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| Document title | Terms and conditions for the supply of Goods |
| Date           | 22/01/2021                                   |
| Version        | 1.4  |
| Author         | Giles Sirett                                 |

**TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS**

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**Shape Blue Ltd. is a business to business reseller of third-party equipment, software and services. By placing an order for Goods with Shape Blue Ltd., you are accepting these terms and conditions. If you are a consumer, your existing statutory rights are not affected by these conditions.**

## 1.0 Definitions

- 1.1 The "Seller" or "ShapeBlue" means Shape Blue Ltd (Company Registration No.: England & Wales: 7887184), whose principal place of business is at ShapeBlue Ltd., 3 London Bridge Street, 3rd floor, News Building, London, SE1 9SG.
- 1.2 The "Buyer" means the account applicant or person who accepts a quotation of the Seller or whose order for the Goods is accepted by the Seller.
- 1.3 "Conditions" means the conditions of sale set out in this document and any special and/or additional conditions agreed in writing by the Seller.
- 1.4 "Order Form" means a quote that will be issued to the Buyer to specify the Goods required and the cost of those Goods.
- 1.5 "Good" or "Goods" means the goods (equipment) in the form of hardware, software media, software licensing and 3<sup>rd</sup> party services that the Seller is to supply in accordance with these Conditions.
- 1.6 "Writing" includes post, email and other comparable means of communication.
- 1.7 "Including" and "in particular" shall be construed as not limiting any general words or expressions in conjunction with which either of those expressions is used.

## 2.0 Conditions

- 2.1 These conditions shall apply to all contracts for sale of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions including any which the Buyer may purport to apply under any purchase order, confirmation of order or any such similar document.
- 2.2 Where the Seller has agreed to provide the Buyer with system design, installation or other consultancy services, then the provision of such services shall be governed by the Seller's separate Terms and Conditions for other services, copies of which are available on the Seller's website.
- 2.3 No variation or addition to these Conditions shall be effective unless agreed in Writing by the Seller.
- 2.4 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in Writing and in entering into the contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed.
- 2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller and without any prior notification. The views and opinions expressed in any sales literature or on the Seller's website are the views of the contributors and should not be taken necessarily as fact or as the opinion of the Seller.
- 2.6 No contract for the sale of Goods shall arise until the Seller despatches the Goods to the Buyer or the Buyer notifies the Seller in writing of its acceptance of the Seller's quotation (whichever shall first occur).
- 2.7 Acceptance of delivery of Goods shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions.
- 2.8 Nothing in these Conditions shall affect the statutory rights of any consumer.

## 3.0 Prices

- 3.1 The price shall be that stated on the Seller's Order Form or as otherwise agreed in writing by the Seller.



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- 3.2 The Buyer will be deemed to have accepted the price stated by return of the Order Form or as agreed in writing.
- 3.3 Prices will only remain valid at the price stated for the validity period stated on the Order Form.
- 3.4 If a price is stated in writing and a validity period for the price given is not explicitly stated, the validity period for the quote will be 14 days.
- 3.5 The Seller reserves the right to revise prices prior to despatch of Goods to reflect any indirect or direct increase in costs to the Seller but if the price has been paid in full prior to despatch no price revision may take place without the prior written agreement of the Buyer.
- 3.6 Unless explicitly stated on the Order Form, all prices are exclusive of VAT and charges for packing, postage and carriage (plus VAT) shall be paid in addition.
- 3.7 For goods ordered on behalf of UK registered companies all amounts invoiced will be subject to VAT payable at the prevailing rate.

