

TERMS AND CONDITIONS OF BUSINESS

TVSAS Brighton & Portsmouth Limited

1 DEFINITIONS

The following expressions shall have the following meanings:

- 1.1 'Company' shall mean TVSAS Brighton and Portsmouth Limited and TVSAS Brighton and Portsmouth Limited trading as Smartouch, Company Registration Number 06374140
- 1.2 'Customer' shall mean any person, organisation, business or public body whom the Company agrees to supply Goods and Services
- 1.3 The Company reserves the right to refuse or decline supply of Goods and Services at its own discretion.
- 1.4 Where the Company agrees to carry out installations for the Customer those installations shall be undertaken by the designated technician or subcontractor appointed by the Company at its absolute discretion
- 1.5 'Proposal' shall mean a statement of installation, estimate, quotation or other similar document describing the Goods and Services
1. 'Goods and Services' shall mean the services as described in the Proposal and includes any labour, materials, software and programming required to complete the installation
- 1.8 'Terms and Conditions' shall mean these terms and conditions as set out in this document and any subsequent terms and conditions agreed in writing by the Company
- 1.9 'Order' shall mean the formal acceptance by the Customer of the Proposal
- 1.10 'Contract' shall mean the contract between the Company and the Customer for the provision of the Goods and Services incorporating these Terms and Conditions;
- 1.11 'Intellectual Property Rights' shall mean any registered or unregistered patent, trademark, copyright, design, programming, expertise, confidential information or process, any application for any of the above, and any other Intellectual Property Right recognised in any part of the world whether or not presently existing or applied for, and shall remain the property of the Company and cannot be used by the Customer without the written permission of the Company
- 1.12 'Adjudicator' is the party nominated to resolve a dispute between the Customer and the Company.

2 GENERAL

- 2.1 These Terms and Conditions shall apply to the Contract for the supply of Goods and Services by the Company to the Customer and shall supersede any other documentation or communication between the Company and the Customer.
- 2.2 Any variation to these Terms and Conditions must be agreed in writing by the Company.
- 2.3 Nothing in these Terms and Conditions shall prejudice any condition or warranty, express or implied, or any legal remedy to which the Company may be entitled in relation to the Goods and Services, by virtue of any statute, law or regulation.

3 PROPOSAL

- 3.1 The Proposal for Goods and Services attached to these Terms and Conditions shall remain valid for a period of 90 days
- 3.2 The Customer must accept the Proposal in its entirety.
- 3.3 The Customer shall be deemed to have accepted the Proposal by placing an Order with the Company.

4 PROVISION OF SERVICES

- 4.1 The Goods and Services are as described in the Proposal.
- 4.2 The Company reserves the right to vary the price of any additional Goods and Services requested by the Customer which were not included in the original Proposal

5 ADVERTISING MATERIAL

- 4.3 Any media contained in advertising material or websites issued by the Company are for the sole purpose of illustration of the Goods and Services and will not form part of any Contract unless otherwise agreed in writing by the Company

6 HOURS OF WORK

- 6.1 The Goods and Services will be delivered between the hours of 0800 and 1730, Monday to Friday.
- 6.2 The Company reserve the right to carry out work outside of these hours and at weekends if deemed necessary or requested by the Customer and this work may attract a premium labour rate
- 6.3 Dates given for the installation of Goods and Services are estimates only and not guaranteed. Time for installation shall not be of the essence of the Contract and the Company shall not be

12 WARRANTY

- 12.1 The Company warrants the installation to be defect free for a period of twelve months from the invoice date
- 12.2 Failure to follow instructions, misuse, alteration or unauthorised repair, improper maintenance or negligence on the part of the Customer or a third party will void the warranty
- 12.3 The warranty excludes fair wear and tear, lamps, fuses or other consumables.
- 12.4 Where projects involve installations by third party trades, any damage to the Company installation by third parties shall remain the responsibility of the Customer. Any rectification costs must be paid by the Customer prior to commencement of further work by the Company. Recovery of such costs from any third party shall be the Customers responsibility.
- 12.5 Installations may be fitted with tamper seals or lock-outs. All warranty is void if seals are broken or Company software has been tampered with.
- 12.6 If the Goods and Services are found to be defective in accordance with these Terms and Conditions then the Company shall, at their sole discretion, either repair, re-perform or replace the Goods and Services or refund any monies paid for the defective Goods and Services.
- 12.7 If the Customer has not paid for the Goods and Services in full by the date the defect in Goods and Services is notified to the Company then the Company has no obligation to remedy the defects

