

# Term & Conditions of Sale

## 1. Interpretation

- 1.1 In this Agreement (as defined below) the following terms shall have the following meanings:  
"Conditions" these terms and conditions and (unless the context otherwise requires) includes any special terms and conditions agreed in Writing by the Supplier and the Customer;

"Agreement" together the attached Order Form and these Conditions;

"Customer" the customer as specified in the attached Order Form;

"Goods" the goods which the Supplier is to supply in accordance with these Conditions and which are specified in the Order Form;

"Intellectual Property" means patents, trade marks, trade secrets, copyright, database rights, designs, inventions, know how and any other industrial or intellectual property rights of any nature whatsoever, whether registered or capable of registration or not, in any part of the world and including all applications and the right to apply for any of the foregoing rights;

"Order Form" The attached order form;

"Supplier" Calendar & Diaries of Bristol Limited (registered in England number 1563088) whose registered office is at Hope Road, Bedminster, Bristol BS3 3NZ trading as Brunel Promotions;

"Writing" includes email or facsimile transmission and in the case of the Supplier signed by an authorised representative;

1.2 Any reference in this Agreement to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in this Agreement are for convenience only and shall not affect their interpretation.

1.4 In this Agreement any reference to the singular shall include the plural and vice versa.

## 2. Basis of the Agreement

2.1 The Supplier shall supply and the Customer shall purchase the Goods in accordance with the Order Form, subject to these Conditions, which shall govern the Agreement to the exclusion of any other terms and conditions. In the event of inconsistency between these Conditions and any special conditions contained in the Order Form, such special conditions shall prevail. No conduct by the Supplier shall be deemed to constitute acceptance of any terms put forward by the Customer.

2.2 No variation to this Agreement shall be binding unless agreed in Writing.

2.3 The Supplier's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Supplier in Writing. In entering into the Agreement the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed provided that nothing in this Agreement shall operate to limit or exclude any liability for fraud.

2.4 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other documents or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.

## 3. Orders and Specification

3.1 No faxed orders submitted by the Customer shall be deemed to be accepted by the Supplier unless and until confirmed in Writing by the Supplier. Unless otherwise notified in writing by the Supplier within 7 days of receipt of such an order, in the case of non-faxed orders, authorisation to proceed with the delivery of the Goods in writing by the Customer shall constitute the Customer's acceptance of the Agreement.

3.2 The Customer shall:

3.2.1 make a full disclosure to the Supplier of all information and material that the Supplier reasonably requires in order to perform its obligations under the Agreement;

3.2.2 ensure that such information and material is true, accurate and complete in all respects;

3.2.3 ensure that such information and material is free from any defamatory or unlawful content and that it does not infringe any rights of any third party;

3.2.4 ensure that such information is provided within sufficient time to enable the Supplier to supply the Goods in accordance with the Agreement; and

3.2.5 indemnify the Supplier (and keep it indemnified) against all costs, claims, losses, expenses and other liabilities arising out of or in connection with any breach by the Customer of its obligations in this Clause.

3.3 The quantity, quality and description of and any specification for the Goods shall be those set out in the Order Form (or as otherwise agreed in writing between the Supplier and the Customer). Any such figures, sizes, descriptions, specifications and details are approximations only and should not be relied upon by the Customer as being totally accurate.

3.4 The Supplier reserves the right to deliver up to 5%, in respect of calendars and diaries, and 10%, in respect of other Goods, more or less than the quantity ordered.

3.5 The Supplier reserves the right to forward to the Customer proofs of the Goods by e-mail, facsimile or by post.

3.6 No order which has been accepted by the Supplier may be cancelled by the Customer except with the agreement in Writing of the Supplier and on terms that the Customer shall indemnify the Supplier in full against all loss (including loss of profit), costs (including the costs of all labour and materials used), damages, charges and expenses incurred by the Supplier as a result of cancellation.

3.7 In relation to any export sales, the Customer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them.

## 4. Prices

4.1 The price of the Goods shall be the price stated in the Order Form. All prices stated in any quotation given by the Supplier, but not yet agreed by the Customer, are valid for 30 days only, after which time they may be altered by the Supplier without giving notice to the Customer.

4.2 The Supplier reserves the right, by giving notice to the Customer at any time before delivery, to increase any prices for Goods to reflect any increase in the cost to the Supplier which is due to:

4.2.1 any factor beyond the control of the Supplier (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture); and/or

4.2.2 any change in delivery dates, quantities or specifications for the Goods which is requested by the Customer; and/or

4.2.3 any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate information or instructions.

