



Colourgen Limited  
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## COLOURGEN LIMITED TERMS AND CONDITIONS OF BUSINESS

### PARTIES:

- (1) Colourgen Limited, of The AmBer Centre, Oldfield Road, Maidenhead, Berkshire SL6 1TH ("Colourgen"); and
- (2) The person or organisation whose details are set out in the Account Application Form ("Customer").

WHEREAS Colourgen provides goods and Customer will purchase these items; and NOW, THEREFORE, the Parties hereby agree as follows:

### 1. INTERPRETATION

1.1 In this Agreement the following terms shall have the following meanings:

**Acceptance:** acceptance of an order by Colourgen by telephone, fax, email or via one of its websites.

**Account Application Form:** the application form provided by Colourgen and completed and submitted to Colourgen by the customer by fax, email or post.

**Agreement:** this Customer Agreement, the Account Application Form, the Order(s) and Acceptance(s).

**Credit Limit:** the maximum value of Orders, in respect of which Colourgen has not received payment, that may be outstanding at any one time.

**Goods:** the products and services set out in the Acceptance, including any part or parts of it.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Order(s):** the order(s) for goods placed by the Customer by post, by fax, by telephone, by email or via the websites and accepted by Colourgen in writing or by email. For the avoidance of doubt, no request to purchase any item shall be deemed to be an Order until Acceptance by Colourgen in accordance with clause 3.2.

**Software:** any operating system installed on the Equipment and/or any software set out in the Acceptance.

**VAT:** value added tax chargeable under English law for the time being and any similar additional tax.

**Websites:** Colourgen's main website, which is located at <http://www.colourgen.com/>, and any other website owned or run by Colourgen.

1.2 Clause headings do not affect the interpretation of this Agreement.

1.3 A reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

### 2. AUTHORISATION OF CUSTOMER

2.1 The prospective Customer shall complete the Account Application Form and submit such completed Account Application Form to Colourgen.

2.2 Colourgen shall notify the prospective Customer of whether such prospective Customer's Account Application Form has been accepted. The prospective Customer shall not be deemed to be a Customer until acceptance of the Account Application Form by Colourgen.

2.3 In the event that the prospective Customer's Account Application Form has been accepted, Colourgen shall notify the Customer of its Credit Limit and, if relevant, shall supply the Customer with a username and password to enable the Customer to place orders via the website.

2.4 Following acceptance by Colourgen of the Account Application Form, the Customer may place Orders up to its Credit Limit.

2.5 By submitting an Account Application Form to Colourgen and/or by placing an Order the Customer indicates its acceptance of these terms.

### 3. BASIS OF SALE

3.1 Each Order or acceptance of a quotation by the Customer shall be deemed to be an offer by the Customer subject to this Agreement. The Customer shall ensure that its Order is complete and accurate.

3.2 A binding contract for the provision of the goods shall not come into existence between Colourgen and the Customer unless and until Colourgen issues an Acceptance to the Customer, or Colourgen makes delivery to the Customer (whichever occurs earlier).

3.3 No Order or part thereof may be cancelled by the Customer, except with the agreement in writing of Colourgen. The cancellation may not be possible on certain products.

3.4 In the event that an order is delivered by Colourgen and the Customer subsequently requests to return the goods, written permission must be obtained from Colourgen. The Customer shall indemnify Colourgen 25% of the net value of the order/item (or £15.00 as the minimum charge) in addition to the cost of collection.

3.5 Colourgen may deliver the goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Acceptance of the applicable Order. Each instalment shall be a separate agreement between the parties and no cancellation or termination by either party of the agreement relating to any one instalment shall entitle the Customer to repudiate or cancel any other instalment.

### 4. QUANTITY AND DESCRIPTION

4.1 The quantity and description of the goods shall be as set out in the Acceptance.

4.2 All samples, drawings, descriptive matter, specifications and advertising issued by Colourgen, and any descriptions or illustrations contained in Colourgen's marketing material and website are issued or published for illustrative purposes only and they do not form part of this Agreement.

4.3 Any typographical, clerical or other error or omission in any sales literature, quotations, price lists, Acceptance, invoice or other document or information issued by Colourgen shall be subject to correction without any liability on the part of Colourgen.

4.4 Colourgen reserves the right (but does not assume the obligation) to make any changes in the specification of its goods which are required to conform with any applicable legislation. Where Colourgen is not the manufacturer of the goods, Colourgen shall use reasonable endeavours to transfer to the Customer the benefit of any warranty or guarantee given by the manufacturer to Colourgen.

4.5 Colourgen's employees, contractors and agents are not authorised to make any contractually binding representations concerning its products and services. In entering into this Agreement, the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which have not been confirmed in writing by an authorised officer of Colourgen. However, nothing in this Agreement limits Colourgen's liability for fraudulent misrepresentation.

