



# Terms and Conditions

This agreement applies as between you, the User of this Web Site and Simply Crates, the owner(s) of this Web Site. Your agreement to comply with and be bound by these terms and conditions is deemed to occur upon your first use of the Web Site. If you do not agree to be bound by these terms and conditions, you should stop using the Web Site immediately.

## **1. Intellectual Property**

- a) All Content included on the Web Site, unless uploaded by Users, including, but not limited to, text, graphics, logos, icons, images, sound clips, video clips, data compilations, page layout, underlying code and software is the property of Simply Crates, our affiliates or other relevant third parties. By continuing to use the Web Site you acknowledge that such material is protected by applicable United Kingdom and International intellectual property and other relevant laws.
- b) You may not reproduce, copy, distribute, store or in any other fashion re-use material from the Web Site unless otherwise indicated on the Web Site or unless given express written permission to do so by Simply Crates.

## **2. Links to Other Web Sites**

This Web Site may contain links to other sites. Unless expressly stated, these sites are not under the control of Simply Crates or that of our affiliates. We assume no responsibility for the content of such web sites and disclaim liability for any and all forms of loss or damage arising out of the use of them. The inclusion of a link to another site on this Web Site does not imply any endorsement of the sites themselves or of those in control of them.

## **3. Links to this Web Site**

Those wishing to place a link to this Web Site on other sites may do so only to the home page of the site without prior permission.



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### **4. Privacy**

- a) For the purposes of applicable data protection legislation, Simply Crates will process any personal data you have provided to it in accordance with its Privacy Policy available on the Simply Crates website or on request from Simply Crates.
- b) You agree that, if you have provided Simply Crates with personal data relating to a third party (1) you have in place all necessary appropriate consents and notices to enable lawful transfer of such personal data to Simply Crates and (2) that you have brought to the attention of any such third party the Privacy Notice available on the Simply Crates's website or otherwise provided a copy of it to the third party. You agree to indemnify Simply Crates in relation to all and any liabilities, penalties, fines, awards or costs arising from your non-compliance with these requirements.

### **5. Availability of the Web Site**

- a) The Service is provided "as is" and on an "as available" basis. We give no warranty that the Service will be free of defects and / or faults. To the maximum extent permitted by the law we provide no warranties (express or implied) of fitness for a particular purpose, accuracy of information, compatibility and satisfactory quality.
- b) Simply Crates accepts no liability for any disruption or non-availability of the Web Site resulting from external causes including, but not limited to, ISP equipment failure, host equipment failure, communications network failure, power failure, natural events, acts of war or legal restrictions and censorship.

### **6. Basis Of Order And Acknowledgement**

- a) The Contract is subject to these terms and conditions to the exclusion of all other terms and conditions (including any terms and conditions you purport to apply in any Contract). Any quotation provided by us shall be valid for fourteen (14) days only or such other time as we may specify in writing. Any quotation provided by us is not an offer and may be withdrawn or modified at any time.
- b) You shall ensure that the terms of your purchase order or request are complete and accurate.



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- c) A Contract shall not be effective until we have issued written acknowledgment and acceptance of such Contract (notwithstanding any earlier confirmation of receipt). We may in our sole discretion decline any purchase order placed by you. No change or modification of the Contract shall be allowed after acceptance by us unless authorised by a Change Order delivered by you and accepted in writing by us.
- d) If there is any conflict between our quotation and our acknowledgment of the Contract then the latter shall take precedence.

### **7. Description And Specification Of The Goods**

- a) The description, and/or specification of the Product shall be set out in our quotation or our acknowledgement of the Contract. All drawings, descriptions, weights, dimensions, etc. are issued to provide an approximate idea of the Product and Services described in them and do not form part of the Contract unless expressly stated in the Contract or otherwise agreed to in writing by us.
- b) You shall determine the suitability of the Product for your use and/or application. You shall be solely responsible for the accuracy and regulatory compliance of your designs, drawings, specifications and other data supplied to us by you, even if we examine, inspect, study or comment to you regarding any such designs, drawings, specifications or other data.

### **8. Delivery And Acceptance**

- a) Unless agreed otherwise by us in writing or expressly stated in the quotation provided to you we will arrange for the Carrier to transport the Product.
- b) Delivery dates for the supply of the Product are estimates only and time is not of the essence. We will not be liable for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Product, nor will any delay entitle you to terminate or rescind the Contract.
- c) If for any reason you do not take delivery of the Product, or we are unable to deliver the Product, your Property on the estimated delivery dates because you have not provided appropriate instructions, documents, licences, authorisations, etc., then such Product



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will be deemed to have been delivered and risk shall pass to you. We may at our option store such Product until actual delivery whereupon you will be liable for all related costs and expenses (including without limitation storage and insurance) and invoice you for all related costs and expenses incurred by us.

