

## CONDITIONS OF PURCHASE – IDEAL SHOPPING DIRECT PLC

### 1. Definitions

In these conditions: “the Agreement” means the agreement for the purchase of the Goods by the Buyer from the Seller , comprising the Purchase Order, the Buyer’s Supplier Manual, these conditions and all terms and conditions implied by law;

“Buyer” means Ideal Shopping Direct Plc;

“Goods” means the items in the quantities specified in the Purchase Order;

“Laws & Regulations” means all applicable Statutes, Laws, Rules, Regulations, Orders, European Community Directives and Regulations, British, Irish and European Community standards and Codes of Practice in force from time to time in the European Community ;

“Marks” means the trade and service marks, trade names, patents, designs and copyright registered, owned, licensed or used by the Seller in connection with the Goods;

“Purchase Order” means the Purchase Order ( or in the case of direct dispatch the DD confirmation order ) in respect of the Goods;

“Seller” means the Seller who signs these conditions.

### 2. (a) Delivery

(i) The Seller will pack the Goods and protect them against damage and deterioration and deliver them at the time(s) and delivery points specified in the Purchase Order or as otherwise specified by the Buyer . All direct dispatch Goods must be dispatched by the Seller within 48 hours of receipt of the Buyer’s pick list and use the Buyer’s mail stamp unless otherwise agreed. The Seller will pay or reimburse to the Buyer all expenses incurred by the Buyer as a result of packing, marking or routing, or reworking any Goods not supplied in accordance with these conditions.

(ii) Unless stated otherwise on the Purchase Order, Goods are to be delivered in one consignment and the Seller will pay all freight, packing and insurance charges relating to the delivery of the Goods.

(iii) Direct dispatch Goods are delivered to the Buyer’s customer at the Seller’s risk and expense. Claims from the Buyer’s customer for goods not received or damaged on receipt will be recharged to the Seller.

**(b)Late Delivery**

(i) Time is of the essence. If there is any actual or anticipated delay in delivery, the Seller will promptly inform the Buyer. If the Goods or any part of them are not delivered (or the Buyer believes are not capable of delivery) at the agreed time and place, the Buyer may terminate this Agreement in respect of the undelivered Goods and any part of the Goods already delivered and/or any other order from the Buyer to the Seller. Goods will be returned at the Seller's expense and risk

(ii) If the Goods are late and as a result the Buyer's customer(s) cancels its order, the Buyer may charge the Seller for the loss of revenue on the cancelled order(s).

(iii) Any charges incurred by the Buyer when informing customers of late delivery of stock will be charged onto the Seller @ £0.50 per item.

(iv) If as a result of late delivery an out of stock situation arises resulting in backorders, all charges incurred by the Buyer in liaising with customers and fulfilling these late orders, will be passed onto the Seller. The charges will be made up of administration, labour and stationery costs @ £2.00 per item plus applicable carriage costs.

**(c) Non-Delivery**

In the event of non delivery the Buyer may charge the Seller for loss of revenue expected from the sale of those Goods.

**(d) Early or Excess Delivery:**

Goods delivered to the Buyer prior to the delivery date(s) specified on the Purchase Order may at the Buyer's option but at the Seller's risk and expense be returned to the Seller to be held to the order of the Buyer until delivery on the date(s) specified in the Purchase Order. If the Seller sends Goods in excess of the quantity specified in the Purchase Order, the Buyer may accept or reject them. If not accepted, the Buyer may return the Goods at the Seller's risk and expense.

**(e) Chargeback Policy**

The Buyer operates a chargeback policy in relation to shipments that do not satisfy the purchase, delivery or quality requirements given in the Buyer's Supplier Manual and these Conditions of Purchase. Details of the charges that may be incurred are given in the Supplier Manual.

**3. Grant of Rights to Sell and Market**

The Seller hereby grants to the Buyer the right to market, use and sell the Goods including the Marks, and all materials provided by the Seller to market the Goods.

