

TERMS AND CONDITIONS – SALE OF GOODS AND SERVICES

BACKGROUND

These Terms and Conditions explain the basis under which the Seller will provide the Goods and Services for the price described at clause 4.

The Buyer should read these Terms and Conditions very carefully to make sure that they understand what is agreed.

1 DEFINITIONS

In these Terms and Conditions, the following words and phrases have the following meanings:

'Buyer'	the person purchasing the Goods and Services
'Commercial Unit'	a unit of Goods which cannot be divided without reducing its overall value or damaging the character of the unit
'Confirmation of Acceptance'	the Seller's confirmation that the Buyer's order has been accepted and a binding agreement has been formed for the supply of Goods and Services
'Digital Content'	data which is produced and supplied in digital form
'Goods'	the items the Buyer is purchasing
'Parties'	the Buyer and the Seller
'Party'	either one of the Buyer or the Seller
'Seller'	the person or company selling the Goods and Services
'Services'	the services the Buyer is purchasing
'Terms and Conditions'	this document detailing the rights and responsibilities of the Parties

2 GOODS AND SERVICES

2.1 The Seller is under a legal duty to supply the Services using reasonable care and skill.

2.2 The Services will be performed so far as reasonably practicable, at such time or times as the Seller shall decide. Any times, dates or periods given by the Seller for provision of the Services are estimates only. The Seller will make reasonable efforts to comply with any such time estimates, and will perform the Services within a reasonable time. However, time is not of the essence in respect of the Seller's performance of the Services.

- 2.3 The Seller is under a legal duty to supply Goods which are:
- 2.3.1 of satisfactory quality;
 - 2.3.2 fit for purpose; and
 - 2.3.3 as described by the Seller.
- 2.4 The Seller may modify or update, or require the Buyer or a third party to modify or update any Digital Content component of the Goods, provided that the Digital Content shall always match the description provided before purchase by the Buyer.

3 **ORDERING**

- 3.1 By ordering the Goods and Services from the Seller, the Buyer makes an offer to buy the Goods and Services for the price given by the Seller. There is no binding contract between the Parties at the time when the order is made.
- 3.2 The Seller will contact the Buyer by email to tell the Buyer when the Goods have been dispatched. This Confirmation of Acceptance is the Seller's acceptance of the Buyer's order. When the Confirmation of Acceptance is received there will be a binding contract between the Parties in accordance with these Terms and Conditions. The binding contract will only be for the Goods and Services that are included in the Confirmation of Acceptance. It may not cover all the Goods the Buyer ordered, for example if stock is unavailable.

4 **PRICE AND PAYMENT**

- 4.1 The Buyer must make payments in accordance with any schedule agreed with the Seller. VAT will be charged at the rate prevailing at the time that payment is due.
- 4.2 Where an estimate of the total price has been provided for any Services by the Seller, the final price may be higher or lower than the estimate. Circumstances where the price may be different from an estimate include, but are not limited to:
- 4.2.1 the Services taking longer to complete than could have reasonably been anticipated;
 - 4.2.2 the Buyer making any changes to the Services after the price is agreed; or
 - 4.2.3 changes to the prices charged by any of the Seller's suppliers.
- 4.3 Occasionally, the Seller's prices may change between the date of the order and the date of the Seller's Confirmation of Acceptance. Reasons for a price change include, but are not limited to, a change in the amount that the Seller is charged by their supplier(s) or a change in the VAT rate. What happens when the price changes depends on whether the new price is lower or higher than the price originally given:
- 4.3.1 if the new price is lower than that originally given, the Seller will charge the lower price and dispatch the Goods;
 - 4.3.2 if the new price is higher than that originally given, the Seller will either cancel the order or contact the Buyer to confirm whether they would prefer to cancel or pay the higher price for the Goods.

4.4 Without prejudice to any other legal right or remedy:

4.4.1 if any agreed payment is not received by the Seller by the due date, the Seller can charge interest on the outstanding sum or sums. Interest will be charged at 3% per annum above the Bank of England base rate, accruing daily from the due date until payment is made;

4.4.2 if the amounts not paid to the Seller when due total 10% or more of the total value of the Goods and/or Services, the Seller is entitled to suspend performance until such time as the outstanding payments are made; and

4.4.3 the Buyer will not refuse to pay any amount which is owed to the Seller where there is only a minor or inconsequential defect or error in the Goods and/or performance of the Services.

