



The David Lloyd Leisure Limited Conditions of Purchase

1. INTERPRETATION

1.1

In these Conditions of Purchase:

Conditions of Purchase' means the terms and conditions set out in this document together with, as appropriate, any other terms or conditions incorporated into the Agreement (if any) by express written agreement between DLL and the Company

'Agreement' means the Conditions of Purchase or, as appropriate, the supply agreement identified by the supply agreement number, for the sale of the Goods and / or the Services by the Company and purchase of the Goods and / or the Services by DLL (the "Supply Agreement"). In the event of any conflict between the terms of the Supply Agreement and the terms set out here, the former shall apply

'Delivery Address' means the delivery address overleaf

'Goods' means the goods (if any) described overleaf

'Order / Purchase Order' means the order overleaf

'Order Number' means the Purchase Order number overleaf

'Services' means the services (if any) described overleaf

'Company' means the person, firm or company identified as supplier overleaf

'DLL' means David Lloyd Leisure Limited whose registered office is 4th Floor, St Alphage House, 2 Fore Street, London, EC2Y 5DH (company number 01516226).

1.2

The headings in these Conditions of Purchase are for convenience only and shall not affect their construction.

2. AGREEMENT TO PURCHASE

2.1

The Order constitutes an offer by DLL to purchase the Goods and/or the Services subject to the Conditions of Purchase and despatch or delivery of the Goods, or the commencement of supply of the Services by the Company shall constitute the Company's acceptance of these Conditions of Purchase.

2.2

These Conditions of Purchase or, as appropriate the terms of the Supply Agreement shall prevail to the exclusion of any other terms and conditions on which any quotation has been given to DLL or other variation and no variation of the Conditions of Purchase, Order or Agreement shall be binding unless made by written agreement between DLL and the Company.

3. PRICE

3.1

The price of the Goods and/or the Services shall be as stated in the Order and, unless otherwise so stated, shall be exclusive of value added tax (which shall be payable by DLL subject to receipt by DLL of a value added tax invoice) and inclusive of all charges for packaging, packing, carriage, insurance, and delivery of the Goods to the Delivery Address and any other duties or imposts other than value added tax.

3.2

DLL shall be entitled to set off any sum due by DLL to the Company against any sum due to DLL by the Company.

4. INSPECTION AND TESTING

4.1

The Company shall permit DLL or OLL's authorised representative to inspect and test the Goods at any time during manufacture, processing or storage and to inspect and test

performance of the Services at the premises of the Company or any third party and the Company shall provide or procure the provision of all such facilities and accommodation as may reasonably be required by DLL for inspection and testing. The Company shall at the request of DLL, supply to DLL a copy of the Company's test sheets certified by the Company to be a true copy.

4.2

If, as a result of such inspection or testing, DLL is of the opinion that the Goods do not comply with the Agreement or are unlikely on completion of manufacture or processing so to comply, upon DLL so informing the Company, the Company shall immediately take such steps as may be necessary to enable the Company to comply with the Agreement.

4.3

For the avoidance of doubt such inspection or right to inspect on the part of DLL shall not constitute acceptance or approval by DLL of the Goods or Services.

5. DELIVERY

5.1

The Goods shall be delivered and the Services shall be performed on the date or within the time period stated in the Order at the Delivery Address or as may be directed by DLL. Where the date of delivery of the Goods or of performance of the services is not specified in the Order, the Company shall give DLL reasonable notice of the date thereof and shall not perform their duties under this order until DLL have confirmed that the date of performance is acceptable.

5.2

The Company shall give DLL in good time any instruction or information required to enable DLL to take delivery of the Goods and performance of the Services.

5.3

DLL shall be entitled to reject any Goods delivered which are not in accordance with the Agreement and shall not be deemed to have accepted any Goods until DLL has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent. In the event of any failure on the part of the Company to supply Goods or Services of the quality, in the quantity and to the time specified, DLL shall be entitled to: 5.3.1 reject, and to require the Company to replace, at no charge, any such Goods; or

5.3.2

reject and obtain equivalent Goods or Services from an alternative source and the Company undertakes to reimburse DLL for any reasonable additional costs incurred in so doing.

5.4

Time of delivery of the Goods and of performance of the Services shall be of the essence of the Agreement.

5.5

Any extension of time for delivery or performance must be agreed in advance between DLL and the Company in writing. If time is so extended, time as extended shall be of the essence of the Agreement.

5.6

If the Goods are to be delivered or the Services are to be performed by instalments, the Agreement will be treated as a single contract and not severable.

5.7

Delivery shall not be effected until the Goods have been unloaded and (if relevant) the Services have been performed and accepted in writing by an authorised officer, employee, or representative of DLL.

5.8

The Order Number must be quoted on all correspondence relating to the Order. A delivery or advice note must accompany all Goods dispatched to the Delivery Address. Goods or Services not accompanied by a delivery or advice note may be refused.

