

## **AMMO & Brand IQ @ Ebiquity - 2011.**

### **GENERAL TERMS OF TRADE**

#### **1. DEFINITIONS**

In these Terms:

"Commencement Date" means the date on which We agree to begin providing you with the Publications and/or the Online Service as set out in the Subscription Form.

"Contract" means the agreement between You and Us for the provision of Publications and/or the Online Service as set out in these Terms, the Subscription Form and any other terms agreed by You and Us in writing for the provision of the same.

"We" "Our" and "Us" means Ebiquity Plc.

"You" and "Your" means the person, their employees and agents seeking to subscribe to Our Publications and/or Online Service.

"Publications" means any information or data published or supplied by Us in printed form.

"Online Service" means any information or data published or supplied by Us in electronic form.

"Terms" means the terms set out herein.

"Subscription Fee" means the price payable by You for the Publications and/or Online Service as set out in the Subscription Form.

"Subscription Form" means Our form setting out (among other things) the Commencement Date, details of the services to be provided, Subscription Fee, payment terms and duration of the Contract.

#### **2. CONTRACT**

2.1 We shall supply Publications and the Online Service subject to these Terms which may not be altered without Our written agreement. Any contrary or additional Terms unless so agreed are excluded.

2.2 We are entitled to rely upon the authority of the person signing the Subscription Form on Your behalf and You waive any right to deny such authority.

2.3 You agree to pay the Subscription Fee on the payment terms set out in the Subscription Form and these Terms unless otherwise agreed in writing.

2.4 We reserve the right to change the content layout and format of Publications and the Online Service without notice. We will consider, without any obligation to agree, any request by You to modify the content layout and format to accommodate Your specific needs.

#### **3. PAYMENT**

3.1 All invoices are payable within 28 days from their date unless otherwise agreed by Us in writing to You.

3.2 Any queries or complaints as to an invoice must be made in writing to Our finance department within 7 days of receipt of the invoice.

3.3 Payment may be made by BACS, major credit cards or by cheque payable to Our trading division as shown on the invoice. We accept payment of the Subscription Fee by Direct Debit.

3.4 Credit is granted and may be reviewed at any time at Our discretion. We may require references and may undertake a search with a licensed credit reference agency who will keep a record of that search.

#### **4. TERM AND FEES**

4.1 Subject to any trial period agreed in writing, and subject to any contrary provisions herein, each Contract will have a minimum term of twelve months. The Contract may be terminated on receipt by Us of 6 months' notice expiring on the anniversary of the Commencement Date. If no such notice is received, the Contract will continue for a further twelve month period whereupon it may be terminated (or may continue) in accordance with the foregoing provisions.

4.2 VAT shall be payable on the services provided by You under the Contract and will be charged at the rate prevailing on the date of Your VAT invoice.

4.3 If a trial period has been agreed in writing the Subscription can only be cancelled on receipt by Us of notice within 7 days of the end of the trial period failing which the Contract will continue in accordance with clause 4.1.

4.4 In the event that the Contract is renewed for a further twelve month period (pursuant to clause 4.1), the Subscription Fee will increase in line with the Retail Prices Index or 3% (whichever is higher). The Contract will otherwise renew on the terms of the previous Contract.

4.5 Notices under this clause must be:

- as shown on the Subscription Form
- sent to the Finance Department of Our trading division in writing

#### **5. DELIVERY AND INSPECTION**

5.1 Unless You notify Us of non delivery within 30 days of the expected delivery date Publications will be deemed delivered and accepted.

5.2 You shall inspect Publications and any binders supplied by Us at the time of delivery and unless You notify Our Customer Services Department within 14 days of any loss or damage in transit Publications and binders, if any, will be deemed delivered and accepted.

5.3 Our liability for non delivery, loss or damage in transit is to supply replacement Publications and/or binders. Damaged goods must first be returned to Our Customer Services Department.