14 TERMINATION

- 14.1 Either party may terminate the Contract by notice in writing to the other if:
 - 14.1.1 the other party commits a material breach of these Terms and Conditions and, in the case of a breach capable of being remedied, fails to remedy it within a reasonable time of being given written notice from the other party to do so; or
 - 14.1.2 the other party commits a material breach of these Terms and Conditions which cannot be remedied under any circumstances; or
 - 14.1.3 the other party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect; or
 - 14.1.4 the other party ceases to carry on its business or substantially the whole of its business; or
 - 14.1.5 the other party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets.
- 14.2 In the event of termination the Customer must make over to the Company any payment for installation done and expenses incurred up to the date of termination.
- 14.3 Any rights to terminate the Contract shall be without prejudice to any other accrued rights and liabilities of the parties arising in any way out of the Contract as at the date of termination.

15 LIMITATION OF LIABILITY

- 15.1 Nothing in these Terms and Conditions shall exclude or limit the liability of the Company for death or personal injury, however the Company shall not be liable for any direct loss or damage suffered by the Customer howsoever caused, as a result of any negligence, breach of contract or otherwise in excess of the price of the Service and/or the Goods.
- 15.2 The Company shall not be liable under any circumstances to the Customer or any third party for any indirect or consequential loss of profit, consequential or other economic loss suffered by the Customer howsoever caused, as a result of any negligence, breach of contract, misrepresentation or otherwise.
- 15.3 For the avoidance of doubt, time shall not be of the essence and the Company shall incur no liability to the Customer in respect of any failure to complete the Services or supply the Goods by any agreed completion date.

16 INDEMNITY

- 16.1 The Customer shall indemnify the Company against all claims, costs and expenses which the Company may incur and which arise directly or indirectly from the Customer's breach of any of its obligations under these Terms and Conditions.

held liable for any loss, costs, damages, charges or expenses caused directly or indirectly by any delay in the installation.
6.4 Emergency Call-Out rates will apply for non scheduled Orders and will be charged at a premium labour rate

7 PAYMENT

7.1 The Company requires full payment on completion of the Order, unless previously agreed in writing with the Customer
7.2 A non-refundable deposit may be required with the Order
7.3 Where Orders involve separate first and second fix installations, part payment may be due on completion of first fix
7.4 Payment is accepted by bank transfer, cash and credit card
7.5 Late payments will attract daily interest at 10% above the base lending rate of the Bank of England.
7.6 The Company reserves the right to suspend installation or Orders immediately should an account become overdue.
7.7 The Company reserves the right to recover all reasonable expenses incurred in obtaining late payment from the Customer
7.8 The Customer is not entitled to withhold any monies due to the Company unless written notice is given within 7 days from date of invoice. The amount to be withheld and the reasons must be clearly specified
7.9 In the event of non payment the Company reserve the right to collect goods supplied by the Company and withhold any certificates, logins & software activations for installation carried out until such payments are made.
7.10 Title or ownership of any property or materials belonging to the Company remains with the Company until payment is received from the Customer in full.

8 VAT

8.1 VAT is payable at the current rate for all Goods and Services specified in the Proposal

9 CUSTOMER OBLIGATIONS

9.1 The Customer will provide access to the Company at the times specified in these Terms and Conditions and will co-operate with all reasonable requests from the Company.
9.2 The Customer will provide electricity, water and toilet facilities to the Company for the purpose of completing the Contract
9.3 The Customer will apply for, obtain and meet the cost of all necessary approvals and permissions required to complete the Contract prior to the commencement of the installation.
9.4 The Customer will take all reasonable steps to ensure that the Company does not sustain any damage or loss to any Company equipment stored on site.
9.5 The Customer shall be liable for any expenses incurred by the Company as a result of the Customers failure to comply with the obligations as defined by these Terms and Conditions.

