

GENERAL TERMS AND CONDITIONS

1. BASIS OF CONTRACT

- 1.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.
- 1.2 The Order shall only be deemed to be accepted when BlueCreation issues written acceptance of the Order at which point and on which date the Contract shall come into existence (Commencement Date).
- 1.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of BlueCreation, which is not set out in the Contract.
- 1.4 Any samples, drawings, descriptive matter or advertising issued by BlueCreation and any descriptions of the Goods or illustrations or descriptions of the Services contained in BlueCreation's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.
- 1.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 1.6 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

2. GOODS

- 2.1 The Goods are described in the Quotation or Invoice as Goods Specification.
- 2.2 BlueCreation reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirements.

3. DELIVERY OF GOODS

3.1 The delivery of Goods is described in the Shipping Policy document (Document ID: SHIPPOLICY-002) available on the Website or upon Request.

4. QUALITY OF GOODS

4.1 The Warranty Policy is described in the Limited Warranty document (Document ID: WARRANTYDOC-003) available on the Website or upon Request.

5. TITLE AND RISK

5.1 The risk in the Goods shall pass to the Customer on completion of delivery.

5.2 Title to the Goods shall not pass to the Customer until BlueCreation receives payment in full (in cash or cleared funds) for the Goods and any other goods that BlueCreation has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.

6. SUPPLY OF SERVICES

6.1 BlueCreation shall provide the Services to the Customer in accordance with the Service Specification. The Services specifications are described in the Invoice or Quote.

6.2 BlueCreation shall use all reasonable endeavours to meet any performance dates for the Services specified in the purchase order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

6.3 BlueCreation warrants to the Customer that the Services will be provided using reasonable care and skill.

7. CUSTOMER'S OBLIGATIONS

7.1 The Customer shall:

- (a) ensure that the terms of the Order and (if submitted by the Customer) the Goods Specification are complete and accurate;
- (b) co-operate with BlueCreation in all matters relating to the Services;

- (c) provide BlueCreation, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by BlueCreation to provide the Services;
- (d) provide BlueCreation with such information and materials as BlueCreation may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
- (e) prepare the Customer's premises for the supply of the Services;
- (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;

7.2 Without prejudice or limitation to any other rights or remedies available to the parties, if BlueCreation's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation or requirement in these Conditions or the Proposal ("Customer Default"), BlueCreation and the Customer shall endeavour to agree the impact on the Proposed Work.

8. CHARGES AND PAYMENT

- 8.1 The price for Goods shall be the price set out in the Order or, if no price is quoted, the price set out in BlueCreation's published price list as at the date of delivery. The price of the Goods is exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be paid by the Customer when it pays for the Goods.
- 8.2 The charges for Services shall be on a time and materials basis and the charges shall be calculated in accordance with BlueCreation's standard daily fee rates, as set out in the Purchase Order.
- 8.3 In respect of Goods and Services, BlueCreation shall invoice the Customer 50% on Order and 50% on Delivery. Payment must be made within 7 days of the invoice being issued unless stated otherwise.
- 8.4 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**).
- 8.5 If the Customer fails to make any payment due to BlueCreation under the Contract by the due date for payment ("Due Date"), BlueCreation shall have the right to charge interest on the overdue amount at the rate of eight percent (8%) per annum above the Bank of England base rate accruing on a daily basis from the Due Date until the date of actual payment. The

Customer shall pay all amounts due under the Contract in full to BlueCreation without any deduction whatsoever.

9. INTELLECTUAL PROPERTY RIGHTS

9.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by BlueCreation unless stated otherwise in the Proposal.

9.2 A Melody Software license agreement includes the license to make, use, sell and lease Products that include a Melody software and are described by Patent Application Serial No. GB2499073 filed 21 November 2012 by TPT Cambridge, Toll Drove, Manea, Cambridgeshire, PE15 0JX.

10. CONFIDENTIALITY

A party (receiving party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (disclosing party), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 10 shall survive termination of the Contract.

11. LIMITATION OF LIABILITY:

11.1 Nothing in these Conditions shall limit or exclude BlueCreation's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);

11.2 Subject to clause 11.1:

- (a) BlueCreation shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract ; and
- (b) BlueCreation's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed £10,000.

