

Purchasing terms and conditions

The David Lloyd Leisure Limited Conditions of Purchase

1. INTERPRETATION

1.1 In these Conditions of Purchase:

'Conditions of Purchase' means the terms and conditions set out in this document together with, as appropriate, any other terms or conditions incorporated into the Agreement (if any) by express written agreement between the Customer and the Supplier

'Agreement' means the Conditions of Purchase or, as appropriate, the supply agreement identified by the supply agreement number, for the sale of the Goods and / or the Services by the Supplier and purchase of the Goods and / or the Services by the Customer (the "Supply Agreement"). In the event of any conflict between the terms of the Supply Agreement and the terms set out here, the former shall apply

'Delivery Address' means the delivery address stated on the Purchase Order

'Goods' means the goods (if any) stated on the Purchase Order

'Initial Term' means the initial term (if any) as stated on the Purchase Order

'Order / Purchase Order' means the order

'Order Number' means the Purchase Order number as stated on the Purchase Order

'Services' means the services (if any) described on the Purchase Order

'Supplier' means the person, firm or company identified as supplier on the Purchase Order

'Customer' means David Lloyd Leisure Limited whose registered office is The Hangar, Mosquito Way, Hatfield Business Park, Hatfield, Hertfordshire, AL10 9AX. (company number 01516226)

1.2 The headings in these Conditions of Purchase are for convenience only and shall not affect their construction.

2. AGREEMENT TO PURCHASE

2.1 The Order constitutes an offer by the Customer to purchase the Goods and/or the Services subject to the Conditions of Purchase. Dispatch or delivery of the Goods, or the commencement of supply of the Services by the Supplier shall constitute the Supplier's acceptance of these Conditions of Purchase.

2.2 These Conditions of Purchase or, as appropriate the terms of the Supply Agreement shall prevail to the exclusion of any other terms and conditions on which any quotation has been given to the Customer or other variation and no variation of the Conditions of Purchase, Order or Agreement shall be binding unless made by written agreement between the Customer and the Supplier.

2.3 This Agreement shall commence on the later of the Commencement Date (if any) stated on the Purchase Order; the date of despatch of goods; and the commencement of supply of the Services and shall continue in full force and effect unless and until terminated in accordance with clause 9.

3. PRICE AND PAYMENT

3.1 The price of the Goods and/or the Services shall be as stated in the Order and, unless otherwise so stated, shall be exclusive of value added tax (which shall be payable by the Customer subject to receipt by the Customer of a value added tax invoice) and inclusive of all charges for packaging, packing, carriage, insurance, and delivery of the Goods to the Delivery Address and any other duties or imposts other than value added tax.

3.2 The Customer shall be entitled to set off any sum due by it to the Supplier against any sum due to the Customer by the Supplier.

3.3 Payment shall fall due on the last day of the calendar month following the month of receipt of a valid and undisputed invoice unless otherwise stated in the Order.

4. INSPECTION AND TESTING

4.1 The Supplier shall permit the Customer or the Customer's authorised representative to inspect and test the Goods at any time during manufacture, processing or storage and to inspect and test performance of the Services at the premises of the Supplier or any third party and the Supplier shall provide or procure the provision of all such facilities and accommodation as may reasonably be required by the Customer for inspection and testing. The Supplier shall at the request of the Customer, supply to the Customer a copy of the Supplier's test sheets certified by the Supplier to be a true copy.

4.2 If, as a result of such inspection or testing, the Customer is of the opinion that the Goods do not comply with the Agreement or are unlikely on completion of manufacture or processing so to comply, upon the Customer so informing the Supplier, the Supplier shall immediately take such steps as may be necessary to enable the Supplier to comply with the Agreement.

4.3 For the avoidance of doubt such inspection or right to inspect on the part of the Customer shall not constitute acceptance or approval by the Customer of the Goods or Services.

5. DELIVERY

5.1 The Goods shall be delivered and the Services shall be performed on the date or within the time period stated in the Order at the Delivery Address or as may be directed by the Customer. Where the date of delivery of the Goods or of performance of the services is not specified in the Order, the Supplier shall give the Customer reasonable notice of the date thereof and shall not perform their duties under this order until the Customer have confirmed that the date of performance is acceptable.

5.2 The Supplier shall give the Customer in good time any instruction or information required to enable the Customer to take delivery of the Goods and performance of the Services.

5.3 the Customer shall be entitled to reject any Goods delivered which are not in accordance with the Agreement and shall not be deemed to have accepted any Goods until the Customer has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent. In the event of any failure on the part of the Supplier to supply Goods or Services of the quality, in the quantity and to the time specified, the Customer shall be entitled to:

5.3.1 reject, and to require the Supplier to replace, at no charge, any such Goods; or

5.3.2 reject and obtain equivalent Goods or Services from an alternative source and the Supplier undertakes to reimburse the Customer for any reasonable additional costs incurred in so doing.