4.6 Any advice or recommendation given by Colourgen or its employees, contractors or agents to the Customer or its employees, contractors or agents about the storage, application or use of its goods which are not confirmed in writing by an authorised officer of Colourgen is followed or acted on entirely at the Customer's own risk.

## **5. PRICES**

5.1 All prices shall be as stated in the Acceptance. All prices are exclusive of delivery, packaging, packing, shipping, carriage, insurance, VAT and other charges and duties.

5.2 The price of the goods shall be the price set out in the Acceptance or, where no Acceptance has been issued or no price has been set out in the Acceptance (or such price is no longer valid), the price listed in Colourgen's price list current at the date of Acceptance.

5.3 Colourgen reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of such of the goods as has not been delivered to reflect any increase in the cost to Colourgen which is due to any factor beyond the control of Colourgen (including any foreign exchange fluctuation, currency regulation, alteration of duties, change in legislation, significant increase in the costs of labour, materials, supply, transportation or other costs of manufacture), any change in delivery dates, quantities or specifications for the goods which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give Colourgen adequate information or instructions.

## **6. PAYMENT**

6.1 Subject to any special terms agreed in writing between the Customer and Colourgen, Colourgen may invoice the Customer for the price of the goods on or at any time after delivery. Notwithstanding the foregoing, where the goods are to be collected by the Customer or where the Customer wrongfully fails to take delivery of the goods, Colourgen shall be entitled to invoice the Customer for the price at any time after Colourgen has notified the Customer that the order is ready for collection.

6.2 The terms of payment shall be as set out in Colourgen's acceptance of the Account Application Form or otherwise within 30 days from the end of the month of the date of Colourgen's invoice, whether or not delivery has taken place or title in the goods has passed to the Customer.

6.2.1 Where a customer elects to make payment by credit card, Colourgen will charge a surcharge on the value of the items purchased.

6.2.2 Colourgen may charge interest on overdue accounts until the date of actual payment at the statutory monthly rate on the overdue balance, such amount being payable without prejudice to Colourgen's other rights and before as well as after judgement.

6.3 If the Customer fails to make payment in full on the due date, the whole of the balance of the price of the goods then outstanding shall become immediately due and payable and, without prejudice to any other right or remedy available to Colourgen, Colourgen may:

6.3.1 terminate this Agreement or suspend any further deliveries (whether ordered under the same contract or not) to the Customer;

6.3.2 suspend all further delivery, installation or warranty service until payment has been made in full.

6.3.3 make a storage charge for any undelivered goods at its current rates from time to time;

6.3.4 stop any orders in transit; and

6.3.5 a general lien on all goods and property belonging to the Customer, exercisable in respect of all sums lawfully due from the Customer to Colourgen. Colourgen shall be entitled, on the expiry of 14 days' notice in writing, to dispose of such goods or property in such manner and at such price as it thinks fit and to apply the proceeds towards the amount outstanding.

6.4 All sums payable to Colourgen under this Agreement shall become due immediately on its termination, despite any other provision of this Agreement. This clause 6.4 is without prejudice to any right to claim for interest under the law, or any right under this Agreement.

6.5 Colourgen may, without prejudice to any other rights it may have, set off any liability of the Customer to Colourgen against any liability of Colourgen to the Customer.

## **7 DELIVERY OF EQUIPMENT**

7.1 Colourgen shall use its reasonable endeavours to deliver the goods on the date or dates specified in the Acceptance, but any such date is approximate only. If no dates are so specified, delivery shall be within a reasonable time of Acceptance. Time is not of the essence as to the delivery of the goods and Colourgen is not liable for any delay in delivery, however caused.

7.2 The goods may be delivered by Colourgen in advance of the quoted delivery date on giving reasonable notice to the Customer.

7.3 Delivery shall be made during normal business hours (excluding bank or public holidays). Colourgen may levy additional charges for any deliveries made outside such hours at the Customer's request.

7.4 The Customer shall be responsible (at the Customer's cost) for preparing the delivery location for the delivery of the goods and for the provision of all necessary access and facilities reasonably required to deliver and install. If Colourgen is prevented from carrying out delivery or installation on the specified date because no such preparation has been carried out, Colourgen may levy additional charges to recover its loss arising from this event.

7.5 The Customer shall be deemed to have accepted the goods when the Customer has had 7 days to inspect it after delivery and has not exercised in writing its right of rejection in accordance with clause 10.

7.6 Colourgen shall be responsible for any damage, shortage or loss in transit, provided that the Customer notifies it to Colourgen immediately by telephone and that the goods have been handled in accordance with Colourgen's stipulations. Any remedy under this clause 7.6 shall be limited, at the option of Colourgen, to the replacement or repair of any goods which is proven to Colourgen's satisfaction to have been lost or damaged in transit, except where the customer is responsible for the transit of the goods when they have been collected from Colourgen's premises or third party warehouses..