6. TITLE AND RISK

6.1

Title in the Goods shall pass to DLL upon delivery unless payment is made prior to delivery in which case it shall pass to DLL once payment has been made and the Goods have been appropriated to the Agreement.

6.2

Risk of damage to or loss of the Goods supplied shall pass to DLL upon delivery in accordance with the Agreement.

6.3

The Company shall insure the Goods to their full value against all risks of damage or loss prior to completion of delivery by whomsoever effected.

7. WARRANTIES AND LIABILITIES

7.1

The Company warrants to DLL that the Goods will:

7.1.1 be of satisfactory quality and fit for any purpose made known to the Company by DLL. When assessing satisfactory quality, DLL will take into account any public statement made by the Company or by any third party supplier engaged by the Company;

7.1.2

be free from defects in design, material and workmanship, and that the Company, upon becoming aware of any defect whatsoever in the Goods immediately notify DLL of such defect and confirm the same in writing to DLL within three (3) days of such defect being identified;

7.1.3

correspond in quality, quantity and description with any specifications, stipulations or any other information contained in the Order or supplied by DLL to the Company or agreed in writing by DLL and shall correspond in all respects with any samples or patterns provided by the Company to DLL or by DLL to the Company; and

7.1.4

comply with all applicable regulations and other legal requirements concerning the manufacture, sale, packaging, carriage, packing, delivery or disposal of the Goods and the performance of the Services.

7.2

The Company warrants to DLL that the Services will be performed by appropriately qualified and trained personnel acting with due care and diligence and to the best industry standard.

7.3

The Company shall indemnify DLL in full against all losses, damages (including but not limited to loss or damage to property or DLL's business or death or personal injury), liabilities, fines, penalties, costs and expenses (including legal expenses whether or not proceedings are brought) of whatsoever nature awarded against or incurred or paid by DLL as a result or in connection with:

7.3.1

any breach of any warranty given by the Company in relation to the Goods or Services;

7.3.2

any claim that the Goods infringe or their importation use or resale infringes the patent, copyright, design right, trade mark or other intellectual property rights of any other person except to the extent that any such claim arises from compliance with a specification or design supplied by DLL;

7.3.3

any liability under the Consumer Protection Act 1987 or subsequent consumer protection legislation;

7.3.4

any act or omission of the Company or its employees, agents or subcontractors in supplying delivering and installing the Goods or in performing the Services; and

7.3.5

the supply, delivery and installation of the Goods and the performance of the Services.

7.4

Nothing in this clause shall render the Company liable to indemnify DLL if and to the extent that it is proved to DLL's satisfaction that such losses, damages, claims, liabilities, fines, penalties, costs and expenses result from any act, negligence or default of DLL's authorised servants or agents.

7.5

The Company warrants that any equipment, software and system to be developed for or supplied to DLL pursuant to the Agreement, and any equipment, software and system used by the Company or used by any supplier of goods or services to the Company to provide the Goods and / or services to DLL is and will be programmed to adapt to and accommodate changes in dates, including without limitation, century dates and leap years, without detriment or deterioration in

performance affecting DLL and undertakes to indemnify DLL and hold DLL harmless against all costs, losses and liability including legal fees arising from any breach of this Clause.

8. FORCE MAJEURE

8.1

DLL and the company shall not be liable for any failure or delay in supplying the Goods or Services or in receiving or making use of the Goods or Services due wholly or partially to any event beyond the reasonable control of the parties ("Force Majeure Event") including without limitation, acts of God, war, acts of terrorism, riot, civil commotion, malicious damage, fire, flood or storm. For the avoidance of doubt strikes, industrial action, third party insolvency and/or failure shall not be considered a Force Majeure Event.

8.2

If either party is prevented, hindered or delayed from or in performing any of its obligations under this Agreement by reason of a Force Majeure Event, it shall within 2 days give written notice to the other party declaring the extent of the Force Majeure Event, the date of its commencement and the effects of the Force Majeure Event on its ability to perform its obligations under this Agreement and if mutually agreed by the parties then the obligations of the party so affected shall thereupon be suspended for so long as the circumstances may continue.

8.3

A party affected by a Force Majeure Event is to use every reasonable effort to minimise the effects thereof and shall resume performance as soon as possible after the removal of such Force Majeure Event. If the period of non-performance exceeds fourteen (14) days from the receipt of the notice of the Force Majeure Event, the party whose performance has not been so affected may, by giving written notice, terminate the agreement forthwith.

9. TERMINATION & BREACH

9.1

DLL shall have the right to terminate this Agreement with immediate effect by notice in writing to the Company being in breach of any of its obligations under this Agreement. In case of any breach which is capable of remedy, DLL shall serve a written notice on the company specifying the nature of such breach and where such breach is remediable the company shall have failed to remedy such breach within the maximum period of fourteen (14) days from the date of service of such notice.

9.2

In the case of a material breach, which is not capable of remedy, DLL shall have the right to terminate this Agreement with immediate effect.