#### 4.0 Payment

- 4.1 In the case of sales to Buyers who do not qualify for a credit account or when a Buyer has failed to adhere to the terms of an existing credit account, the Seller retains the right to demand payment in advance of the goods being despatched.
- 4.2 Payment of invoices for Goods must be received in full by ShapeBlue within the payment terms specified on the Invoice.
- 4.3 The payment terms to be applied to the Goods will be stated on the Order Form, hence the Customer will be deemed to have accepted these payment terms as a result of sign off and return of the Order Form or confirmation in writing.
- 4.4 Time for payment shall be of the essence and any failure to pay shall entitle the Seller at his option to treat the contract as repudiated by the Buyer, to delay delivery until paid or appropriate any payment made by the Buyer to such of the Goods as the Seller may think fit notwithstanding any purported appropriation by the Buyer (without prejudice to any other remedy that the Seller may have). Receipts for payment shall be issued only on request.

#### 5.0 Interest on Overdue Invoices

- 5.1 The Seller reserves the right to recover on a full indemnity basis any costs incurred collecting overdue payments including interest at a rate of 4% above the Bank of England base rate from the date when payment becomes due until the date of payment (a part of a month being treated as a full month for the purpose of calculating interest), to accrue both before and after any judgment.
- 5.2 All invoices shall be paid in full, free from any deduction for any set-off, counterclaim or otherwise howsoever.

#### 6.0 Delivery

- 6.1 Whilst every reasonable effort shall be made to keep to any estimated delivery date, time of delivery shall not be of the essence and the Seller shall not be liable for any losses, costs, damages or expenses incurred by the Buyer or any other person or Company arising directly or indirectly out of any failure to meet any estimated delivery date. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 6.2 Notification of delivery may be made by telephone call/message, email, fax or by post on the due date.
- 6.3 A carrier's first attempt to deliver shall be considered as the delivery date and unless otherwise agreed in writing by the Seller all deliveries can take place up until 6 pm.



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- 6.4 Unless otherwise agreed the Seller may deliver by instalments and in such case each instalment shall be treated as a separate contract and any delay, default or non-delivery in respect of any instalment by the Seller shall not entitle the Buyer to cancel the remainder of the contract.
- 6.5 Failure by the Buyer to pay for any instalments or delivery when due shall entitle the Seller to withhold any further deliveries and the Buyer shall be liable for any costs incurred by the Seller relating to such Goods.
- 6.6 Delivery of the Goods shall be made to the Buyer's address and the Buyer shall make arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.
- 6.7 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control) then, without prejudice to any other right or remedy available to the Seller, the Seller may:
- 6.7.1 Store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
- 6.7.2 Sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the contract or charge the Buyer for any shortfall below the price of the contract.
- 6.8 The method of despatch for all sales shall be at the Seller's discretion.
- 6.9 The Seller's delivery charges and the timing of all deliveries shall be as published from time to time. Any promotional offers in respect of delivery charges shall only apply to UK mainland and Northern Ireland.
- 6.10 A delivery insurance charge, as published from time to time, shall be added to orders at the Seller's discretion and is non-refundable. If applicable, this charge will be clearly stated on the Order Form.

## 7.0 Ownership and Risk

- 7.1 The risk in Goods shall pass to the Buyer upon delivery of the Goods or upon the Goods being appropriated to the Buyer but kept at the Seller's premises at the Buyer's request.
- 7.2 The Seller remains the owner of the Goods affected by the contract until the Seller has been paid in full in cash or cleared funds for such Goods and all other Goods agreed to be sold by the Seller to the Buyer for which payment is due.
- 7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property.
- 7.4 If any payment due under these Conditions is overdue in whole or in part, the Seller may without prejudice to any of its other rights recover and/or re-sell the Goods or any of them and may enter on the Buyer's premises by its servants or agents to recover the Goods and the Buyer shall be liable for all the Seller's costs of so doing.
- 7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) immediately become due and payable.

## 8.0 Warranties and Liabilities

- 8.1 Subject to the conditions set out below the Seller warrants that the Goods will at the time of delivery correspond to the description given by the Seller on the Order Form.
- 8.2 The above warranty is given by the Seller subject to the following conditions:
- 8.2.1 the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;

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8.2.2 the Seller shall not be under liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's written approval;

8.2.3 the Seller shall be under no liability under the above warranty (or any other warranty, conditions or guarantee) if the total price for the Goods has not been paid by the due date for payment;

8.3 Where the Goods are covered by manufacturer's warranties, details of which will be supplied to the Buyer on delivery of the Goods the Buyer shall only be entitled to the benefit of such warranties or guarantees as are given by the manufacturer to the Seller.

