



XP Distribution

STANDARD TERMS AND CONDITIONS OF BUSINESS

1 Interpretation

- 1.1 The definitions below apply in these terms and conditions:
 - 1.1.1 "XP Distribution": means TypeMaker Limited trading as XP Distribution, a company registered in England and Wales with number 2850281 whose registered office is at Spectrum Point, 164 Claggate Lane, Birmingham, B32 3DE, United Kingdom;
 - 1.1.2 "Contract": any contract between XP Distribution and You for the sale and purchase of the Goods and/or Services, incorporating these conditions;
 - 1.1.3 "Goods": any goods XP Distribution is supplying to You in the Contract;
 - 1.1.4 "Services": any services XP Distribution is supplying to You in the Contract;
 - 1.1.5 "working days": Monday to Friday inclusive, with the exception of any day which is a public or bank holiday in England and Wales;
 - 1.1.6 "writing" shall include facsimile and email;
 - 1.1.7 "You": the person, firm or company purchasing the Goods and/or Services from XP Distribution.
- 1.2 A reference to a particular 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.
- 1.3 Condition headings do not affect the interpretation of these conditions.

2 Application of terms

- 2.1 The Contract shall be on these conditions. No variation to these conditions shall have effect unless agreed in writing by an authorised representative of XP Distribution.
- 2.2 Each order for Goods and/or Services by You from XP Distribution is an offer by You to buy Goods and/or Services subject to these conditions.
- 2.3 No order placed by You shall be accepted by XP Distribution until XP Distribution despatches the Goods to You or commences performance of the Services. Until that time there is no legally binding contract between You and XP Distribution. Any acknowledgement of order which XP Distribution sends to You is simply confirmation that it has received your order.

3 Description

- 3.1 The quantity and description of the Goods (if any) and/or Services shall be as set out in XP Distribution's acknowledgement of order.
- 3.2 Any descriptions or illustrations contained in XP Distribution's catalogues, brochures or website are issued or published for the sole purpose of giving an approximate idea of the Goods or Services described in them and they shall not form part of the Contract, unless You are buying Services described as being provided for a specific length of time when that length of time will form part of the Contract.

4 Delivery of the Goods

- 4.1 Delivery of the Goods shall take place at the address You provided to XP Distribution when you placed Your order.
- 4.2 XP Distribution will not be liable for any loss or damages suffered by You through delay in delivery following despatch of the Goods.
- 4.3 XP Distribution shall not be liable for any non-delivery of Goods (even if caused by XP Distribution's negligence) unless You give written notice to XP Distribution of the non-delivery within 7 days of the date when the Goods would in the ordinary course of events have been received.
- 4.4 Any liability of XP Distribution 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.

5 Performance of the Services

- 5.1 Performance of the Services shall take place at the place and time(s) agreed between XP Distribution and You from time to time.
- 5.2 The extent of any Services is more fully described on the order agreed between You and XP Distribution.
- 5.3 You shall take all steps necessary to ensure that XP Distribution is able to perform the Services on the date they are due to be performed.

6 Price

- 6.1 The price payable for the Goods or Services shall be the price set out in XP Distribution's published price lists on the date the Goods are despatched or performance of the Services commences.
- 6.2 Value added tax, delivery costs, any customs duty or import tariffs and travel and subsistence (where applicable in the case of Services) shall be added to the total amount due from You and paid by You.
- 6.3 XP Distribution reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

7 Payment

- 7.1 Payment of the price for the Goods and/or Services is due on the date of the Contract, unless XP Distribution has granted You a credit account with payment terms.
- 7.2 All payments shall be made in the currency of the invoice unless agreed upon in writing.
- 7.3 If you do not pay any sums due to XP Distribution on time then You are in breach of the Contract and XP Distribution can terminate the Contract immediately and claim damages from you.
- 7.4 No payment shall be deemed to have been received until XP Distribution has received cleared funds.

7.5 All payments payable to XP Distribution under the Contract shall become due immediately on its termination despite any other provision.

8 Risk and title

8.1 The Goods are at Your risk from the time of delivery.

8.2 Ownership of the Goods shall not pass to You until XP Distribution has received in full in cleared funds all sums due to it in respect of:

8.2.1 the Goods and/or Services; and

8.2.2 all other sums which are or which become due to XP Distribution from You on any account.

8.3 Until ownership of the Goods has passed to You, You shall hold the Goods as XP Distribution's fiduciary agent and bailee and shall keep the Goods separate from your other goods and those of any third party and properly stored, protected and insured and identified as XP Distribution's property, but you may resell or use the Goods in the ordinary course of your business.

8.4 Your right to possession of the Goods shall terminate immediately if:

8.4.1 You have a bankruptcy order made against You or make an arrangement or composition with Your creditors, or otherwise take the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convene a meeting of creditors (whether formal or informal), or enter into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or have a receiver and/or manager, administrator or administrative receiver appointed of Your undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of You or notice of intention to appoint an administrator is given by You or Your directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up or the granting of an administration order in respect of You, or any proceedings are commenced relating to Your insolvency or Your possible insolvency; or

8.4.2 You suffer or allow any execution, whether legal or equitable, to be levied on Your property or obtained against You, or fail to observe or perform any of Your obligations under the Contract or any other contract between XP Distribution and You, or are unable to pay Your debts within the meaning of section 123 of the Insolvency Act 1986 or You cease to trade; or

8.4.3 You encumber or in any way charge any of the Goods.

8.5 XP Distribution shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from XP Distribution.

8.6 You grant XP Distribution, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored where Your right to possession has terminated, to recover them.