9.3

The Company shall have the right to terminate this Agreement in the event of DLL being in breach of "any of its obligations under this Agreement, provided that the Company shall first have served a written notice on DLL specifying the nature of such breach and where such breach is remediable

DLL shall have failed to remedy such breach within the maximum period of fourteen (14) days from the date of service of such notice.

9.4

The Company or DLL may (without prejudice to any other rights or remedy of the other party) terminate this Agreement by notice to take immediate effect if any of the following events occur in respect of the other:

- a) The Company or DLL makes or offers to make any arrangement or composition with or for the benefit of its creditors (including any voluntary arrangement as defined in the Insolvency Act 1986); or
- b) The Company or DLL ceases or threatens to cease to carry on business or suspends or threatens to suspend all or substantially all of its operations (other than temporarily by reason of a strike) or suspends payments of its debts or becomes unable to pay its debts (within the meaning of Section 123 of the Insolvency Act 1986 where applicable) or commits any act of insolvency or bankruptcy; or

- c) A petition or resolution for the making of an administration order for the bankruptcy, winding-up or dissolution of the Company or DLL for the purposes of reconstruction or amalgamation of the solvent company is presented or passed; or
- d) The Company or DLL files a voluntary petition in bankruptcy or insolvency; or
- e) A liquidator, trustee, supervisor, receiver, administrator, administrative receiver or encumbrancer takes possession of or is appointed over the whole or any part of the assets of the Company or DLL; or
- f) There is a change of control of the Company. For the purpose of this Clause 9.4 (f), "control" means the ability to direct the affairs of another whether by voting or contractual rights or otherwise and whether directly or indirectly.

If DLL reasonably apprehends that any of the events mentioned in Clause 9.4 (a) to (f) above are about to occur in relation to the Company then DLL shall be entitled to terminate this Agreement immediately upon written notice at which point any sums payable by the Company to DLL under this Agreement shall become due and payable.

9.5

DLL shall have the right to terminate this Agreement at any time on three (3) months' written notice.

10. ELECTRONIC DATA INTERCHANGE

Where the parties communicate using direct computer to computer interchange of computer processable data (whether with or without the assistance of a value added network or other intermediary) then the terms and conditions of the Interchange Agreement shall apply, a copy of which is available from DLL upon request. In the event of any conflict between the terms of the Interchange Agreement and the terms here set out, the latter shall apply.

11. ASSIGNMENT AND CONTRACTING

11.1.

The Company shall not assign, sub-contract or transfer or purport to assign, sub-contract or transfer any of its rights or obligations under this Agreement without the prior written consent of DLL.

11.2

Any consent given by DLL to the Company under condition 11.1 shall not impose any duty on DLL to enquire as to competency of any sub-contractor and the Company shall ensure that any subcontractor is competent and that performance of the Agreement is properly carried out. In the event that any sub-contractor is subsequently deemed in DLL'S reasonable opinion not to be suitable on technical or commercial grounds then the Company shall replace that sub-contractor with an alternative sub-contractor also approved in writing by DLL.

11.3

DLL shall have the right to assign, sub-contract or transfer any or all of its rights or obligations under this Agreement in whole or in part.

12 GENERAL

12.1

No waiver by DLL of any breach of the Agreement shall be considered as a waiver of any subsequent breach of the same or any other provision.

12.2

If any provision of these Conditions of Purchase is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions of Purchase and the remainder of the provision in question shall not be affected thereby.

12.3

Any notice required or permitted to be given by either party to the other shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

12.4

Notwithstanding the fact that the Company may have or have had business dealings with DLL, DLL's name shall not be used by the Company for the purpose of advertisement or publicity without the prior written consent of DLL.

12.5

All copyright, designs, domain names, patents, trade marks and all other intellectual property, which may from time to time be licensed to the Company under this Agreement, shall remain the exclusive property of DLL.

13. CONFIDENTIALITY

13.1

During the term of this Agreement and after termination or expiration of this Agreement the terms of this Agreement and any information concerning the business affairs of the one party which comes into the possession of the other party or any other contracted party under or pursuant to this Agreement shall be confidential to the parties and shall not be disclosed to any outside party (save as required by any law, regulation or court order) or used other than for the purposes of this Agreement without the prior written consent of the other party, unless the information is manifestly in the public domain or already in the possession of the receiving party (other than as a result of a breach of confidentiality).

13.2

In particular, the Company shall not disclose to any outside party any prices being paid by DLL or any details of any computer or other data of DLL to which the Company may have access from time to time for the purposes of this Agreement and the Company shall take all actions as are necessary to ensure that their personnel and any subcontractors engaged by it in accordance with this

'Agreement observe these provisions of confidentiality.

14. LAW AND JURISDICTION

14.1

This Contract shall be governed by English law.

14.2

The Parties to this Contract submit to the exclusive jurisdiction of the English Courts.

Dated March 03.