8.4 Subject as expressly provided in these conditions and except where the Buyer is dealing as a consumer (as defined in the Unfair Contract Terms Act 1977, section 12) all warranties, conditions, or other terms implied by statute, common law or otherwise are excluded to the fullest extent permitted by the law.

8.5 Where Goods are sold to a consumer (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these Conditions.

8.6 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be held responsible for any incompatibility issues or held liable to the Buyer by reason of any representation (unless fraudulent) or any implied warranty, condition, or other term or any duty at common law or under the express terms of the contract, for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer including, without limitation, losses or damages of the types listed below:

8.6.1 loss of profit; and/or

8.6.2 loss of anticipated savings.

8.6.3 loss of business and/or goods; and/or

8.6.4 loss of revenue; and/or

8.6.5 loss of contract; and/or

8.6.6 loss of goodwill; and/or

8.6.7 loss of use; and/or

8.6.8 loss and/or corruption of data and/or other information; and/or

8.6.9 downtime; and/or

8.6.10 any damage relating to the procurement by you of any substitute hardware or software.

8.7 The entire liability of the Seller under or in connection with the contract shall not exceed the price of the Goods, except as expressly provided in these Conditions.

## 9.0 Returns/Cancellations/Replacements

9.1 Subject to clause 10, no contract shall be cancelled once accepted by the Seller nor shall any Goods which are delivered in accordance with the contract be returned without prior written approval of the Seller and on terms to be determined at the absolute discretion of the Seller.

9.2 Unless the Seller at its discretion decides otherwise, if the Seller agrees to accept the return of any such Goods then:

9.3 A Goods return number must be obtained from the Seller and be clearly shown on the returned parcels and must be returned in the original manufacturer's packaging (which shall not be defaced) complete with accessories, manuals and documentation. Software packages must be returned unopened with the

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software seal intact. Except in the case of faulty Goods, returned items not complying with these requirements will be rejected.

- 9.4 The Buyer will be liable for the cost of remedying any damage to the Goods returned where such damage has, in the opinion of the Seller, been caused by the Goods being inadequately packaged by the Buyer or through the Buyer's fault.
- 9.5 Where the Seller accepts the return of Goods, the Seller reserves the right to make a handling and restocking charge of 30% on Goods which are returned if they were ordered in error or are no longer required by the Buyer.
- 9.6 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with the specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 5 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the terms of the contract.
- 9.7 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or conditions of the Goods or their failure to meet specification is notified to the Seller in accordance with these conditions, the Seller shall be entitled to replace the Goods (or any part thereof) free of charge or at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), but the Seller shall have no further liability to the Buyer.
- 9.8 The Seller shall not give any credit for returned Goods where the Seller deems the Goods not to be faulty unless otherwise agreed in writing by the Seller.
- 9.9 Any Goods in respect of which any claim of defect or damage is made by the Buyer shall be preserved by the Buyer intact together with the original packaging at the Buyer's risk and shall at the request of the Seller be:
- 9.9.1 retained by the Buyer for a reasonable period to enable the Seller or its agent to inspect the Goods; or
  - 9.9.2 collected from the Buyer by the Seller if the Goods are defective.
  - 9.9.3 Goods not featured in the Seller's catalogue are not be subject to the normal returns policy and instructions for return should be confirmed with the Seller before returning the Goods.