8.7 Where XP Distribution is unable to determine whether any Goods are the goods in respect of which Your right to possession has terminated, You shall be deemed to have sold all goods of the kind sold by XP Distribution to You in the order in which they were invoiced to You.

8.8 On termination of the Contract, howsoever caused, XP Distribution's (but not Your) rights contained in this condition 9 shall remain in effect.

9 Warranty

9.1 XP Distribution warrants that (subject to the other provisions of these conditions):

9.1.1 on delivery, and for a period of 12 months from the date of delivery, the Goods shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and

9.1.2 it will perform the Services with reasonable skill and care.

9.2 The warranty in condition 9.1 does not apply to any defect in the Goods arising from fair wear and tear, wilful damage, accident, negligence by You or any third party, if You use the Goods in any way that XP Distribution does not recommend, Your failure to follow XP Distribution's instructions, or any alteration or repair You carry out without XP Distribution's written approval.

9.3 XP Distribution shall not be liable for a breach of the warranty in Condition 9.1.1 unless:

9.3.1 You give written notice of the defect to XP Distribution, within a reasonable time when You discover or ought to have discovered the defect and, in particular, if the defect is as a result of damage in transit within 7 days of the date of XP Distribution's invoice; and

9.3.2 XP Distribution is given a reasonable opportunity after receiving the notice of examining such Goods and You (if asked to do so by XP Distribution) return such Goods to XP Distribution's place of business at Your cost for the examination to take place there.

9.4 If pursuant to condition 9.3.2 you wish or are asked to return Goods to XP Distribution, you must first obtain a Returns Authorisation Number which should be stated on the packaging in which the Goods are obtained.

9.5 If any of the Goods do not conform with the warranty in condition 9.1.1, XP Distribution shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if XP Distribution so requests, You shall, at Your expense, return the Goods or the part of such Goods which is defective to XP Distribution in accordance with condition 9.4. XP Distribution reserves the right to charge You for any repairs to the Goods where it reasonably believes that any defects in the Goods were caused by Your acts or omissions.

9.6 If XP Distribution complies with condition 9.5 it shall have no further liability for a breach of the warranty in condition 9.1.1 in respect of such Goods.

9.7 If any of the Services do not conform to the warranty in condition 9.1.2, XP Distribution shall at its option perform or re-perform such Services or refund the price of such Services at the pro rata Contract rate.

9.8 If XP Distribution complies with condition 9.7, it shall have no further liability for a breach of the warranty in condition 9.1.2 in respect of such Services.

9.9 In addition XP Distribution shall endeavour to pass to You the benefit of any warranty or guarantee given to XP Distribution by the manufacturer of the Goods.

9.10 Any Goods replaced shall belong to XP Distribution and any repaired or replacement Goods shall be guaranteed on these terms for the unexpired portion of the 12 month period.

10 Limitation of liability

10.1 Your attention is particularly drawn to the provisions of this Condition 10.

10.2 The following provisions set out the entire financial liability of XP Distribution (including any liability for the acts or omissions of its employees, agents and sub-contractors) to You in respect of:

10.2.1 any breach of these conditions;

10.2.2 any use made or resale by You of any of the Goods or Services, or of any product incorporating any of the Goods or Services; and

10.2.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

- 10.3 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 as applicable) are, to the fullest extent permitted by law, excluded from the Contract.
- 10.4 Nothing in these conditions excludes or limits the liability of XP Distribution:
- 10.4.1 for death or personal injury caused by XP Distribution's negligence; or
 - 10.4.2 for any matter which it would be illegal for XP Distribution to exclude or attempt to exclude its liability; or
 - 10.4.3 for fraud or fraudulent misrepresentation.
- 10.5 Subject to condition 10.3 and condition 10.4, XP Distribution shall not be liable to You for
- 10.5.1 loss of profits; or
 - 10.5.2 loss of business; or
 - 10.5.3 depletion of goodwill and/or similar losses; or
 - 10.5.4 loss of anticipated savings; or
 - 10.5.5 damage to goods; or
 - 10.5.6 loss of contract; or
 - 10.5.7 loss of use; or
 - 10.5.8 loss or corruption of data or information; or
 - 10.5.9 any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- 10.6 XP Distribution'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 the Contract shall be limited to the price payable for the Goods and/or Services under the Contract.

11 Assignment

- 11.1 XP Distribution may assign the Contract or any part of it to any person, firm or company.
- 11.2 You shall not be entitled to assign the Contract or any part of it without the prior written consent of XP Distribution.

12 General

- 12.1 Each right or remedy of XP Distribution under the Contract is without prejudice to any other right or remedy of XP Distribution whether under the Contract or not.
- 12.2 XP Distribution shall not be liable to You by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Goods or Services, if the delay or failure was due to an act of God, war, terrorism, power failure, or any other cause beyond XP Distribution's reasonable control.
- 12.3 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 12.4 Failure or delay by XP Distribution in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 12.5 Any waiver by XP Distribution of any breach of, or any default under, any provision of the Contract by You shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 12.6 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 12.7 The Contract shall be governed by English law and the parties submit to the non-exclusive jurisdiction of the English courts.
- 12.8 These conditions are drafted in the English language. If the conditions are translated into any other language, the English language text shall prevail.