

BMG Purchase Order Conditions

1. Definitions

The following meanings apply:

- (a) **"Bertelsmann Supplier Code of Conduct"**: the Bertelsmann Supplier Code of Conduct available at <https://www.bertelsmann.com/comp-any/essentials/compliance/business-partners/> (it being acknowledged and agreed that, for the purpose of the incorporation of such code by reference, each reference in such code to "Bertelsmann", "we", "us" or "our" will, unless the context otherwise requires, be deemed to include an additional reference to BMG).
- (b) **"BMG"**: BMG Rights Management (UK) Limited or (where different) such of its UK affiliates as is set out in the relevant purchase order (as applicable).
- (c) **"Conditions"**: the terms and conditions set out in this document as amended from time to time in accordance with clause 2(b).
- (d) **"Confidential Information"** means all information relating to BMG (or its affiliates) which is disclosed or obtained under or in connection with the Contract, whether or not designated as confidential information but which by its nature is confidential or should reasonably be considered as such, including any information relating to BMG's clients, employees, directors, artists, writers and any other persons or entities relating and/or connected to BMG, but excluding information that is (otherwise than by breach of the Contract) in the public domain, in the lawful possession of Supplier other than pursuant to disclosure from BMG, and/or subsequently comes into the possession of Supplier from a third party having the right to disclose the same.
- (e) **"Contract"**: the contract for the purchase of the Goods and/or supply of the Services of which these Conditions form part.
- (f) **"Goods"**: the goods or any part thereof agreed to be purchased as described in the purchase order, or, if there is no such purchase order, the goods agreed between BMG and Supplier in writing (which may include email) prior to the commencement of the supply of the Goods, and any repaired, replaced or spare parts.

- (g) **"IPR"** means all vested and future rights of copyright, database rights, design rights, trade marks (including all goodwill attaching to those trade marks), patents, rights in inventions, trade names, know-how and any other intellectual, industrial property and exploitation rights anywhere in the world (including rights in photographs, logos, artwork, literary works, musical works and sound recordings), whether or not registered or registrable (including all registrations and applications for registration of any of the above) and rights to apply for the same and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these anywhere in the world.
- (h) **"IR35 Legislation"** means Part 2, Chapter 8 of the Income Tax (Earnings and Pensions) Act 2003 ("ITEPA") or, as applicable, Part 2, Chapter 10 of ITEPA; and the Social Security Contributions (Intermediaries Regulations) 2000;
- (i) **"Losses"**: all losses, costs, claims, demands, actions, proceedings, fines, penalties, awards, liabilities, damages, compensation, settlements, expenses and/or professional costs and/or charges.
- (j) **"PAYE"** means HMRC's system for the collection of income tax and National Insurance from employment.
- (k) **"Services"**: the services or any part thereof agreed to be supplied as described on the purchase order, or, if there is no such purchase order, the services agreed between BMG and Supplier in writing (which may include email) prior to the commencement of the supply of the Services.
- (l) **"Supplier"**: the person or persons or firm or company to whom a purchase order is addressed or with whom the Contract is made.
- (m) The words **"other"**, **"include"**, and **"including"** do not connote limitation in any way.

2. Contract

- (a) All orders given, and all Contracts made, by BMG are subject to these Conditions. Subject to clause 2(b), no other conditions of contract which Supplier purports to apply in relation to the Goods or Services will be accepted by BMG, nor will BMG's

acceptance or receipt of any confirmation or order, invoice, note or other document or notification whatsoever constitute acceptance of any other terms or conditions.

- (b) To the extent there is a conflict between the terms of a signed contract between Supplier and BMG and these Conditions, the relevant term of the signed contract will prevail to the extent of the conflict in question.
- (c) Except as set out in these Conditions, no variation of the Contract will be effective unless it is agreed in writing and signed by the parties or their authorised representatives.