5.4 You are responsible for advising Us of changes to Your contacts or addresses.

5.5 Except as set out in this clause We do not accept or give credit or refunds for returned Publications.

## **6. ONLINE SERVICE**

6.1 If You Subscribe to the Online Service We grant You a non-exclusive and non-transferable licence to access and use the Online Service on the following terms:

6.1.1 the Online Service may be accessed by up to 5 named individuals each to be identified by a username and password.

6.1.2 the Online Service may be accessed by Your employees at the office location notified to Us at the beginning of the Contract.

6.1.3 information accessed via the Online Service may not be downloaded printed or transferred to any other computer or person or otherwise copied.

6.1.4 You may not modify any of the information on the Online Service; use it for any public display, performance, sale or rental; remove modify or alter any copyright or other proprietary notice or trade mark.

6.2 We reserve the right to terminate this licence at any time without notice if You breach the Terms of this clause and the termination provisions in clause 9 will apply, in which case You will be obliged immediately to destroy any information downloaded printed or otherwise copied from the Online Service. We reserve all Our rights arising from or related to the Online Service.

6.3 The licence to use the Online Service may be modified or extended with Our written agreement which may include further Subscription Fees for additional and/or changes in users and/or location.

## **7. COPYRIGHT**

7.1 All Publications and information on the Online Service together with their design and layout are copyrighted. They may not be reproduced, copied, edited, published, transmitted, downloaded, uploaded or stored in a retrieval system in any way without Our or Our licensor's written permission. Except as expressly stated in the licence granted at clause 6 We do not grant any express or implied right to You in respect of any copyright or other proprietary rights of whatever nature subsisting in respect of the Publications and/or the Online Service.

## **8. LIMIT OF OUR LIABILITY**

8.1 We shall exercise reasonable care and skill in collating the information contained in Publications and the Online Service and nothing in these Terms shall exclude Our liability for death or personal injury caused by Our negligence.

8.2 Publications and the Online Service are provided without any express or implied warranty of any kind including warranties for quality, fitness for any purpose or non infringement of intellectual property.

8.3 We do not warrant the accuracy or completeness of the information in Publications or the Online Service.

8.4 We do not warrant an uninterrupted or error-free Online Service.

8.5 In no circumstances shall We be liable for misrepresentation (unless fraudulent) or in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever and whatever the cause for:

8.5.1 any loss of profit, business, contacts, reputation, goodwill, business interruption, loss of information, anticipated savings, economic loss or any liability You may have to a third person

8.5.2 unforeseeable special indirect or consequential losses of any nature whatsoever.

8.6 Without prejudice to any other provisions of these Terms Our liability for misrepresentation (unless fraudulent) in contract, tort (including negligence or breach of statutory duty) or otherwise arising by reason of or in connection with the Contract shall be limited to the greater of:

8.6.1 the Subscription Fee, and

8.6.2 the amount received by Us for the claim under Our insurance policy covering such risks provided that nothing in these Terms shall oblige Us to obtain any insurance or claim upon any insurance which We hold.

## **9. DEFAULT AND TERMINATION**

9.1 "Insolvent" means You ceasing to pay Your debts in the ordinary course of business or being unable to pay Your debts as they become due or Your ceasing or threatening to cease to carry on Your business or an administrator (or equivalent person) being appointed to manage Your affairs, business or property.

9.2 If You fail to pay any sum due to Us under a Contract on the due date or You become Insolvent or You breach the licence granted under clause 6 or You commit a material breach of this contract and fail to remedy that breach after being requested to do so We shall be entitled to do any one or more of the following (without prejudice to any other right or remedy We may have):

9.2.1 charge interest on any invoice that is overdue for payment and seek debt recovery compensation pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

9.2.2 suspend any further deliveries of Publications to You and/or access to the Online Service under any Contract with Us without liability on Our part.

9.2.3 treat this and any other Contract between You and Us as terminated as if You had served notice to cancel the Contracts and recover from You Subscription Fees in accordance with clause 4.1.

