



TERMS & CONDITIONS

STANDARD TERMS AND CONDITIONS OF CGI DESIGN LIMITED FOR THE SALE OF GOODS AND SERVICES

1. INTERPRETATION

1.1. The definitions and rules of interpretation in this condition apply in these conditions.

Business Day: any day other than Saturday or Sunday or a bank or public holiday in England;

Client: the person, firm or company who purchases the Goods and/or Services from the Company.

Company: Visivo (A trading name of Thirty Six Visualisation Services Limited) Westwood House, 78 Loughborough Road, Quorn, Leicestershire, LE12 8DX

Contract: any contract between the Company and the Client for the sale and purchase of the Goods and/or Services, incorporating these conditions.

Document: includes, in addition to a document in writing, a map, plan, design, drawing, picture or other image, or any other record of any information in any form.

Goods: any goods and/or Output Material agreed in the Contract to be supplied to the Client by the Company (including any part or parts of them).

Input Material: means any Documents or other materials, and any data or other information

CGI Quotation: provided by the Client relating to the Services. IPR: all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Output Material: means any Documents or other materials, and any data or other information provided by the Company relating to the Services.

Quotation: a document to be provided by the Company to the Client detailing the initial quotation, proposals and production program.

Services: any services which the Company provides to the Client (including any part or parts of them).

VAT: value added tax chargeable under English law for the time being and any similar additional tax.

2. APPLICATION OF TERMS

2.1. Subject to any variation under condition 2.3 the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Client purports to apply under any purchase order, confirmation of order, specification or other document).

2.2. No terms or conditions endorsed on, delivered with or contained in the Client's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

2.3. These conditions apply to all the Company's sales and any variation to these conditions and any representations about the Goods and/or Services shall have no effect unless expressly agreed in writing and signed by the Company. The Client acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.

2.4. Each order or acceptance of a Quotation for Goods and/or Services the by the Client from the Company shall be deemed to be an offer by the Client to purchase Goods and/or Services subject to these conditions.

2.5. No order placed by the Client shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods or supplies the Services to the Client.

2.6. The Client shall ensure that the terms of its order and any applicable specification are complete and accurate.

2.7. Any Quotation is given on the basis that no Contract shall come into existence until the Company dispatches an acknowledgement of order to the Client. Any Quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.

3. DESCRIPTION

3.1. The quantity and description of the Goods and/or Services shall be as set out in the Company's Quotation or acknowledgement of order.

3.2. All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions, illustrations contained in the Company's catalogues or brochures or any other Documents are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.

3.3. The Services supplied under the Contract shall continue to be supplied until the project is completed or until the Contract is terminated in accordance with condition 12.

4. DELIVERY AND PERFORMANCE

4.1. The Company shall procure the availability of personnel to provide the Services and shall ensure that the personnel use reasonable skill and care in the performance of the Services.

4.2. The Client shall at its own expense supply the Company with all necessary Documents or other materials, and all necessary data or other information relating to the Specified Service, within sufficient time to enable the Company to provide the Service in accordance with the Contract. The Client shall ensure the accuracy of all Input Material. The Client shall at its own expense retain duplicate copies of all Input Material and insure against its accidental loss or damage. The Supplier shall have no liability for any such loss or damage however caused.

4.3. The Company may at any time without notifying the Client make any changes to the Specified Service which are necessary to comply with any applicable safety or other statutory requirements, or which do not materially affect the nature or quality of the Specified Service.

4.4. The Client shall take delivery of the Goods within 7 Business Days of the Company giving it notice that the Goods are ready for delivery.

4.5. Any dates specified by the Company for delivery of the Goods or performance of the Services are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.

4.6. Subject to the other provisions of these conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods or in the supply of the Services (even if caused by the Company's negligence), nor shall any delay entitle the Client to terminate or rescind the Contract unless such delay exceeds 180 days.