3. Price and Payment

- (a) The price for the Goods and/or Services will be the price set out in the applicable purchase order, or, if there is no such purchase order, the price agreed between BMG and Supplier in writing (which may include email) prior to the commencement of the supply of the Services and/or Goods, or, if no such price has been agreed in writing, the price set out in the Supplier's published price list in force as at the Contract date. The price will not be subject to change without the prior written consent of BMG. No extra charges or expenses will be payable by BMG unless agreed with BMG in writing in advance.
- (b) Except where the Contract otherwise provides, the price of the Goods will include secure and proper packing acceptable to BMG, and the cost and delivery to the place specified under clause 4 below.
- (c) Unless otherwise agreed in writing, BMG will pay Supplier within 30 days of the date on which the properly submitted, valid and undisputed invoice (which must include the relevant purchase order number) is received by BMG, as long as the provision of the Goods and/or Services has been performed by Supplier in accordance with the Contract. Delivery in instalments is only permitted with the prior written consent of BMG, and payment will only be made on delivery to and acceptance by BMG of the whole of the Goods or when supply of all of the Services has been completed.
- (d) BMG may, at any time, without limiting any of its other rights or

remedies, set off any liability of Supplier to BMG against any liability of BMG to Supplier (including any sums owed to it by Supplier against sums owed by it to Supplier).

- (e) All prices and amounts payable by BMG under the Contract will be in GBP, and will be made by electronic transfer to the bank account nominated by Supplier from time to time, with any applicable charges on such payments being at Supplier's sole cost and expense. All prices and amounts are exclusive of VAT, which will be payable by BMG at the rate and in the manner prescribed by law, and BMG will pay an amount equal to any VAT chargeable on delivery of a valid VAT invoice.
- (f) Provided that Supplier has notified BMG in writing that payment of a sum has become overdue under the Contract, if such non-payment is not rectified by BMG within 60 days of its receipt of Supplier's notice, then BMG will, subject to written demand from Supplier, pay interest on any undisputed amounts that have not been paid by BMG by the due date at an annual rate of 2% per annum from and including the due date up to but excluding the date of payment.

4. **Delivery and Risk**

- (a) The Goods will be securely and properly packed by Supplier and delivered to the address, and on the date, specified on the purchase order or as specified in writing by BMG (which may include email), including any changes to such date/address made by BMG pursuant to clause 9(c)(i), between the hours of 10am and 5.30pm on a business day.
- (b) Subject to BMG having a reasonable time following delivery to examine the Goods for any defects, and then only if BMG accepts such Goods are free of any identifiable defects, risk of damage to or loss or destruction of the Goods will only pass to BMG on delivery to and acceptance by BMG of the Goods in accordance with the Contract.
- (c) Ownership of the Goods will pass to BMG upon delivery in accordance with this Contract.
- (d) Time for delivery of the Goods and of supply of the Services will be of the essence for the Contract.

5. **Alterations**

- (a) Supplier will not make any modifications or alterations to or substitutions for the Goods or

Services without the prior written consent of BMG. If any modifications, alterations or substitutions are needed to prevent any breach or delay by Supplier of its obligations under the Contract, any associated costs (including of repeat performance) will be borne by Supplier.

- (b) If BMG refuses its consent under sub-clause (a) above, and Supplier is unable for any reason to perform the Contract without modifying, altering and/or substituting the Goods/Services ordered by BMG, BMG may terminate the Contract with immediate effect by giving notice in writing to Supplier.
- (c) Where the Contract is terminated under sub-clause (b) above, any deposit will be returned to BMG together with any instalments of the sums already paid and BMG will be entitled to recover from Supplier any Losses suffered by BMG as a consequence of Supplier's failure to perform the Contract.

6. **Provision of the Goods and Services**

- (a) Supplier will ensure that the Goods will: (i) correspond with their description and any applicable specifications provided to BMG in relation to the Contract; (ii) be of first class quality, workmanship and design and fit for any purpose held out by Supplier or made known to Supplier by BMG expressly or by implication; (iii) be free from defects in design, material and workmanship and remain so for 12 months after delivery; and (iv) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods. Supplier will pass to BMG the benefit of any manufacturer and other warranties, guarantees and/or service agreements relating to the Goods.
- (b) Supplier will ensure that all Services will be supplied: (i) in accordance with any applicable specifications, descriptions and/or dates provided to, or agreed with, BMG (or if no dates were specified, within a reasonable time taking into account BMG's requirements); (ii) with all reasonable skill, care and diligence and in accordance with good industry practice; and (iii) in accordance with all applicable statutory and regulatory requirements.