10 COMPANY OBLIGATIONS

10.1 The Company shall supply the Goods and Services as specified in the Proposal.
10.2 The Company shall perform the Services with reasonable skill and care and to a reasonable standard and in accordance with recognised codes of practice.
10.3 The Company shall comply with all relevant health and safety regulations.
10.4 The Company shall be registered with the appropriate organisation for the purpose of self-certification or notify building control to arrange for an inspection of the installation carried out if so required to do so in terms of the relevant building regulations.
7.5 In addition to the undertakings specified in Clause 7.4 the Company shall ensure that all necessary licences and permissions required to provide the Goods and Services are current including
7.6 The Company shall be responsible for all waste management and disposal required in the course of providing the Goods and Services.
7.7 The Company shall hold valid employer and public liability insurance policies.

11 CANCELLATION

11.1 The Customer may cancel an Order for Goods and Services by notifying the Company in writing within 14 days of placing the Order and any monies paid by the Customer will be refunded in full subject to the deduction of an administration charge of 10% or as determined by the Company.
11.2 If the Customer does not notify cancellation within 14 days of placing the Order and any monies paid by the Customer will not be refunded

16.2 The Company undertakes that it will indemnify and hold harmless the Customer against all proceedings, costs, expenses, liabilities, injury, death or damages arising from negligent performance or breach or failure of performance by the Company of any obligations under these Terms and Conditions.

17 SETTLEMENT OF DISPUTES

17.1 Any dispute arising under this Contract will be referred to and decided by the Adjudicator appointed by application to the Construction Industry Council
17.2 A party wishing to refer a dispute to the Adjudicator shall advise the other party of this intention in writing at any time during the term of this Contract. The dispute must then be referred to the Adjudicator within seven (7) days of this intention being intimated.
17.3 During the period of adjudication both parties must continue with their obligations as stated in this Contract.
17.4 The decision of the Adjudicator is binding on both parties unless and until revised by legal proceedings, arbitration or Contract.
17.5 The Adjudicator will decide which party is liable to meet the fees of the adjudication and in what proportion if both parties are held liable.

18 FORCE MAJEURE

Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, breakdown of plant or machinery or shortage or unavailability of raw materials from a natural source of supply, and the party shall be entitled to a reasonable extension of its obligations.

19 ASSIGNMENT

The Customer shall not be entitled to assign its rights or obligations or delegate its duties under the Contract without the prior written consent of the Company.

20 SEVERANCE

If any term or provision of these Terms and Conditions is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Terms and Conditions had been agreed with the invalid, illegal or unenforceable provision eliminated.

21 WAIVER

The failure by either party to enforce at any time or for any period any one or more of the Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all Terms and Conditions.

22 NOTICES

Any notice to be given by either party to the other may be served by email, fax, personal service or by post to the address of the other party given in the Proposal or such other address as such party may from time to time have communicated to the other in writing, and if sent by email shall unless the contrary is proved be deemed to be received on the day it was sent, if sent by fax shall be deemed to be served on receipt of an error free transmission report, if given by letter shall be deemed to have been served at the time at which the letter was delivered personally or if sent by post shall be deemed to have been delivered in the ordinary course of post.

23 THIRD PARTY RIGHTS

Nothing in these Terms and Conditions intend to or confer any rights on a third party.

24 ENTIRE CONTRACT

24.1 These Terms and Conditions supersede any previous Contracts, arrangements, documents or other undertakings either written or oral.
24.2 No party has the right to alter these terms and conditions without prior written notification of changes from the Company to the Customer

LAW AND JURISDICTION

These terms and conditions and all contracts awarded between the Company and Customer shall be governed and construed in accordance with English law and shall be subject to the exclusive jurisdiction of the English law.