4.7. If for any reason the Client fails to accept delivery

of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Client has not provided appropriate instructions, documents, licenses or authorisations: (a) risk in the Goods shall pass to the Client (including for loss or damage caused by the Company's negligence); (b) the Goods shall be deemed to have been delivered; and (c) the Company may store the Goods until delivery, whereupon the Client shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

4.8. The Client shall: (a) co-operate with the Company in all matters relating to the Services; (b) promptly provide all Input Material; and (c) provide such other information as the Company may request and the Client considers reasonably necessary, in order to carry out the Services and ensure that it is accurate in all material respects.

5. NON-DELIVERY

5.1. The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Client gives written notice to the Company of the non-delivery within 7 Business Days of the date when the Goods would in the ordinary course of events have been received.

5.2. Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

6. RISK/TITLE

6.1. All Goods will remain the property of the Company until the price of such Goods has been paid in full but risk in the Goods will pass to the Client from the date of delivery.

6.2. The Client's right to possession will terminate immediately upon the occurrence of an event which would allow the Company to terminate the Contract under Condition 12.1.

6.3. The Client grants the Company, its agents and employees an irrevocable license at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Client's right to possession has terminated, to recover them.

6.4. The Client grants the Company, its agents and employees an irrevocable license at any time to use any and all Goods for the purpose of marketing.

7. PRICE

7.1. Unless otherwise agreed, the price payable by the Client for the Goods and/or Services will mainly be by reference to the time spent in producing the

or received).

7.2. At the outset, the Company will either estimate the price that will be due for the Goods and/or Services or, alternatively, agree a fixed fee with the Client. This information will be included in the Quotation.

7.3. Notwithstanding clause 7.2, the Clients shall pay any additional sums which are agreed between the Supplier and the Company for the provision of the Service or which, in the Supplier's sole discretion, are required as a result of the Client's instructions or lack of instructions, the inaccuracy of any Input Material or any other cause attributable to the Client.

7.4. If the Company is unable to fulfil the supply of Goods and/or Services then it will be entitled to terminate the contract render an invoice for all costs or time incurred up to the date of termination.

7.5. All prices shall be subject to VAT.

8. PAYMENT

8.1. Work will only begin upon receipt of the initial non-refundable 100% deposit. The balance of the invoice amount is payable upon completion of the works.

8.2. An invoice may be raised at any time by the Company.

8.3. Time for payment shall be of the essence.

8.4. No payment shall be deemed to have been received until the Company has received cleared funds.

8.5. All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.

8.6. The Client shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Client has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Client.

8.7. If the Client fails to pay the Company any sum due pursuant to the Contract, the Client shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 3% above the base lending rate from time to time of Santander Bank, accruing on a daily basis until payment is made, whether before or after any judgment.

9. QUALITY

9.1. The Company warrants that (subject to the other provisions of these conditions) upon delivery the Goods shall: (a) be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and (b) be reasonably fit for any particular purpose for which the Goods and/or Services are being bought if the Client had made known that purpose to the Company in writing and the Company has confirmed in writing that it is reasonable for the Client to rely on the skill and

judgment of the Company.

9.2. The Company shall not be liable for a breach of any of the warranties in condition 9.1 unless: (a) the Client gives written notice of the defect to the Company, and, if the defect is as a result of damage in transit, to the carrier, within 7 Business Days of the time when the Client discovers or ought to have discovered the defect; and (b) the Company is given a reasonable opportunity, after receiving the notice, of examining such Goods and the Client (if asked to do so by the Company) returns such Goods to the Company's place of business at the Company's cost for the examination to take place there.

9.3. The Company shall not be liable for a breach of any of the warranties in condition 9.1 if: (a) the Client makes any further use of such Goods after giving such notice; or (b) the defect arises because the Client failed to follow the Company's oral or written instructions or good trade practice; or (c) the Client alters or repairs such Goods without the written consent of the Company.

9.4. Subject to condition 9.2 and condition 9.3, if any of the Goods do not conform with any of the warranties in condition 9.1 the Company shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if the Company so requests, the Client shall, at the Company's expense, return the Goods or the part of such Goods which is defective to the Company.

9.5. If the Company complies with condition 9.4 it shall have no further liability for a breach of any of the warranties in condition 9.1 in respect of such Goods.