7. **BMG Remedies**

- (a) If Supplier delivers any Goods or provides any Services that do not comply with the requirements of this Contract (including any failure to deliver Goods or to perform the Services by the date set out in the applicable purchase order or otherwise agreed between the parties), BMG will, without limiting or affecting (and in addition to) other rights or remedies available to it under the Contract or by law, have one or more of the following rights and remedies: (i) terminate the Contract with immediate effect by giving written notice to Supplier; (ii) refuse to accept any subsequent performance of the Services and/or delivery of the Goods which Supplier attempts to make; (iii) recover from Supplier any costs incurred by BMG in obtaining substitute goods and/or services from a third party; (iv) require a refund from Supplier of sums paid in advance for Services or Goods that Supplier has not provided or delivered or has failed to provide/deliver in accordance with this Contract; (v) claim damages for any Losses incurred by BMG which are attributable to Supplier's failure to comply with this Contract; (vi) return any non-compliant deliverables or Goods to Supplier at Supplier's own risk and expense; and (vii) require Supplier to provide repeat performance of the Services at the cost of Supplier, or to provide a full refund of the price paid for the Services (if paid in advance).

8. **Indemnity**

- Supplier will indemnify and keep indemnified BMG against any Losses incurred by BMG as a result of:
- (a) any infringement or alleged infringement of any third party's IPR arising out of or in connection with the manufacture, supply, receipt or use of the Goods, Services and/or any other materials, information, documentation or data provided by Supplier in accordance with the Contract;
 - (b) any breach by Supplier, in respect of the Goods, of the Health and Safety at Work Act etc 1974, or any statutory modification or re-enactment thereof or any regulations, orders or directions made thereunder; and
 - (c) any breach by Supplier of the Bertelsmann Supplier Code of Conduct.

9. Termination of the Contract

- (a) BMG will be entitled to terminate the Contract by giving **seven** days' notice to Supplier at any time. BMG will pay Supplier a fair and reasonable sum for any work in progress on the Goods at, and Services provided up to, the date of termination, but such compensation will not include loss of anticipated profits or any consequential loss.
- (b) BMG may by notice to Supplier terminate the Contract with immediate effect if Supplier: (i) commits a material breach of any term of the Contract and such breach is irremediable or (if such breach is remediable) fails to remedy that breach within seven days of being notified in writing to do so; or (ii) not being a body corporate, becomes bankrupt, compounds or makes any arrangement with his creditors, or commits any act of bankruptcy; or (iii) being a body corporate, goes into liquidation, whether compulsory or voluntary (except for the purpose of solvent reconstruction or amalgamation), or has a receiver appointed over its undertaking or assets or any part thereof.
- (c) On termination of the Contract, Supplier will immediately cease work under the Contract and, at BMG's sole discretion, will:
 - (i) either: (A) deliver the Goods and deliverables (whether or not then complete) to a location of BMG's choice, as notified to Supplier by BMG in writing (which may be different to the original address specified under clause 4); or (B) destroy such deliverables/Goods and provide a certificate of destruction to BMG; and
 - (ii) return or otherwise dispose of (as directed by BMG) any and all data, materials and property belonging or relating to BMG, including, but not limited to, BMG's Confidential Information, and all copies of the same then in its possession, custody or control.
- (d) Termination of the Contract will not affect the parties' rights and remedies that have accrued as at termination.
- (e) Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract will remain in full force and effect.

10. Intellectual Property Rights

- (a) Each party will retain ownership of any IPR owned by it or its licensors prior to the date of the Contract or which have been developed independently of the Contract without reference to the IPR of the other party ("**Background IPR**").
- (b) Supplier grants to BMG a non-exclusive, perpetual, irrevocable, royalty-free licence to use Supplier Background IPR to facilitate and/or enable full use of the Goods, deliverables or other materials created as a result of the provision of the Services and, for this purpose, to sub-license such Supplier Background IPR to third parties, and Supplier will be responsible for all costs arising from this clause 10(b).
- (c) All IPR subsisting in anything developed or created by Supplier (or on behalf of Supplier, including by any sub-contractor) for BMG under the Contract, including in the Goods and any deliverables or other materials created as a result of the provision of the Services, will vest in BMG upon their creation and BMG will own all such IPR (the "**Developed IPR**"). Supplier hereby irrevocably assigns (or will procure the assignment of) to BMG with full title guarantee, including by present assignment of future rights, all right, title and interest in the Developed IPR, including the right to exploit the Developed IPR for the lifetime of the Developed IPR throughout the world. Supplier undertakes (and will procure that any sub-contractors will undertake), to the extent necessary, to execute all such documents and perform all such acts as may be required by BMG to perfect the assignment to BMG of all IPR as provided for in this clause 10(c).
- (d) Supplier will obtain waivers of all moral rights in any of the Goods, deliverables and any other materials which are created by or on behalf of Supplier as a result of the performance of the Contract to which any individual is now or may at any future time be entitled under Chapter IV of Part 1 of the Copyright Designs and Patents Act 1988 or any similar provision of law in any jurisdiction.
- (e) Supplier warrants that the Developed IPR and Supplier's Background IPR:
 - (i) and the use of them by BMG, will not infringe the IPR of any third party;