## **8 RISK AND PROPERTY**

8.1 The goods shall be at the risk of Colourgen until delivery to the Customer at the place of delivery specified in the Acceptance. Colourgen shall off-load the goods at the Customer's risk.

8.2 Ownership of the products shall pass to the Customer on the later of completion of delivery (including off-loading), or when Colourgen has received in full in cleared funds all sums due to it in respect of the goods and all other sums which are or which become due to Colourgen from the Customer on any account.

8.3 Until ownership of the goods has passed to the Customer under clause 8.2, the Customer shall:

8.3.1 hold the goods on a fiduciary basis as Colourgen's bailee;

8.3.2 store the goods (at no cost to Colourgen) in satisfactory conditions and separately from all the Customer's other equipment or that of a third party, so that it remains readily identifiable as Colourgen's property;

8.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the goods; and

8.3.4 keep the goods insured on Colourgen's behalf for its full price against all risks to the reasonable satisfaction of Colourgen, and hold the proceeds of such insurance on trust for Colourgen and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.

8.4 The Customer's right to possession of the goods before ownership has passed to it shall terminate immediately if any of the circumstances set out in clause 14 arise or if the Customer encumbers or in any way charges the goods, or if the Customer fails to make any payment to Colourgen on the due date.



8.5 The Customer grants Colourgen, its agents and employees an irrevocable licence at any time to enter any premises where any goods not owned by the Customer may be stored in order to inspect them, or where the Customer's right to possession has terminated, to remove them. All costs incurred by Colourgen in repossessing the goods shall be borne by the Customer.

8.6 On termination of this Agreement for any reason, Colourgen's (but not the Customer's) rights in this clause 8 shall remain in effect.

8.7 Colourgen may appropriate payments by the Customer to such goods as it thinks fit, notwithstanding any purported appropriation by the Customer to the contrary, and may make such appropriation at any time.

## **9 EXPORT TERMS**

9.1 Where the goods are supplied for export from the United Kingdom, the provisions of this clause 9 shall (subject to any contrary terms agreed in writing between the Customer and Colourgen) override any other provision of this Agreement.

9.2 The Customer shall be responsible for complying with any legislation governing the importation of the goods into the country of destination and the export and re-export of the goods, and shall be responsible for the payment of any duties on it.

9.3 Unless otherwise agreed in writing between the Customer and Colourgen, the goods shall be delivered Ex Works and Colourgen shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979, as amended up to date or under subsequent Acts if relevant.

9.4 The Customer shall pay the price for the goods in a currency nominated by Colourgen.

## **10 WARRANTY**

10.1 Colourgen warrants to the Customer that the goods are free from defects of workmanship and materials. Colourgen undertakes (subject to the remainder of this clause 10), at its option, to repair or replace goods (other than consumable items) which are found to be defective as a result of faulty materials or workmanship within 3 months of delivery and installation.

10.2 Colourgen shall not be liable for a breach of the warranty contained in clause 10.1 unless:

10.2.1 the Customer gives written notice of the defect to Colourgen within 7 days of the time when the Customer discovers or ought to have discovered the defect; and

10.2.2 after receiving the notice, Colourgen is given a reasonable opportunity of examining such goods and the Customer (if asked to do so by Colourgen) returns such goods to Colourgen's place of business at Colourgen's cost for the examination to take place there.

10.3 Colourgen shall not be liable for a breach of the warranty in clause 10.1 if:

10.3.1 the Customer makes any use of the goods in respect of which it has given written notice under clause 10.2.1; or 10.3.2 the defect arises because the Customer failed to follow the manufacturers oral or written instructions as to the storage, installation, commissioning, use or maintenance of the goods or (if there are none) good trade practice; or

10.3.3 the Customer alters or repairs the relevant goods without the written consent of Colourgen.

10.4 Any repaired or replacement goods shall be under warranty for the unexpired portion of the 3 month period.

10.5 Colourgen shall not be liable for any damage or defect to the goods caused by improper use of the goods or use outside their normal application.

## **11 REMEDIES**

11.1 Colourgen shall not be liable for any non-delivery of goods (even if caused by Colourgen's negligence) unless the Customer notifies Colourgen in writing of the failure to deliver within seven days after the scheduled delivery date.

11.2 Any liability of Colourgen for non-delivery of the goods shall be limited to replacing the goods within a reasonable time or issuing a credit note at the pro rata contract rate against any invoice raised for such goods.

11.3 If Colourgen's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Customer (other than by reason of a Force Majeure Event under clause 15), the Customer shall be liable to pay to Colourgen all reasonable costs, charges or losses sustained by it as a result, subject to Colourgen notifying the Customer in writing of any such claim it might have against the Customer in this respect.