## 10.0 Buyers dealing as Consumers

- 10.1 A Buyer dealing as a consumer shall have 7 days from the date of receipt of the Goods to cancel his order by giving notice by letter, fax or email to the Seller.
- 10.2 The effective date of cancellation is the date on which the notice is sent.
- 10.3 If the Buyer fails to return the Goods to the Seller within 7 days of the date of cancellation, the Seller shall be entitled to recover the Goods and deduct the cost of so doing from any monies owed to the Buyer.
- 10.4 The Seller shall refund any monies paid by the Buyer as soon as reasonably possible but in any event no later than 30 days from the date the notice of cancellation was given. The refund shall be made by the same method as payment.
- 10.5 The Buyer shall be liable for the cost of returning the Goods to the Seller.
- 10.6 This clause 10 shall not apply to:
- 10.6.1 goods made to the Buyer's specifications; and
  - 10.6.2 sealed computer software which has been opened by the Buyer

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## 11.0 Insolvency of Buyer

11.1 This clause applies if:

- 11.1.1 the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- 11.1.2 an encumbrancer takes possession, or a receiver is appointed of any of the property or assets of the Buyer; or
- 11.1.3 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

11.2 If this clause applies then without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the contract or suspend any further deliveries under the contract without any liability to the Buyer and if the Goods have been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## 12.0 Customer Service queries

- 12.1 The Seller shall make every reasonable effort to resolve or acknowledge by post, telephone or email any queries which the Buyer has made within 48 hours of receipt of any such query.
- 12.2 The Seller shall make every reasonable endeavour to respond to complaints within 5 working days and keep the Buyer reasonably notified of any progress thereafter.
- 12.3 Telephone calls made to the Seller may be recorded for training purposes.

## 13.0 Trademarks and Accreditation

- 13.1 The Seller and Buyer acknowledge the intellectual property rights of suppliers and manufacturers of the products quoted for by the Seller or displayed in the Seller's sales literature and on the Seller's website.
- 13.2 Where Goods have been manufactured and supplied under an ISO9000 approval may be indicated in the product text of the Manufacturer. The Seller will not be responsible to specifically stating this.

## 14.0 Trademarks and Accreditation

- 14.1 The Seller shall not be liable to the Buyer or be deemed to be in breach of the contract by reason of any delay in performing or any failure to perform any of the Seller's obligations in respect of the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:
  - 14.1.1 act of God, explosion, flood, tempest, fire or accident;
  - 14.1.2 war, threat of war, sabotage, insurrection, civil disturbance or requisition;
  - 14.1.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
  - 14.1.4 import or export regulations or embargoes;
  - 14.1.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
  - 14.1.6 difficulty in obtaining materials, labour or machinery; and
  - 14.1.7 power failure or breakdown in machinery.



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### 15.0 Third Party (Rights) Act 1999

15.1 The parties hereby exclude the application of the Contracts (rights of Third Parties) Act 1999 to each and every contract made under these Conditions.

### 16.0 No Waiver

16.1 The Seller's failure to insist upon strict performance of any provision of these Conditions shall not be deemed a waiver of its rights or remedies in respect of any present or future default of the Buyer in performance or compliance with any of these Conditions.

### 17.0 Notice

17.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving notice.

17.2 Notice shall be delivered personally or sent by first class prepaid recorded delivery or by registered post (airmail if overseas) or by facsimile transmission and shall be deemed to be given in the case of delivery personally on delivery and in the case of posting (in the absence of evidence of earlier receipt) 48 hours after posting (six days if sent by airmail) and in the case of facsimile transmission on completion of the transmission provided that the sender shall have received printed confirmation of transmission.

### 18.0 Enforceability

18.1 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provision of these Conditions and the remainder of the provision in question shall not be affected.

### 19.0 Dispute

19.1 In the event of a dispute between the Buyer and the Seller, should the Seller in writing require, the Buyer agrees to submit to the jurisdiction in accordance with the Arbitration Act 1996 for the time being in force as a legally binding alternative to court action.

### 20.0 Jurisdiction

20.1 The contract shall be governed by the laws of England and the Buyer agrees to submit to the non-exclusive jurisdiction of the English courts.



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