#### **4. Warranties and Representations of Seller**

The Seller represents and warrants to the Buyer that:

- (a) the Seller possesses all licences, permits and consents required, necessary or desirable to enter into this Agreement and to grant to the Buyer the rights set out in this Agreement ;
- (b) the Goods and the Seller's performance of this Agreement ( including but not limited to the production, sales, packaging, labelling, safety, import and transport of Goods and all related representations and advertising by the Seller) comply at all times with all Laws and Regulations;
- (c) the Goods are new of satisfactory quality and reasonably fit for their purpose and free from all defects, comply with any samples and written documentation provided by the Seller, and are not reworked, rebuilt or refurbished;
- (d) where applicable, reasonable and representative tests as prescribed by Laws and Regulations have been performed or will be performed before delivery of the Goods to the Buyer;
- (e) The Seller shall supply with the Goods, in English, all instructions for or warnings with respect to doing or refraining from doing anything with or in relation to the Goods necessary to render the Goods safe and without defect within the meaning of the Consumer Protection Act 1987 and any Law or Regulation;
- (f) all manufacturers' warranties are effective and enforceable by both the Buyer and its customer(s);
- (g) neither the Goods nor any component part is subject to any duty, tariff, value added tax or penalty except as previously disclosed in writing by the Seller to the Buyer;
- (h) the Goods and similar goods are not and have not been subject to product liability claims or product recall notices;
- (j) the Seller gives all the warranties in this condition 4 on the basis that they or any of them will be treated as written warranties for the purpose of Section 33 of the Weights and Measures Act 1985;
- (i) the Seller will maintain for the life of the Goods, Public Liability Insurance coverage on the Goods, including full Products Liability, infringement and advertising injury, for not less than £5,000,000 on standard terms and with an insurance company of repute acceptable to the Buyer and shall at the request of the Buyer promptly provide the Buyer with a certificate of insurance.

## **5. Indemnity**

The Seller hereby agrees to indemnify and hold harmless the Buyer, subsidiaries, associated companies and each of their respective employees, agents, officers, directors, successors and assigns from and against any and all liabilities, obligations, claims, actions or demands arising directly or indirectly from:

- (a) the infringement and/or alleged infringement of any Marks or any other third party rights arising from the supply, use, sale or promotion of the Goods;
- (b) any alleged and/or actual defect in any of the goods and/or any alleged and/or actual injury to persons or damage to property arising out of the supply or use of the Goods ( including any product recall);
- (c) the exercise of all or any part of the rights granted to the Buyer under this Agreement;
- (d) the Seller's breach of any of the obligations, representations, warranties or covenants, whether express or implied, contained herein;
- (e) the repossession, or garnishment, lien, levy, attachment of or on the Goods.

## **6. Termination by Buyer**

- (a) The Buyer may terminate this Agreement in respect of all or part of the Goods with no liability to the Seller and without prejudice to any other right or remedy if:
  - (i) the Buyer is notified that any Goods infringe or are alleged to infringe any Marks; or
  - (ii) there is any anticipated breach of this Agreement by the Seller ( including pursuant to condition 2 b (i)); or
  - (iii) there is any unforeseen event which may adversely affect the Buyer's ability to take physical delivery of the Goods, or any substantial change to the Buyer's business for any reason.
- (b) If the Seller being an individual (or, if the Seller is a firm, any partner of the firm) becomes bankrupt, or if the Seller being a company has a receiving order or administration order made against it, makes any composition or arrangement with or for the benefit of his creditors, passes a resolution or the Court makes an order that the company shall be wound up (other than for the purpose of amalgamation or reconstruction), if a receiver or administrator is appointed, if circumstances arise which entitle the Court or a creditor to appoint a receiver or manager or administrator or which entitle the Court to make a winding-up order, or if anything analogous to the foregoing occurs in any relevant jurisdiction, then the Buyer may cancel the Agreement or any part of it without compensation to the Seller.
- (c) If the Seller is in breach of the Agreement, and has failed to remedy the breach within 14 days of receipt of a notice requiring remedy, the Buyer may terminate the Agreement and any order with by notice in writing to the Seller without compensation.