- d) You shall promptly notify the Carrier of any damage to, loss from or non-receipt of any Product and/or your Property if transportation has been arranged by or on your behalf. We shall not be liable for any such damage, loss or non-receipt.
- e) You will be deemed to have accepted the Product as being in accordance with the Contract, we shall have no liability for any defect and/or failure and you shall be bound to pay the price unless: (a) within fifteen (15) days of the date of delivery of the Product, you notify us in writing of any defect apparent upon inspection of the Product to conform with the Contract; or (b) you notify us in writing of any failure of the Product to conform to the Contract within a reasonable time where the defect and/or failure would not be so apparent within fifteen (15) days of the date of delivery.
- f) You shall be responsible for checking that all documentation supplied by us to you is accurate and free from error. We agree to remedy any inaccuracies/errors in such documentation provided that you have notified us of the inaccuracies/errors within thirty (30) days of receipt of the relevant document(s). Beyond such period, we reserve the right to charge an administration fee for any amendments made.

### **9. Passing Of Risk And Title**

- a) The risk in the Product and your Property shall pass to you on delivery as set forth herein. Subject to this Section full legal, beneficial and equitable title to the Product shall remain vested in us (even though they have been delivered and risk has passed to you) until we give written notice to you to pass legal and beneficial ownership of the Product to you or, if earlier: (a) payment in full, in cash or cleared funds, for all the Product has been received by us; and (b) all other money payable by you to us on any other account or under the Contract or any other contract or order has been received by us.
- b) Until full legal, beneficial and equitable title to and property in the Product passes to you:
  - (a) you shall hold the Product on a fiduciary basis as our bailee and shall store the



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Product at your premises, insure them without any charge to us, and keep them clearly identifiable as belonging to us;

- c) We hereby authorise you to use and/or sell the Product in the normal course of your business and to pass good title in the Product to your purchasers, if they are purchasers in good faith without notice of our rights. This right shall automatically cease if any sum owed to us by you is not paid when due. If you sell the Product prior to paying the full price thereof: (i) you shall hold the proceeds of sale on trust for us; and (ii) title to the Product shall pass from us to you immediately prior to you entering into a contract for the sale of the Product.
- d) Our rights and remedies set forth herein are in addition to and shall not in any way prejudice, limit or restrict any of our other rights or remedies under the Contract or in law or equity. We shall be entitled to maintain an action against you for the price of the Product notwithstanding that legal, equitable and beneficial title to and property in the Product has not passed to you.

### **10. Contract Price**

- a) We reserve the right to adjust prices where necessary before a Contract is accepted notwithstanding the prices stated in any price list or quotation. The price charged in respect of the Product supplied shall be the price that is current at the date of delivery. We shall not normally perform Services until you have confirmed your agreement to the estimated price.
- b) We reserve the right, by giving notice to you at any time before delivery, to increase the price of the Product to reflect any increase in the cost to us which is due to any factor beyond our control (such as, without limitation, any increase in the costs of labour, materials, or other costs of manufacture or supply); any change in the quantities of the Product requested by you; any change in the delivery dates of the Product requested by you; or any delay or cost caused by any of your instructions or failure by you to give us adequate information or instructions.
- c) Unless otherwise agreed in writing, the price for the Product shall be exclusive of any taxes (including sales tax) or levies and you will pay all costs and charges in relation to



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packaging (other than standard packaging), loading, unloading, carriage, freight and insurance, together with export and/or import charges or duties, where appropriate.

### 11. Payment Terms

- a) Unless agreed otherwise by us in writing or expressly stated in the quotation provided to you, payment for the Product and other charges is due thirty (30) days after the date of our invoice for this Contract. We may issue a separate invoice for each Contract or for each shipment (if more than one) under a Contract. You shall pay the amount stated in our invoice in the currency required by the invoice in immediately available funds, without any deduction whether by way of set-off, withholding, counterclaim, discount, abatement or otherwise. Payment must be made to us at the address or account stated on the invoice. Time of payment is of the essence.
- b) We reserve the right to revise payment terms at any time and to request guarantees, security, stage payments or cash in advance for the Product. We may, at our discretion, refuse or limit deferred payment terms to you.
- c) We may agree to accept payment for the Product by credit card provided that you shall in addition to the price of the Product pay any charge levied by the credit card company in respect of such transaction.
- d) Notwithstanding any other provision, all payments payable to us under the Contract shall become due immediately upon termination of the Contract for whatever reason.
- e) If any sum owed by you under the Contract, or any other contract or order, is not paid to us on or before the due date for payment, then all sums that you owe to us or any of our affiliates shall become due and payable immediately and, without prejudice to any other right or remedy available to us, we and any of our affiliates shall be entitled to: (a) cancel or suspend performance of the Contract or any other contract or order placed with us or any affiliate including suspending deliveries of the Product, Services and/or any other goods until arrangements as to payment or credit have been established which are satisfactory to us; and/or (b) require you to pay for the Product prior to shipment from our place of business; and/or (c) charge you interest calculated on a daily basis on all overdue amounts (both before and after judgment) until actual payment at the rate of four per cent (4%) per annum above the Bank of England Offered Rate prevailing from



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time to time (or such other rate which is legally permissible) until payment is made in full.