9.3 You shall reimburse Us costs including legal costs on an indemnity basis which We incur in enforcing Our rights under any Contract including but not limited to recovery of any sums due.

## **10. GENERAL**

10.1 This Contract shall be governed and interpreted according to the Law of England and Wales and You agree to submit to the non exclusive jurisdiction of the English Courts.

10.2 Any reference in these Terms to any Statute or Statutory Provision includes a reference to that Statute or Statutory Provision as from time to time amended extended or re-enacted.

10.3 The headings in these Terms are for convenience only and shall not affect their interpretation.

10.4 Except as provided otherwise in these Terms We shall not be deemed to be in breach of contract or liable for any delays or failures to perform any of Our obligations under this Contract due to any cause beyond Our reasonable control including but not limited to industrial action. Should any such event occur We reserve the right to cancel or suspend all or any part of the Contract without incurring any liability.

10.5 Nothing in these Terms is intended or will create any right to or benefit for any third party.

10.6 Any notice to be provided to Us under this Contract shall be in writing and delivered by first class post addressed to Our relevant trading division or any department named at 45 Foubert's Place, London W1F 7QH (or such other address, details of which We may notify to You from time to time). We shall deliver any written notice to You by first class post to Your last known address. A notice shall be deemed to be delivered 48 hours after the date it was posted.

10.7 The waiver by Us of any breach or default of these Terms shall not be construed as a continued waiver of that breach or as a waiver of any subsequent breach of the same or any other provision.

10.8 If any clause or sub-clause of these Terms is held by a competent authority to be invalid or unenforceable the validity of the other clauses and sub-clauses of these Terms shall not be affected and they shall remain in full force and effect.

10.9 This contract is personal to You and it may not be assigned.

10.10 Words denoting the singular number only include the plural and vice versa and words denoting one gender include all genders.

10.11 Termination of this contract shall not affect rights and obligations which have already accrued at the time of termination.

## **11 RESTRICTION**

11.1 The Publications and the Online Services are provided to You for Your personal use only and You agree not to (and agree not to assist and facilitate any third party to) distribute, resell or commercially exploit all or any part of the Publications and/or the Online Services provided to you pursuant to Your Subscription.

11.2 In consideration of Our providing and continuing to provide You with the Publications and the Online Services in accordance with Your Subscription from time to time, You hereby warrant and undertake to Us that You will not for the duration of Your Subscription to the Publications and/or the Online Services, and for a period of one year after the date of expiry of such Subscription, whether directly or indirectly and whether on Your own behalf or on behalf of any other person or otherwise howsoever, carry on, be engaged, concerned or interested in any capacity (whether for reward or otherwise) in any business that acts in competition with the business that We carry on under the brand names "AMMO" and "Brand IQ", namely commercially exploiting and granting subscriptions in respect of the Publications and the Online Services ("the Protected Business"), in the geographical location in which the Protected Business is conducted by Us from time to time (except as the holder for investment purposes only of not more than one per cent of the issued share capital of any company for the time being listed or admitted to trading on any recognised investment exchange (as defined in Section 285, Financial Services and Markets Act 2000) provided that You are not involved in the management of the business of such company other than by the exercise of voting rights attached to the shares You hold).

11.3 Each undertaking contained in clause 11.2 shall be read and construed independently of the other undertakings herein and as an entirely separate and severable undertaking, You agree that the restrictions contained in clause 11.2 are reasonable and necessary for the protection of the Protected Business and that, having regard to that fact and the continued provision by Us to You of the Publications and the Online Services in accordance with Your Subscription, these restrictions do not work harshly on You.

11.4 Whilst the restrictions in clause 11.2 are considered by You and Us to be reasonable in all the circumstances, if any one or more should for any reason be held invalid but would have been valid if part of the wording thereof was deleted, the said restriction shall apply with the minimum modifications necessary to make them valid and effective.