- (d) The exercise of the right granted to the Buyer under sub-clauses (a) (b) and (c) of this condition will not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Buyer.
- (e) If the Seller is in breach of any term of the Agreement, the Buyer may recover all losses which are a reasonably foreseeable result of that breach, including additional costs incurred, loss of profit and claims by the Buyer's customers.

## **7. Passing of Risk and Property**

Property and risk in the Goods shall pass from the Seller to the Buyer following acceptance of the Goods by the Buyer ( or in the case of direct delivery , acceptance by the Buyer's customer). This does not affect any of the Buyer's other rights under this Agreement.

If Goods are returned to the Seller for any reason, risk will pass back to the Seller when they leave the Buyer's premises and title will pass back when the Buyer receives a credit or refund of all amounts to be paid to the Seller in respect of the Goods.

## **8. Acceptance and Rejection of Goods**

- (a) Without prejudice to any other rights/or remedies under this Agreement, the Buyer may reject or revoke acceptance of Goods which:
  - (i) are not in compliance with the Agreement, including substitute Goods , or Goods which do not comply with sample or description, which do not meet the Buyer's quality control tests or Buyer's carrier's drop or other tests; and/or
  - (ii) are delivered contrary to instructions or in excess of the agreed quantity; and/or
  - (iii) are returned by the Buyer's customer for any reason; and/or
  - (iv) violate or allegedly violate any Laws and Regulations; and/or
  - (v) do not comply with the Buyer's Supplier Manual.
- (b) The Seller acknowledges that the Buyer does not inspect each item on receipt of Goods and therefore defects, imperfections or non-conformity with the Agreement may not be discovered by the Buyer until Goods shall have been purchased by customers and returned to the Buyer. No inspection or failure to inspect will affect the Buyer's subsequent right to reject Goods.
- (c) If the Buyer inspects or tests the Goods for quality control purposes and 5% or more of the Goods inspected or tested fail, the Buyer may inspect or test the remainder of the Goods at the Seller's expense.
- (d) Rejected Goods will be returned to the Seller at the Seller's expense and risk. The Buyer may return Goods without additional authorisation, and the Seller agrees to

accept the returns. Goods returned or rejected by the Buyer are not to be replaced by the Seller without the prior written approval of the Buyer.

**9. Time for Payment**

(a) Unless otherwise agreed in writing by a Director of the Buyer or in the Agreement, the Buyer will pay 60 days after the date of receipt of the Seller's invoice, which should be submitted to the Buyer's Finance Department and not included with the Goods on or after delivery of the Goods, subject to the Goods being delivered in accordance with the Agreement and there being no query regarding the order.

(b) The Buyer may set-off against any amount payable by the Buyer to the Seller, whether under the Agreement or otherwise, against any amounts which the Seller may owe to the Buyer under the Agreement or otherwise. The Buyer may also withhold payment in respect of Goods are in the Buyer's warehouse awaiting return.

**10. Goods on Sale or Return and samples**

(a) Unless otherwise agreed in writing by the Buyer, all samples are provided free of charge and on the basis that the Buyer need not return them or pay for them.

(b) Unless otherwise agreed in writing by the Buyer, all purchases are "Sale or Return"; the Buyer may return to the Seller for credit or refund at the Buyer's option all or any portion of the Goods that the Buyer has not sold, or which have been returned to the Buyer by its customer under the terms of the statutory 7 day cancellation right or the Buyer's money back guarantee offered by the Buyer to its customers. This right is in addition to any other right to return or reject the Goods under this Agreement.

(c) If the Buyer elects for a refund, the Seller shall repay the price originally paid for the Goods within 30 days of return. The Buyer may issue a debit note and credit the Supplier's account immediately on dispatch of the Goods.

(d) Expenses incidental to the return of Goods under this condition will be paid by the Seller unless otherwise specified on the Purchase Order.

(e) Any query relating to debit notes issued by the Buyer, and / or the receipt of returned goods shall be notified to the Buyer within 14 days of issue of the debit note, after which time no dispute will be accepted.

(f) The Buyer reserves the right at any time, to withhold up to 20% of the gross amount of the Seller's invoice for a maximum period equal to the 30 day money back guarantee period granted to its customers, to cover anticipated returns.