### 12. Warranty

- a) We warrant that the Product furnished hereunder shall, at the time of delivery, be free from defects in material and workmanship. Services shall be performed with reasonable skill and care.
- b) You shall submit to us reasonable written details (on our prescribed form if required) establishing a breach of the warranty set forth above. Unless agreed otherwise by us in writing, our liability for failure of any Product or Service to comply with the foregoing shall be limited to replacing or repairing that Product and/or to re-performing the Services found to be defective within six (6) months of delivery. Such Product will be repaired or replaced, at our option, or Services re-performed, without charge, and re-warranted for the remainder of the original warranty period.
- c) We shall pay all reasonable return packaging and transportation costs of a valid warranty claim. We are not liable for the removal of the Product from, or installation of the Product into, any other property to which it may be attached or incorporated. 8.4 If requested by us, you shall promptly deliver back to us any Product and/or materials which have been replaced and legal title to the replaced Product shall re-vest in us.
- d) Our performance of one of the options set out in this Section shall constitute an entire discharge of our liability for breach of the above warranty.
- e) For Product that is returned under warranty and is tested and no fault found, we will be entitled to reimbursement from you for reasonable charges incurred for transportation, testing and evaluation.
- f) We shall not be liable for a breach of the warranty in any of the following circumstances:
  - (i) the Product or parts thereof have been modified, altered, installed, used or serviced other than in conformity with our applicable specifications, manuals, bulletins or written instructions, or which shall have been subjected to improper installation, misuse or neglect;
  - (ii) normal wear and tear, willful or accidental damage, harsh environment or experimental running;
  - (iii) you or your customer fail to afford us a reasonable



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opportunity to inspect the Product; (iv) the price for the Product, or any other goods or services supplied by us or our affiliates, has not been received in full.

- g) Minor deviations from specifications which do not affect performance of the Product shall not be deemed to constitute defects in materials or workmanship or a failure to comply with the specifications referred to herein. Other than as set out all warranties, conditions, terms, express or implied, including warranties of merchantability or satisfactory quality or fitness for a particular purpose are excluded from the contract.

### **13. Our Liability**

- a) We will be responsible for any foreseeable loss or damage that You may suffer as a result of Our breach of this Agreement or as a result of Our negligence. Loss or damage is foreseeable if it is an obvious consequence of Our breach or negligence or if it is contemplated by You and Us when the contract is created. We will not be responsible for any loss or damage that is not foreseeable.
- b) We provide Services for domestic and private use (or purposes). We make no warranty or representation that the Services are fit for commercial, business or industrial purposes of any kind. By entering into this Agreement, You agree that You will not use the Services for such purposes. We will not be liable to You for any loss of profit, loss of business, interruption to business or for any loss of business opportunity.
- c) Nothing in this Agreement seeks to exclude or limit Our liability for death or personal injury caused by Our negligence (including that of Our employees, agents or sub-contractors); or for fraud or fraudulent misrepresentation.

### **14. Events Outside of Our Control (Force Majeure)**

- a) We will not be liable for any failure or delay in performing Our obligations under this Agreement where that failure or delay results from any cause that is beyond Our reasonable control. Such causes include, but are not limited to: power failure, internet service provider failure, industrial action, civil unrest, fire, explosion, flood, storms, earthquakes, subsidence, acts of terrorism, acts of war, governmental action, epidemic or other natural disaster, or any other event that is beyond Our reasonable control.





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- b) If any event described under this Section occurs that is likely to adversely affect Our performance of any of Our obligations under this Agreement: (i) We will inform You as soon as is reasonably possible; (ii) Our obligations under this Agreement will be suspended and any time limits that We are bound by will be extended accordingly;
- c) We will inform You when the event outside of Our control is over and provide details of any new dates, times or availability of Services as necessary;(iii) If the event outside of Our control continues for more than 15 Days We will cancel this Agreement and inform You of the cancellation. Any refunds due to You as a result of that cancellation will be paid to You as soon as is reasonably possible;
- d) If an event outside of Our control occurs and You wish to cancel this Agreement, You may do so in accordance with Your right to Cancel.

### **15. No Waiver**

In the event that any party to these Terms and Conditions fails to exercise any right or remedy contained herein, this shall not be construed as a waiver of that right or remedy.

### **16. Previous Terms and Conditions**

In the event of any conflict between these Terms and Conditions and any prior versions thereof, the provisions of these Terms and Conditions shall prevail unless it is expressly stated otherwise.

### **17. Law and Jurisdiction**

These terms and conditions and the relationship between you and Simply Crates shall be governed by and construed in accordance with the Law of England and Wales and Simply Crates and you agree to submit to the exclusive jurisdiction of the Courts of England and Wales.