation by SIGMA Technology Solutions** – SIGMA Technology Solutions can terminate any contract governed by these Terms immediately upon written notice to the Customer and suspend any further deliveries if the following happen or SIGMA Technology Solutions reasonably believes that they may happen:
  - a. The Customer fails to perform any of its obligations within the contract
  - b. The Customer suspends all payments and ceases or threatens to cease trading or performing its business obligations.
  - c. A receiver or administrator is appointed over any assets, including property, of the Customer
  - d. The Customer makes or proposes to make any voluntary arrangement with its creditors, enters into administration, is unable to pay its debts as they fall due, makes an application to a court to suspend enforcement action against it goes into liquidation or becomes insolvent.
  
- 24) **Force Majeure** - SIGMA Technology Solutions shall not be liable for delay in performing or for failure to perform its obligations if the delay or failure results from any of the following: Acts of God; Outbreak of hostilities, riot, civil disturbance, acts of terrorism; The act of any government or authority (including refusal or revocation of any licence or consent); Fire, explosion, flood, fog or bad weather; Power failure, failure of telecommunications lines, failure or breakdown of plant, machinery or vehicles; Default of suppliers or sub-contractors; Theft, malicious damage, strike, lock-out or industrial action of any kind; Any cause or circumstance whatsoever beyond SIGMA Technology Solutions' reasonable control
  
- 25) **Notice** - Any notice or communication served during the performance of this agreement shall be sent by hand or by recorded delivery first class post to the following address: SIGMA Technology Solutions, 32 Bankfield Street, Liverpool, L20 8EJ.
  
- 26) **Severability** - the provisions of these Terms are severable and if any part thereof is held to be invalid or unenforceable by any court then it will not affect the validity or enforceability of any of the remaining provisions.
  
- 27) **Governing Law** - Any differences arising between SIGMA Technology Solutions and the Customer concerning this Agreement or the rights and liabilities within it shall be governed by and interpreted, in all respects, in accordance with the Laws of England. The parties hereby submit to the exclusive jurisdiction of the English Courts.
  
- 28) **Third Party Rights** – a person who is not a party to any contract governed by these Terms (a 3<sup>rd</sup> Party) shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of these Terms.
  
- 29) **Dispute Resolution** - The parties shall attempt to resolve any dispute arising out of or relating to this contract through negotiations between representatives of the parties, who have authority to settle such disputes. If the matter is not resolved by negotiation within 30 days of receipt of a written 'invitation to negotiate', the parties will attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution (ADR) procedure. If the matter has not been resolved by an ADR procedure within 60 days of the initiation of that procedure, or if any party will not participate in an ADR procedure, the dispute may be referred to arbitration by any party. Nothing in this clause shall be construed as prohibiting a party or its affiliate from applying to a court for interim injunctive relief.

**Whole Agreement** – These Terms governing any contract established with the Customer constitute the entire Agreement between SIGMA Technology Solutions and the Customer and supersede any and all prior terms whether written or oral. No modification to the Terms or any claimed waiver shall be deemed to be valid unless in writing and signed by authorised representative of SIGMA Technology Solutions.