5.4 Time of delivery of the Goods and of performance of the Services shall be of the essence of the Agreement.

5.5 Any extension of time for delivery or performance must be agreed in advance between the Customer and the Supplier in writing. If time is so extended, time as extended shall be of the essence of the Agreement.

5.6 If the Goods are to be delivered or the Services are to be performed by instalments, the Agreement will be treated as a single contract and not severable.

5.7 Delivery shall not be effected until the Goods have been unloaded and (if relevant) the Services have been performed and accepted in writing by an authorised officer, employee, or representative of the Customer.

5.8 The Order Number must be quoted on all correspondence relating to the Order. A delivery or advice note must accompany all Goods dispatched to the Delivery Address. Goods or Services not accompanied by a delivery or advice note may be refused.

6. TITLE AND RISK

6.1 Title in the Goods shall pass to the Customer upon delivery unless payment is made prior to delivery in which case it shall pass to the Customer once payment has been made and the Goods have been appropriated to the Agreement.

6.2 Risk of damage to or loss of the Goods supplied shall pass to the Customer upon delivery in accordance with the Agreement.

6.3 The Supplier shall insure the Goods to their full value against all risks of damage or loss prior to completion of delivery by whomsoever effected.

7. WARRANTIES AND LIABILITIES

7.1 The Supplier warrants to the Customer that the Goods will:
7.1.1 be of satisfactory quality and fit for any purpose made known to the Supplier by the Customer. When assessing satisfactory quality, the Customer will take into account any public statement made by the Supplier or by any third party supplier engaged by the Supplier;

7.1.2 be free from defects in design, material and workmanship, and that the Supplier, upon becoming aware of any defect whatsoever in the Goods immediately notify the Customer of such defect and confirm the same in writing to the Customer within three (3) days of such defect being identified;

7.1.3 correspond in quality, quantity and description with any specifications, stipulations or any other information contained in the Order or supplied by the Customer to the Supplier or agreed in writing by the Customer and shall correspond in all respects with any samples or patterns provided by the Supplier to the Customer or by the Customer to the Supplier; and

7.1.4 comply with all applicable regulations and other legal requirements concerning the manufacture, sale, packaging, carriage, packing, delivery or disposal of the Goods and the performance of the Services.

7.2 The Supplier warrants to the Customer that the Services will be performed by appropriately qualified and trained personnel acting with due care and diligence and to the best industry standard.

7.3 The Supplier shall indemnify the Customer in full against all losses, damages (including but not limited to loss or damage to property or the Customer's business or death or personal injury), liabilities, fines, penalties, costs and expenses (including legal expenses whether or not proceedings are brought) of whatsoever nature awarded against or incurred or paid by the Customer as a result or in connection with:

7.3.1 any breach of any warranty given by the Supplier in relation to the Goods or Services;

7.3.2 any claim that the Goods infringe or their importation use or resale infringes the patent, copyright, design right, trade mark or other intellectual property rights of any other person except to the extent that any such claim arises from compliance with a specification or design supplied by the Customer;

7.3.3 any liability under the Consumer Protection Act 1987 or subsequent consumer protection legislation;

7.3.4 any act or omission of the Supplier or its employees, agents or subcontractors in supplying delivering and installing the Goods or in performing the Services; and

7.3.5 the supply, delivery and installation of the Goods and the performance of the Services.

7.4 Nothing in this clause shall render the Supplier liable to indemnify the Customer if and to the extent that such losses, damages, claims, liabilities, fines, penalties, costs and expenses result from any act, negligence or default of the Customer or of its authorised servants or agents.

7.5 Subject always to clauses 7.6 and 7.7:

7.5.1 the aggregate liability of the Supplier in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to 125% of the fees paid or payable to the Supplier; and

7.5.2 except in the case of claims arising under clause 7.3.2, in no event shall the Supplier be liable to the Customer for any:

- (a) loss of profits;
- (b) loss of business;
- (c) loss of revenue;
- (d) loss of or damage to goodwill;
- (e) loss of savings (whether anticipated or otherwise); and/or
- (f) any indirect, special or consequential loss or damage.

7.6 Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:

7.6.1 death or personal injury caused by its negligence or that of its Staff;

7.6.2 fraud or fraudulent misrepresentation by it or that of its Staff; or

7.6.3 any other matter which, by law, may not be excluded or limited.