5 BUYER'S RESPONSIBILITIES

5.1 The Buyer shall co-operate fully with the Seller in the performance of the Services. Co-operation shall include, but is not limited to:

5.1.1 responding promptly and properly to any correspondence, request, query or communication from or on behalf of the Seller;

5.1.2 promptly providing any information, documentation, instruction, support or other assistance as the Seller reasonably requires;

5.1.3 promptly making any space, resources or facilities available as may reasonably be required by the Seller; and

5.1.4 paying any and all sums due on time.

5.2 If the Buyer does not comply fully and properly with their responsibilities under this clause, the Seller may, without prejudice to their legal rights:

5.2.1 charge the Buyer for any costs or expenses thereby reasonably incurred; or

5.2.2 suspend the provision of the Services until such time as the Buyer complies, so far as reasonably practicable, with their responsibilities under these Terms and Conditions.

6 DELIVERY

6.1 The Seller will arrange for the Goods to be delivered to the Buyer. Delivery will be attempted to the address given by the Buyer for the purpose.

6.2 Dates or times for the delivery of the Goods given by the Seller are estimates and cannot be relied on as definitive. The Goods will be delivered within an estimated 14 days from the date of the Seller's Confirmation of Acceptance. Delivery for the purposes of this clause includes attempted delivery at the delivery address given by the Buyer.

6.3 If the Buyer or anyone nominated by the Buyer to take delivery of the Goods fails to take delivery when it is attempted, the Seller may charge the Buyer any costs incurred for storage and redelivery as a result.

6.4 The Goods may be delivered directly from the manufacturer or the Seller's supplier and may be delivered in instalments.

6.5 The Seller only delivers to the mainland United Kingdom.

7 **PASSING OF RISK AND OWNERSHIP**

7.1 The Goods will be at the Seller's risk until delivered either to the Buyer or otherwise at the Buyer's direction.

7.2 The ownership of the Goods shall not pass to the Buyer until the Seller has sent the Confirmation of Acceptance to the Buyer and has received payment in full, regardless of whether the Goods have been delivered to the Buyer at that date.

7.3 For the purposes of this clause, if the Goods include Digital Content which is to be downloaded by the Buyer, the delivery of the Digital Content is effected at the time when it reaches the Buyer's device.

8 **RETURNS**

8.1 This clause applies if the Buyer wishes to return Goods that are not Digital Content, or are only partly Digital Content.

8.2 If the Goods are not of satisfactory quality, are unfit for purpose or are not as described by the Seller, the Buyer has a right to reject the Goods and claim a full refund. Alternatively, the Buyer can request that the Seller either repairs or replaces the Goods in these circumstances. If the Buyer wishes to exercise any of these rights, they must do so in writing using the contact details below.

8.3 If the Buyer exercises the right to reject under this clause within 30 days after the Goods are delivered to the Buyer, the Seller will arrange to collect the Goods from the Buyer or ask the Buyer to return the Goods at the Seller's expense; and either:

8.3.1 refund the Buyer the full amount paid if requested; or

8.3.2 repair or replace the Goods if requested. If it is disproportionate in the circumstances for the Seller to repair the Goods, they can choose to replace them instead. Equally, if it is disproportionate in the circumstances for the Seller to replace the Goods, they may choose to repair them.

8.4 If the Goods have been repaired or replaced under this clause and the repair or replacement still does not meet the required standard, the Buyer is entitled to a full refund provided that they request one from the Seller using the contact details below, within whichever is the later of:

8.4.1 7 days of receipt of the repair or replacement of the Goods; or

8.4.2 if still within the 30-day period from the delivery of the original Goods, whatever time is left on that, extended by the number of days that the Buyer has had to wait to receive the repair or replacement of the Goods after notifying the Seller.

8.5 If the Buyer exercises their right to reject under this clause more than 30 days but less than 6 months after the delivery of the Goods to the Buyer, the Seller can choose whether to repair the Goods, replace them, or give a refund in exchange for their return, provided the Seller's

choice can be carried out within a reasonable time and does not cause significant inconvenience to the Buyer. If the Seller opts to repair or replace and the repair or replacement still does not meet the required standard, the Buyer is entitled to a full refund or, if they wish to keep the Goods, a price reduction that takes the problems into account provided that they request one from the Seller using the contact details below.

- 8.6 The Buyer is not entitled to only reject part of the Goods if the Goods form a Commercial Unit. In these circumstances the Buyer must reject all or none of the Goods.
- 8.7 Any refund payable under this clause will be paid within 14 days of the Seller agreeing that the Buyer is entitled to a refund. The Seller may not be able to tell whether the Buyer is entitled to a refund until they have received the returned Goods and have had an opportunity to examine them.
- 8.8 The Buyer cannot rely on any problem with the Goods as a reason for returning them if, before agreeing to buy them, the Buyer was expressly informed of the problem or inspected a sample of the Goods from which the problem was obvious.
- 8.9 If the Goods are perishable, they cannot be returned after the date by which they can reasonably be expected to perish.
- 8.10 Nothing in this clause prevents the Buyer from seeking other remedies to which they are entitled by law.