## **11. Product Recall**

If the Seller becomes aware of any defect or possible defect in the Goods that may or will require the Goods to be recalled from customers or consumers, it will immediately inform the Buyer. The Seller will co-operate with the Buyer and any applicable regulatory authority. All costs are to the account of the Seller.

The Seller will not make any public statement in relation to a product recall without the Buyer's consent ( not to be unreasonably withheld or delayed ) , unless required by Law or Regulation.

## **12. No Assignment by Seller**

The Seller shall not factor, assign , sub-let or otherwise deal, in whole or in part, with any rights, claims or obligations under this Agreement. Factoring does not work in practice when goods are supplied on sale or return.

## **13. Further Assurance by the Seller**

The Seller shall at its cost and expense provide the Buyer with any and all documents requested or required by the Buyer from time to time to give effect to the terms of this Agreement.

## **14. Confidentiality**

- (a) Subject to condition 14(b) below, the Seller agrees that it will treat as confidential the terms of the Agreement and all information of whatever nature or sort relating in any manner to the business or affairs of the Buyer which it may obtain in connection with this Agreement and will not disclose such information to any person, firm or company (other than to its professional advisers) or to the media and will not use such information other than for the purposes of this Agreement.
- (b) All customer data supplied remains the property of the Buyer and may not be used by the Supplier or disclosed other than for the purposes of this Agreement.
- (c) Condition 14(a) above shall not apply to any information which is in the public domain other than by default of the Seller, or which has already been independently generated by the Seller, or which is required to be disclosed by law or the valid order of a Court of competent jurisdiction or the request of any competent governmental or regulatory authority.

## **15. Law and Jurisdiction**

This Agreement shall be governed by the Laws of England, and the parties submit to the exclusive jurisdiction of the English courts.

**16. Waiver**

Any waiver of this Agreement by the Buyer must be in writing and signed by a director of the Buyer. It will not prevent the Buyer from subsequently taking action in respect of the same or other matters.

**17. Severability of Provisions**

In the event of any term of this Agreement being held or otherwise deemed to be void and/or unenforceable then it shall be deleted from this agreement but all of the other provisions will remain in full force and effect.

**18. Amendment and Entire Agreement**

The Agreement may only be amended in writing, signed by an authorised person on behalf of the Seller and the Buyer. The Agreement sets out the whole agreement between the parties and no other terms or conditions will apply. This does not exclude the liability of either party for death or personal injury or fraudulent misrepresentation.

**19. Third Party Rights**

The rights and benefits under the Agreement are expressly made available to the Buyer and all associated companies. Unless otherwise expressly agreed in writing by the Seller and the Buyer, nothing in these conditions is intended by the parties to confer any rights or benefits on other third parties. No party except the Seller and the Buyer shall be required to consent to a variation or termination of the Agreement.

**Name of Supplier** .....

I confirm that I have read and understood the attached terms and conditions, and agree to be bound by them in respect of any dealings between me/us and Ideal Shopping Direct Plc.

Signed ..... Dated .....  
Name ..... Position re Supplier .....

**NEW UK SUPPLIER ACCOUNT AGREEMENT**

AGREEMENT between IDEAL SHOPPING DIRECT PLC ( ISD )AND

.....

("The Supplier").

Company number: .....

Registered office address .....

.....

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Supplier's remittance address ( if different ) :

Name (to whom invoices will be paid): .....

Telephone number: .....

Email address: .....

Fax number: .....

VAT number .....

.....

Agreed settlement terms are (tick relevant box):

1. ISD standard terms. 60 days from receipt of invoice.

2. Settlement discount terms

Discount % .....

Period .....

Preferred Payment Method : **BACS**

BACS details as follows:

Company name .....  
Sort code .....  
Bank account number .....  
Bank name .....  
Branch address .....

Contact ..... Position.....

Address to which returns should be sent.

Returns Address .....

.....

Returns Contact .....

Returns telephone number

.....

Signed for the Supplier .....

DATE .....

.....

ISD accounts contact .....

ISD accounts telephone number.....

ISD accounts fax number .....

ISD accounts email address .....