7.7 The Supplier's liability under the indemnity in clause 7.3.2 shall be unlimited.

8. FORCE MAJEURE

8.1 the Customer and the company shall not be liable for any failure or delay in supplying the Goods or Services or in receiving or making use of the Goods or Services due wholly or partially to any event beyond the reasonable control of the parties ("Force Majeure Event") including without limitation, acts of

God, war, acts of terrorism, riot, civil commotion, malicious damage, fire, flood or storm. For the avoidance of doubt strikes, industrial action, third party insolvency and/or failure shall not be considered a Force Majeure Event.

8.2 If either party is prevented, hindered or delayed from or in performing any of its obligations under this Agreement by reason of a Force Majeure Event, it shall within 2 days give written notice to the other party declaring the extent of the Force Majeure Event, the date of its commencement and the effects of the Force Majeure Event on its ability to perform its obligations under this Agreement and if mutually agreed by the parties then the obligations of the party so affected shall thereupon be suspended for so long as the circumstances may continue.

8.3 A party affected by a Force Majeure Event is to use every reasonable effort to minimise the effects thereof and shall resume performance as soon as possible after the removal of such Force Majeure Event. If the period of non-performance exceeds fourteen (14) days from the receipt of the notice of the Force Majeure Event, the party whose performance has not been so affected may, by giving written notice, terminate the agreement forthwith.

9. TERMINATION & BREACH

9.1 the Customer shall have the right to terminate this Agreement with immediate effect by notice in writing to the Supplier being in breach of any of its obligations under this Agreement. In case of any breach which is capable of remedy, the Customer shall serve a written notice on the company specifying the nature of such breach and where such breach is remediable the company shall have failed to remedy such breach within the maximum period of fourteen (14) days from the date of service of such notice.

9.2 In the case of a material breach, which is not capable of remedy, the Customer shall have the right to terminate this Agreement with immediate effect.

9.3 The Supplier shall have the right to terminate this Agreement in the event of the Customer being in breach of "any of its obligations under this Agreement, provided that the Supplier shall first have served a written notice on the Customer specifying the nature of such breach and where such breach is remediable the Customer shall have failed to remedy such breach within the maximum period of fourteen (14) days from the date of service of such notice.

9.4 The Supplier or the Customer may (without prejudice to any other rights or remedy of the other party) terminate this Agreement by notice to take immediate effect if any of the following events occur in respect of the other: a) The Supplier or the Customer makes or offers to make any arrangement or composition with or for the benefit of its creditors (including any voluntary arrangement as defined in the Insolvency Act 1986); or b) The Supplier or the Customer ceases or threatens to cease to carry on business or suspends or threatens to suspend all or substantially all of its operations (other than temporarily by reason of a strike) or suspends payments of its debts or becomes unable to pay its debts (within the meaning of Section 123 of the Insolvency Act 1986 where applicable) or commits any act of insolvency or bankruptcy; or c) A petition or resolution for the making of an administration order for the bankruptcy, winding-up or dissolution of the Supplier or the Customer for the purposes of reconstruction or amalgamation of the solvent company is presented or passed; or d) The Supplier or the Customer files a voluntary petition in bankruptcy or insolvency; or e) A liquidator, trustee, supervisor, receiver, administrator, administrative receiver or encumbrancer takes possession of or is appointed over the whole or any part of the assets of the Supplier or the Customer; or f) There is a change of control of the Supplier. For the purpose of this Clause 9.4 (f), "control" means the ability to direct the affairs of another whether by voting or contractual rights or otherwise and whether directly or indirectly.

If the Customer reasonably apprehends that any of the events mentioned in Clause 9.4 (a) to (f) above are about to occur in relation to the Supplier then the Customer shall be entitled to terminate this Agreement immediately upon written notice at which point any sums payable by the Supplier to the Customer under this Agreement shall become due and payable.

9.5 the Customer shall have the right to terminate this Agreement at any time on three (3) months' written notice to expire on any date after the expiry of the Initial Term.

10. ELECTRONIC DATA INTERCHANGE

Where the parties communicate using direct computer to computer interchange of computer processable data (whether with or without the assistance of a value added network or other intermediary) then the terms and conditions of the Interchange Agreement shall apply, a copy of which is available from the Customer upon request. In the event of any conflict between the terms of the Interchange Agreement and the terms here set out, the latter shall apply.

11. ASSIGNMENT AND CONTRACTING

11.1. The Supplier shall not assign, sub-contract or transfer or purport to assign, sub-contract or transfer any of its rights or obligations under this Agreement without the prior written consent of the Customer.