9 RETURNS (DIGITAL CONTENT ONLY BEING RETURNED)

- 9.1 This clause applies if the Buyer wishes to return Digital Content only.
- 9.2 If Digital Content is not of satisfactory quality, is unfit for purpose or not as described by the Seller, the Buyer has a right to request that the Seller either repairs or replaces the Digital Content. If the Buyer wishes to exercise either of these rights, they must do so using the contact details below. The Buyer does not have a right to a refund except as described in this clause.
- 9.3 If the Buyer exercises the right to request a repair or replacement within 6 months of the Digital Content reaching the Buyer's device, the Seller will repair or replace the Digital Content as requested. If it is disproportionate in the circumstances for the Seller to repair the Digital Content, they can choose to replace it instead. Equally, if it is disproportionate in the circumstances for the Seller to replace the Digital Content, they may choose to repair it.
- 9.4 If the Buyer exercises the right to request a repair or replacement under this clause more than 6 months after the Digital Content reaches the Buyer's device, the Seller will only repair or replace the Digital Content if satisfied that the problem with it existed on the day it was supplied to the Buyer. If it is disproportionate in the circumstances for the Seller to repair the Digital Content, they can choose to replace it instead. Equally, if it is disproportionate in the circumstances for the Seller to replace the Digital Content, they may choose to repair it.
- 9.5 If the Digital Content has been repaired or replaced under this clause and the repair or replacement still does not meet the required standard, the Buyer is entitled to a price reduction. The amount of any reduction will take into account the problems with the Digital Content and may be up to the full price. If the Buyer has already paid more than the reduced price for the Digital Content, the Seller will refund the difference.

9.6 Any refund payable under this clause will be paid within 14 days of the Seller agreeing that the Buyer is entitled to a refund.

9.7 The Buyer cannot rely on any problem with the Goods as a reason for returning them if, before agreeing to buy them, the Buyer was expressly informed of the problem, inspected a sample of the Goods or used a trial version of the Digital Content from which the problem was obvious.

9.8 Nothing in this clause prevents the Buyer from seeking other remedies to which they are entitled by law.

10 BUYER'S RIGHTS (SERVICES)

10.1 If the Seller fails to carry out the Services with reasonable care and skill or within a reasonable time, the Buyer has the right to request the Seller re-performs the relevant part of the Services. Any such request can only be made by the Buyer if it is still possible for the Seller to supply the Services to the required standard. Any such repeat performance will be carried out at no cost to the Buyer, within a reasonable time and without causing significant inconvenience to the Buyer.

10.2 If repeat performance under this clause is not possible, cannot be or has not been carried out within a reasonable time, or cannot be or has not been carried out without causing significant inconvenience to the Buyer, the Buyer has a right to a price reduction up to 100% of the price.

10.3 Where a price reduction is due under this clause, any refund due to the Buyer shall be paid within 14 days of the Seller agreeing that the Buyer is entitled to one. Any refund will be made by the same means of payment that the Buyer used, unless expressly agreed otherwise between the Parties. The Seller will not charge any fee for any such refund.

11 SUB-CONTRACTORS

11.1 The Seller can, at its absolute discretion, choose to retain or instruct sub-contractors to carry out the Services in whole or part.

12 AGENCY OR PARTNERSHIP

12.1 Nothing in these Terms and Conditions is intended to or does imply any partnership, fiduciary relationship, joint venture, agency or any other relationship between the Parties, save as provided for in these Terms and Conditions.

13 LIABILITY AND INDEMNITY

13.1 Nothing in these Terms and Conditions seeks to limit the liability of the Seller for fraudulent acts or omissions, death or personal injury caused in connection with this sale of Goods and Services, whether arising in contract, negligence, tort, breach of statutory duty or otherwise.

13.2 Neither Party shall be liable to the other whether in contract, negligence, tort, breach of statutory duty or otherwise for any loss or damage sustained by the other Party indirectly or consequentially and including but not limited to economic loss or loss of profits, goodwill or business in general.

13.3 Subject to the rest of this clause, the Seller's total liability to the Buyer will not, in any circumstances, exceed the total amount of the price payable by the Buyer.

13.4 In the event that the Buyer or their servants or agents breach these Terms and Conditions, or are negligent in their actions, the Buyer will, to the fullest extent permitted by law, indemnify the Seller against any liability, loss, claim, damage, expense suffered by the Seller as a result.