10. LIMITATION OF LIABILITY

10.1. Subject to condition 4, condition 5 and condition 9, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Client in respect of: (a) any breach of these conditions; (b) any use made or resale by the Client of any of the Goods, or of any product incorporating any of the Goods; and (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

10.2. All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979 or section 2 Sale and Supply of Goods and Services Act 1982) are, to the fullest extent permitted by law, excluded from the Contract.

10.3. Nothing in these conditions excludes or limits the liability of the Company: (a) for death or personal

injury caused by the Company's negligence; or (b) under section 2(3), Consumer Protection Act 1987; or (c) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or (d) for fraud or fraudulent misrepresentation.

10.4. Subject to condition 10.2 and condition 10.3: (a) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and (b) the Company shall not be liable to the Client for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

11. INTELLECTUAL PROPERTY

11.1. All IPR and all other rights in the Services and/or Goods in whatever form used or produced in the course of the Services shall remain vested in or shall vest in the Company absolutely unless otherwise agreed with the Client in writing. The Company grants to the Client an irrevocable, non-exclusive and royalty-free license to use the Goods and Services, including any such documentation and materials, for the purpose(s) for which they were devised.

11.2. Any Input Material or other information provided by the Client which is so designated by the Client shall be kept confidential by the Company and any information provided by the Company which is so designated by the Company shall be kept confidential by the Client; but the foregoing shall not apply to any Documents or other materials, data or other information which are public knowledge at the time when they are so provided by either party, and shall cease to apply if at any future time they become public knowledge through no fault of the other party. The Client warrants that any Input Material and its use by the Company for the purpose of providing the Service will not infringe the copyright or other rights of any third party.

11.3. The Client shall at all times indemnify the Company in respect of costs, loss, damages and expenses resulting from claims by any third party that the Company has breached that third party's IPR as a result of using any Input Materials supplied by the Client to the Company.

12. TERMINATION

12.1. The Company may by written notice terminate the Contract immediately if the Client is in material breach of the Contract or enters into insolvency,

bankruptcy, any arrangement with its creditors or any other arrangement or situation which has a like effect. Failure to pay any sums due in accordance with condition 8 is a material breach of the terms of the Contract which is not capable of remedy.

12.2. The company may terminate this Agreement at any time by giving not less than 1 months' written notice to the other party.

12.3. The termination of the Contract howsoever arising is without prejudice to the rights, duties and liability of either the Client or the Company accrued prior to termination. The conditions which expressly or impliedly have effect after termination will continue to be in force notwithstanding termination.

13. ASSIGNMENT

13.1. The Company may assign the Contract or any part of it to any person, firm or company. 13.2. The Client shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

14. FORCE MAJEURE

The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Client (without liability to the Client) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, govern- mental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 30 Business Days, the Client shall be entitled to give notice in writing to the Company to terminate the Contract.

15. COMMUNICATIONS

15.1. All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax: (a) (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Client by the Company; or (b) (in the case of the communications to the Client) to the registered office of the addressee or such other address as shall be notified to the Company by the Client.

15.2. Communications shall be deemed to have been received: (a) if sent by pre-paid first class post, two



days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or (b) if delivered by hand, on the day of delivery; or (c) if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.

16. GENERAL

16.1. Time for performance of all obligations of the Client is of the essence. Time for performance of all obligations of the Company is not of the essence.

16.2. Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

16.3. If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable, and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

16.4. Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

16.5. Following the conclusion of a project on behalf of a Client the Company will retain any Client information for such a period as they shall deem appropriate in their absolute discretion. A Client who requires such documentation to be kept for any specific period shall give notice in writing to the Company to that effect and, in the event of such notice being given the Company reserves the right to require the Client to take personal custody of the information.

16.6. Nothing in the Contract is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

16.7. These terms and conditions, together with the Quotation, constitute the whole agreement between the parties relating to the subject matter they cover and supersede any arrangements, understanding or previous agreements between the parties relating to such subject matter.

16.8. The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any

person that is not a party to it.

16.9. The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.