11.2 Any consent given by the Customer to the Supplier under condition 11.1 shall not impose any duty on the Customer to enquire as to competency of any sub-contractor and the Supplier shall ensure that any subcontractor is competent and that performance of the Agreement is properly carried out. In the event that any sub-contractor is subsequently deemed in the Customer's reasonable opinion not to be suitable on technical or commercial grounds then the Supplier shall replace that sub-contractor with an alternative sub-contractor also approved in writing by the Customer.

11.3 the Customer shall have the right to assign, novate or otherwise dispose of any or all of its rights or obligations under this Agreement in whole or in part provided that such assignment, novation or disposal shall not increase the burden of the Supplier's obligations under the Agreement.

12 INSURANCE

12.1

At all times during the term of this Agreement, the Supplier shall take out and maintain adequate insurance policies to the value sufficient to meet its liabilities under or in connection with this Agreement. Upon the Customer's reasonable request the Supplier will provide the Customer with evidence that such insurance is in place.

13. CONFIDENTIALITY

13.1

During the term of this Agreement and after termination or expiration of this Agreement the terms of this Agreement and any information concerning the business affairs of the one party which comes into the possession of the other party or any other contracted party under or pursuant to this Agreement shall be confidential to the parties and shall not be disclosed to any outside party (save as required by any law, regulation or court order) or used other than for the purposes of this Agreement without the prior written consent of the other party, unless the information is manifestly in the public domain or already in the possession of the receiving party (other than as a result of a breach of confidentiality).

13.2

In particular, the Supplier shall not disclose to any outside party any prices being paid by the Customer or any details of any computer or other data of the Customer to which the Supplier may have access from time to time for the purposes of this Agreement and the Supplier shall take all actions as are necessary to ensure that their personnel and any subcontractors engaged by it in accordance with this 'Agreement observe these provisions of confidentiality.

15. ANTI-CORRUPTION AND BRIBERY

15.1 The Supplier shall:

- (a) comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements);
- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- (c) have and shall maintain in place throughout the Term of this agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and clause 15.1(b), and will enforce them where appropriate;
- (d) promptly report to the Customer any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of the Agreement;
- (e) immediately notify the Customer (in writing) if a foreign public official becomes an officer or employee of the Supplier or acquires a direct or indirect interest in the Supplier and the Supplier warrants that it has no foreign public officials as direct or indirect owners, officers or employees at the date of this agreement);
- (f) within 30 days of a request in writing from the Customer certify in writing signed by an officer of the Supplier, compliance with this clause by the Supplier and all persons associated with it under clause 15.2. The Supplier shall provide such supporting evidence of compliance as the Customer may reasonably request.

15.2 The Supplier shall ensure that any person associated with the Supplier who is performing services or supplying goods in connection with the Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this clause (Relevant Terms). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Customer for any breach by such persons of any of the Relevant Terms.

15.3 Breach of this Clause 15 shall be deemed a material breach of the Agreement.

15.4 For the purpose of this Agreement, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this Agreement a person associated with the Supplier includes but is not limited to any Sub-Contractor of the Supplier.

16. MODERN SLAVERY AND HUMAN TRAFFICKING

16.1 In performing its obligations under the Agreement, the Supplier shall and shall ensure that each of its subcontractors shall:

- (a) comply with all applicable laws, statutes, regulations in force from time to time including but not limited to the Modern Slavery Act 2015; and
- (b) take reasonable steps to ensure that there is no modern slavery or human trafficking in the Suppliers or subcontractors supply chains or in any part of their business.

16.2 The Supplier represents and warrants that:

- (a) neither the Supplier nor any of its officers, employees or other persons associated with it:
 - (i) has been convicted of any offence involving slavery and human trafficking; and
 - (ii) having made reasonable enquiries, to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.

16.3 Supplier shall notify DLL immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have, breached or potentially breached any of its obligations under this Clause 16, such notice to set out full details of the circumstances concerning the breach or potential breach.

16.4 Any breach of this Clause 16 by Supplier shall be deemed a material breach of the Agreement and shall entitle Customer to terminate the agreement in accordance with clause 9.2.

17. GENERAL

17.1

No waiver by the Customer of any breach of the Agreement shall be considered as a waiver of any subsequent breach of the same or any other provision.

17.2

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

17.3

Any notice required or permitted to be given by either party to the other shall be in writing addressed to that 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 the notice.

17.4

Notwithstanding the fact that the Supplier may have or have had business dealings with the Customer, the Customer's name shall not be used by the Supplier for the purpose of advertisement or publicity without the prior written consent of the Customer.

17.5

All copyright, designs, domain names, patents, trademarks and all other intellectual property, which may from time to time be licensed to the Supplier under this Agreement, shall remain the exclusive property of the Customer.

17.6 This Agreement shall be governed by English law. The Parties to this Agreement submit to the exclusive jurisdiction of the English Courts.

Revised June 2019