- (ii) will not contain any material or content which is offensive, obscene, defamatory or otherwise unlawful or legally restricted; and
- (iii) will not, to the best of Supplier's knowledge, be the subject of any litigious or other claims or proceedings, and Supplier will inform BMG immediately if Supplier becomes aware of any such claims or proceedings.
- (f) Supplier further warrants that (i) the Developed IPR is Supplier's original work not copied wholly or substantially from any other third party source, or (ii) Supplier otherwise has all the necessary rights, permissions and consents needed to validly assign the Developed IPR to BMG in accordance with clause 10(c) at Supplier's own cost (as applicable).
- (g) Neither party will use or reproduce any names, trademarks, branding or logos owned by the other party for the purposes of advertising or promotional materials without the other party's prior written consent.

11. Data protection

- (a) Both parties will comply with all applicable requirements of applicable data protection and privacy legislation (including binding guidance and codes of practice issued by a party's relevant data protection authority) in force from time to time which apply to a party relating to its use of personal data in connection with the Contract and the performance of its obligations under the Contract.
- (b) The parties acknowledge that neither party intends to carry out processing of personal data on behalf of the other party under the Contract. To the extent that either party will process personal data on behalf of the other party in connection with the Contract, the parties will enter into a separate data processing agreement in respect of any such processing.
- (c) BMG will process personal data relating to Supplier and/or Supplier's personnel (as applicable) in accordance with its privacy statement, which may be updated from time to time, available at <https://www.bmg.com/de/privacy-statements>.

12. Confidentiality

- (a) Supplier undertakes to keep BMG's Confidential Information confidential.

Unless agreed otherwise in advance in writing by BMG, Supplier will not use or disclose BMG's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract, or as required by law. This clause 12(a) will survive expiry or termination of the Contract.

13. **Supplier personnel**

(a) Subject to 13(d), it is expected that services supplied under the Contract shall be managed and controlled by the Supplier and shall not constitute a supply of labour or of personal service to BMG. Accordingly, the Supplier shall be responsible for, in respect of its personnel, compliance with all relevant tax and employment laws, including, (but not limited to) compliance with the IR35 Legislation. Where the Supplier engages off-payroll personnel to work on the services provided under this Contract, then the obligation of such personnel to provide the services shall be owed to the Supplier and not to BMG. Accordingly, in respect of any personnel whom the Supplier engages via an intermediary, the Supplier shall be the "client" for the purposes of s.49(1)(a) or s.61M(1)(a) ITEPA (as applicable) and shall (where applicable) be responsible for carrying out an IR35 status determination as defined in s.61NA ITEPA ("**Status Determination**") and for paying the relevant personnel in accordance with such determination or legal tax status. Where the Supplier engages personnel directly on a freelance or sole trader basis (where there is no intermediary) then the Supplier shall also be solely responsible and liable for ensuring that it complies with all relevant tax and social security laws in respect of payments to such personnel.

(b)

(c) Notwithstanding clause 13(a), Supplier will at all times during and after the term of this Contract indemnify and keep indemnified BMG against all Losses :

(i) (including any assessment for tax and/or National Insurance Contributions) incurred by BMG and arising out of or in connection with any investigation and/or assessment or appeal thereof raised by HMRC against BMG in respect of supplies made by the

Supplier and/or payments made by the Supplier to any of the Supplier's personnel which relate to the services supplied under this Contract, including (without limitation) any assessment for tax and/or National Insurance Contributions against BMG under the IR35 Legislation;