11.3 BlueCreation Shall have no liability except as expressly set out in the Contract. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

11.4 This clause 11 shall survive termination of the Contract.

12. TERMINATION

12.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing of the breach;
- (b) the other party enters into any compromise or arrangement with its creditors, a resolution is passed or an order is made for or in connection with the winding up or bankruptcy of that other party (being a company), an administrator, receiver or administrative receiver is appointed in respect of the other party or its assets;
- (c) any event occurs with respect to the other party in any jurisdiction that has an effect equivalent or similar to any of the events mentioned in clause 8.1.2;
- (d) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.

12.2 Without limiting its other rights or remedies, BlueCreation may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.

- 12.3 Without limiting its other rights or remedies, BlueCreation may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and BlueCreation if the Customer fails to pay any amount due under this Contract on the due date for payment, if the Customer becomes subject to any of the events listed in clause 12.1 or BlueCreation reasonably believes that the Customer is about to become subject to any of them.
- 12.4 On termination of the Contract for any reason:
- (a) the Customer shall immediately pay to BlueCreation all of BlueCreation's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, BlueCreation shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - (b) the Customer shall return all of BlueCreation Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then BlueCreation may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
 - (c) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

13. FORCE MAJEURE

- 13.1 For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of BlueCreation including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of BlueCreation or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 13.2 BlueCreation shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 13.3 If the Force Majeure Event prevents BlueCreation from providing any of the Services and/or Goods for more than 6 weeks, BlueCreation shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

14. ALTERNATIVE DISPUTE RESOLUTION

If any dispute arises in connection with these terms and conditions, the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (“CEDR”) Model Mediation Procedure. Unless otherwise agreed between the parties the mediator will be nominated by the CEDR. To initiate the mediation a party must give notice in writing (“ADR notice”) to the other party to the dispute requesting a mediation. A copy of the request should be sent to CEDR. The cost of the mediation will be shared equally between the parties to the dispute. The venue for any mediation will be England. No party may commence any proceedings in relation to the dispute arising out of the terms and conditions until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

15. GENERAL

15.1 **Assignment and other dealings.** Except where otherwise provided in these Conditions, neither party shall without the prior consent of the other, assign, transfer, charge or deal in any other manner with all or any of its rights or obligations under the Contract.

15.2 **Notices.** Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be sent by pre paid first class post to its principal place of business, or sent by fax or email to the other party's fax number or email address as is notified by it. Any notice or other communication shall be deemed to have been duly received if sent by pre-paid first class post, at 9am on the second Business day after posting, or if sent by fax or email, on the next Business Day after transmission. This clause 13 shall not apply to the service of any proceedings or other documents in any legal action. For the purpose of this clause, “writing” includes emails.

15.3 **Non Solicitation.** In order to protect both parties neither party shall directly or indirectly, solicit or entice away any staff or employee engaged in the Contract to leave their employment throughout the duration of the contract and for a period of one year after.

15.4 Severance

- (a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

- (b) If one party gives notice to the other of the possibility that] any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

15.5 **Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

15.6 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

15.7 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

15.8 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by BlueCreation.

15.9 **Governing law.** This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

15.10 **Jurisdiction** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

16. INTERPRETATION

16.1 Definitions. In these Conditions, the following definitions apply:

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Commencement Date: has the meaning set out in clause 1.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 15.8.

Contract: the contract between BlueCreation and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

Customer: the person or firm who purchases the Goods and/or Services from BlueCreation.

Deliverables: the the deliverables set out in the Order.

Force Majeure Event: has the meaning given to it in clause 14.

Goods: the goods (or any part of them) set out in the Order.

Goods Specification: any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and BlueCreation.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world

Order: the Customer's order for the supply of Goods and/or Services, as set out the Customer's purchase order form

Services: the services, including the Deliverables, supplied by BlueCreation to the Customer as set out in the Service Specification below.

Service Specification: the description or specification for the Services provided in writing by BlueCreation to the Customer.

BlueCreation: Cambridge Executive Limited registered in England and Wales with company number 7187383.

16.2 **Construction.** In these Conditions, the following rules apply :

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its personal representatives, successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or

statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

- (d) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) a reference to **writing** or **written** includes faxes and e-mails.