11.4 In the event of any claim by the Customer under the warranty given in clause 10.1, the Customer shall notify Colourgen in writing of the alleged defect. Colourgen shall have the option of testing or inspecting the goods at its current location or moving it to Colourgen's premises (or those of its agent or sub-contractor) at the cost of Colourgen. If the Customer's claim is subsequently found by Colourgen to be outside the scope or duration of the warranty in clause 10, the costs of transportation of the goods, investigation and repair shall be borne by the Customer.

## **12 LIMITATION OF LIABILITY**

12.1 The following provisions set out the entire liability of Colourgen (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of any breach by Colourgen of this Agreement and any representation, statement or tortious act or omission (including negligence) arising out of or in connection with this Agreement.

12.2 All warranties, representations, guarantees, conditions and terms, other than those expressly set out in this Agreement whether express or implied by statute, common law, trade usage or otherwise and whether written or oral are hereby expressly excluded to the fullest extent permissible by law.

12.3 Nothing in this Agreement excludes or limits the liability of Colourgen for death or personal injury caused by Colourgen's negligence or for fraud or fraudulent misrepresentation.

12.4 Subject to clause 12.3:

12.4.1 Colourgen shall not be liable for any loss of profits, loss of business, depletion of goodwill or similar losses or pure economic loss or for any special, indirect or consequential loss, costs, damages, charges or expenses howsoever arising; and

12.4.2 Colourgen's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the price paid for the relevant goods or part thereof.

## **13 INTELLECTUAL PROPERTY RIGHTS**

13.1 The Customer acknowledges that all Intellectual Property Rights used by or subsisting in the goods are and shall remain the sole property of Colourgen or (as the case may be) third party rights, or owner. The Customer shall not at any time make any unauthorised use of such Intellectual Property Rights, nor authorise or permit any of its agents or contractors or any other person to do so.

13.2 Colourgen shall retain the property and copyright in all documents supplied to the Customer in connection with this Agreement and it shall be a condition of such supply that the contents of such documents shall not be communicated either directly or indirectly to any other person, firm or company without the prior written consent of Colourgen.

#### **14 TERM AND TERMINATION**

14.1 This Agreement shall commence on the date on which the Account Application Form is submitted to Colourgen by the proposed Customer and shall continue, unless such proposed Customer's Account Application Form is rejected by Colourgen, until terminated by Colourgen on the provision of 30 days notice to the Customer, or otherwise in accordance with this clause

14.2 Without prejudice to any other right or remedy available to Colourgen, Colourgen may terminate this Agreement or suspend any further deliveries under this Agreement without liability to the Customer 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 if:

14.2.1 the ability of the Customer to accept delivery of the goods is delayed, hindered or prevented by circumstances beyond the Customer's reasonable control; or

14.2.2 an order is made or a resolution is passed for the winding up of the Customer, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the Customer; or

14.2.3 an order is made for the appointment of an administrator to manage the affairs, business and property of the Customer, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the Customer, or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or

14.2.4 a receiver is appointed of any of the Customer's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the Customer, or if any other person takes possession of or sells the Customer's assets; or

14.2.5 the Customer makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way, or becomes bankrupt; or

14.2.6 the Customer ceases, or threatens to cease, to trade; or

14.2.7 the Customer takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

14.3 Termination of this Agreement, however arising, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive or implicitly surviving termination.

#### **15 FORCE MAJEURE**

Colourgen reserves the right to defer the date of delivery, or to cancel this Agreement or reduce the amount of goods ordered, if it is prevented from or delayed in carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including without limitation strikes, lock-outs or other industrial disputes (whether involving the workforce of Colourgen or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors (Force Majeure Event).

#### **16 MISCELLANEOUS**

16.1 A waiver of any right under this Agreement is only effective if it is in writing and signed by or on behalf of the waiving party, and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

16.2 If any provision of this agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

16.3 The Customer shall not, without the prior written consent of Colourgen, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement. Colourgen may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

16.4 This Agreement is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.

16.5 Any notice required to be given pursuant to this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the address of the party as set out in this Agreement, or such other address as may be notified by one party to the other. A notice delivered by hand is deemed to have been received when delivered (or, if delivery is not in business hours, 9.00 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.

16.6 This Agreement and any disputes or claims arising out of or in connection with its subject matter are governed by and construed in accordance with the law of England and the parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement.

16.7 This Agreement shall prevail over any inconsistent terms or conditions contained in or referred to in the Customer's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.

16.8 No addition to, variation of, exclusion or attempted exclusion of any term of this Agreement shall be binding on Colourgen unless in writing and signed by a duly authorised representative of Colourgen.