14 **PROPERTY AND INTELLECTUAL PROPERTY**

14.1 Any property or intellectual property rights in any material owned by the Seller shall belong to the Seller and the Buyer shall not cause or permit anything to endanger those rights or title, or permit, assist or encourage others to do so.

14.2 Any property or intellectual property rights in any material owned by the Buyer shall belong to the Buyer and the Seller shall not cause or permit anything to endanger those rights or title, or permit, assist or encourage others to do so.

14.3 This clause is subject to the right of the Parties to use any such material so far as is reasonably required to carry out the agreed Services.

14.4 The Buyer warrants that any material, whether comprising documents, data, records or any other materials, that it provides to the Seller does not infringe the intellectual property rights of any non-Party. The Buyer agrees to indemnify the Seller against any loss, damage, cost, expense or claim of any kind that may arise as a result of such an infringement.

15 **CONFIDENTIALITY**

15.1 The Parties will use their best endeavours to keep confidential any confidential information relating to the other Party that is provided or otherwise accessed in the performance of the Services. Neither Party shall disclose any confidential information without the consent of the other Party, except to comply with an order of a court of competent jurisdiction or if required in connection with legal proceedings relating to these Terms and Conditions.

15.2 The Parties' obligations under this clause shall continue after the termination or completion of the Services unless or until the information concerned becomes public knowledge or is otherwise in the public domain through no fault of the Party bound to keep it confidential under this clause.

16 **AMENDMENT AND TRANSFER OF RIGHTS**

16.1 These Terms and Conditions can only be amended by the agreement of the Parties in writing with signatures on behalf of both.

16.2 The Seller is permitted to assign or transfer any rights or obligations under these Terms and Conditions, or subcontract the same for performance to a third party. The Buyer is not permitted to assign or transfer any rights or obligations under these Terms and Conditions without the prior written permission of the Seller.

17 **SEVERANCE**

17.1 If any of the provisions of these Terms and Conditions are unlawful, invalid or otherwise unenforceable, they will be severed from the remainder. The Terms and Conditions which are left will remain valid and enforceable.

18 **THIRD PARTIES**

18.1 For the purposes of the Contracts (Rights of Third Parties) Act 1999, these Terms and Conditions are not intended to and do not confer any rights on any person who is not a Party. Any person who is not a Party does not have the right to enforce any provision of these Terms and Conditions.

19 **CIRCUMSTANCES BEYOND THE CONTROL OF THE PARTIES**

19.1 Neither Party shall be liable for any delay or failure to perform any term or part of these Terms and Conditions due to circumstances beyond the reasonable control of that Party. Such circumstances include – but are not limited to – industrial action, lock out, trade dispute, power failure, internet outage, fire, natural disaster or outbreak of war. As soon as is reasonably possible after the discovery of such circumstances, the affected Party will notify the other Party in writing of any anticipated or existing delay or failure in performance.

19.2 If the circumstances referred to in this clause continue for a period of longer than 60 days, either Party can end the contract by giving 14 days' notice in writing to the other Party. All money owing under these Terms and Conditions before the circumstances arose shall be paid immediately.

20 **ENTIRE AGREEMENT**

20.1 These Terms and Conditions and the Confirmation of Acceptance taken together are the entire agreement between the Seller and the Buyer and supersede any and all prior terms, conditions, warranties or representations to the fullest extent permitted by law.

21 **WAIVER**

21.1 Any failure or delay by the Seller in using rights or powers provided by these Terms and Conditions shall not constitute a waiver of the whole or any part of these Terms and Conditions. The partial or sole use of any rights or powers provided by these Terms and Conditions shall not prevent any additional use of the same rights or powers. The rights, powers and remedies in these Terms and Conditions are additional to the rights of the Parties provided by law.

22 **GOVERNING LAW AND JURISDICTION**

22.1 These Terms and Conditions shall be governed by and construed in accordance with English law and the courts of England and Wales will have exclusive jurisdiction in relation to them.

23 **ATTRIBUTION**

23.1 These terms and conditions were created using a template from Sparqa Legal (<https://www.sparqa.com>), 07 September 2023.

24 **COMPLAINTS**

24.1 In the event of a complaint of any nature the Seller can be contacted using the details below.

25 **CONTACT DETAILS**

25.1 The Seller is EAR HEALTH MATTERS LTD of Office 7 35/37, Ludgate Hill, London, EC4M 7JN and can be contacted at +44 (0)2038388018 or contact@earhealthmatters.co.uk. In circumstances where the Buyer is required to contact the Seller in writing, they can write to the

Seller at Office 7 35/37, Ludgate Hill, London, EC4M 7JN; or email them at contact@earhealthmatters.co.uk.