- (ii) incurred by BMG arising out of the Supplier having provided inaccurate, incomplete or misleading information to BMG as required under clause 13(d);
 - (iii) incurred by BMG arising out of or in connection with any of the Supplier's failure to comply with clause 13(d);
 - (iv) incurred by BMG arising out of or in connection with the Supplier's breach of the warranty in clause 13 (e); and
 - (v) incurred by BMG arising out of or in connection with any of the Supplier's personnel claiming employment and/or worker rights as against BMG.
- (d) In the event that the services supplied by the Supplier comprise or otherwise involve the supply of personnel such that BMG would be/or is deemed to be the "client" for the purposes of the IR35 Legislation, the Supplier shall co-operate with BMG (including, without limitation, providing, on a timely basis, all such information as BMG may request to assist BMG in assessing whether IR35 needs to be considered in relation to the supply and, if so, to assist BMG in carrying out, updating or checking a Status Determination. The Supplier shall be solely responsible for paying its personnel in accordance with all relevant tax and social security laws and any Status Determination issued to it by BMG.
- (e) The Supplier warrants and undertakes that it engages/will engage any and all personnel whom BMG has determined as falling inside IR35 or who are otherwise working under arrangements which would/are not suitable for self-employment, on an employed basis for tax purposes and that all payments relating services supplied under this Contract by such personnel shall be paid directly to the personnel via the Supplier's PAYE payroll.

14. **TUPE**

(a) Supplier will (for itself and as agent of all Supplier affiliates) indemnify BMG and any "New Supplier" (being any person who provides to BMG any services which are similar to the Services and which, immediately prior to the date on which Supplier ceases providing the Services, were provided under the Contract) against all Losses which BMG or the New Supplier may incur arising out of or in connection with the actual or alleged application of the Transfer of Undertakings (Protection of Employment) Regulations 2006 and/or any successor legislation in respect of any Supplier personnel or subcontractor concerned with any part of the Services at any time.

15. **Compliance**

(a) Supplier warrants and represents that it will, and will procure that any and all persons engaged by it will, comply with any and all applicable laws, statutes, regulations, policies, procedures, guidelines, codes and/or other standard requirements (including, but not limited to, any anti-bribery, anti-corruption, anti-slavery, anti-trafficking and/or other ethical policies and any policies that we may notify to you and update from time to time) including, but not limited to, the Bertelsmann Supplier Code of Conduct. Breach of this clause constitutes a material breach of the Contract.

16. **General**

- (a) The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation will be governed by and construed in accordance with the laws and exclusive jurisdiction of England and Wales.
- (b) No failure or delay by a party to exercise any right or remedy will constitute a waiver or abandonment of that right or any other right or remedy. No waiver of any term of the Contract by BMG will be deemed to a further or continuing waiver of any other term of the Contract.
- (c) Notices should be served by first class pre-paid post by Supplier to Legal Team, BMG Rights Management (UK) Limited, 8 Floor, 5 Merchant Square, London, W2 1AS, and by BMG to Supplier at its address as it appears in the Contract, or (if no such address is provided) its registered address.

- (d) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract, except that any UK affiliate of BMG may enforce any term of the Contract which is expressly or impliedly intended to benefit a UK affiliate of BMG.
- (e) Nothing in the Contract is intended to, or will be deemed to, establish any partnership or joint venture between the parties, constitute any party as the agent of the other party, or authorise a party to make or enter into any commitments for or on behalf of the other party.
- (f) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it will be deemed deleted, but that will not affect the validity and enforceability of the rest of this Contract.
- (g) BMG may, but Supplier will not without the prior written consent of BMG, subcontract, assign, transfer or deal in any other manner with all or any of its rights and obligations under the Contract. Supplier will be responsible for all acts and omissions of its subcontractors as if such acts and omissions were its own.
- (h) Neither party will be deemed to be in breach of the Contract, or otherwise liable to the other, by reason of any delay in performance or non-performance of any of its obligations under the Contract to the extent that such delay or non-performance is caused by any circumstances beyond that party's reasonable control (excluding any circumstances related to Covid-19 and its impact).
- (i) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party acknowledges that: (a) upon entering into the Contract, it does not rely, and has not relied, upon any representation (whether negligent or innocent), statement or warranty made or agreed to by any person (whether a party the Contract or not) except those expressly set out in the Contract; and (b) the only remedy available in respect of any misrepresentation or untrue statement made to it will be a claim for damages for breach of contract under the Contract. Nothing in this clause limits or excludes any liability for fraud.