4.2.4 alterations requested by the Customer from the original copy after the proofs have been prepared will be the subject of additional charges to be borne by the Customer.

4.3 Except as otherwise stated in the Order Form, and unless otherwise agreed in Writing between the Customer and the Supplier:

4.3.1 all prices for Goods are given by the Supplier on an "ex works" and "unpacked" basis, the Customer shall be liable to reimburse the Supplier in respect of all costs incurred by it in relation to the transportation of the Goods to their final destination, including, but not limited to all packing freight and related shipping and carrier charges, insurance, customs clearance, payment of any taxes and duties payable on the Goods and warehousing and storage in transit; and

4.3.2 all prices and any other amounts payable by the Customer are expressed exclusive of any value added tax or other applicable sales tax.

4.4 Unless otherwise agreed in writing, all payments payable by the Customer under the Agreement shall be made without set-off or counterclaim of any description and shall be made in pounds sterling.

## 5. Terms of Payment

5.1 Subject to any special terms agreed in Writing between the Supplier and the Customer, the Supplier shall be entitled

to invoice the Customer for the price of the Goods on or at any time after despatch of the Goods.

5.2 The Customer shall pay the price of the Goods within 30 days of the date of the Supplier's invoice. The time of payment of the price shall be of the essence of the Agreement.

5.3 If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Supplier, the Supplier shall be entitled to:

5.3.1 terminate the Agreement or suspend any further deliveries of Goods to the Customer; and/or

5.3.2 appropriate any payment made by the Customer to such of the Goods (or the goods supplied under any other Agreement between the Customer and the Supplier) as the Supplier may think fit (notwithstanding any purported appropriation by the Customer); and/or

5.3.3 charge the Customer interest (both before and after any judgment) on the amount unpaid, at the rate of 5 per cent per annum above National Westminster Bank base rate from time to time from the due date until the date of actual payment;

5.3.4 at any time require the Customer to deliver up the Goods to the Supplier and, if the Customer fails to do so forthwith to enter upon any premises of the Customer where the Goods are located and repossess the Goods and any costs incurred by the Supplier in obtaining and transporting the Goods to its own premises shall be for the account of the Customer.

5.4 Notwithstanding any other rights and remedies available to the Supplier, the Supplier shall in respect of all debts due and payable by the Customer to the Supplier have a general lien on all goods and materials belonging to the Customer in the Supplier's possession and the Supplier shall be entitled, on the expiration of 14 days notice to the Customer, to dispose of such goods and materials as it thinks fit and to apply any proceeds of sale thereof towards the payment of such debts.

## 6. Delivery of Goods

6.1 Delivery of the Goods shall be made by the Customer collecting the Goods at the Supplier's premises at any time after the Supplier has notified the Customer that the Goods are ready for collection or, if some other place for delivery is agreed by the Supplier, by the Supplier delivering the Goods to that place.

6.2 Where the Supplier agrees to deliver the Goods to the Customer's premises or some other address, the Supplier shall be under no obligation under section 32(2) of the Sale of Goods Act 1979.

6.3 In relation to export sales, the Customer shall be responsible for arranging inspection of the Goods at the Supplier's premises before shipment. The Supplier shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection but which is only discovered after shipment, or in respect of any damage during transit.

6.4 Any dates quoted for despatch of the Goods are approximate only and although the Supplier shall use its reasonable endeavours to keep to any such quoted despatch dates it shall not be liable for any failure to do so. Time for despatch and delivery shall not be of the essence.

6.5 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Supplier to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Agreement as a whole as repudiated.

6.6 If the Customer fails to take delivery of the Goods or fails to give the Supplier adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of the Supplier's fault) then, without prejudice to any other right or remedy available to the Supplier, the Supplier may store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage.

## 7. Risk and Property in Goods

7.1 Risk of damage to or loss of the Goods shall pass to the Customer at the time of delivery or where the Customer has wrongfully failed to take delivery of the Goods, when the Supplier has tendered the Goods for delivery.

7.2 Notwithstanding delivery and the passing of risk in the Goods or any other provision of the Agreement, the legal title to the Goods shall not pass to the Customer until the Supplier has received in cleared funds payment in full of the price of the Goods and any other sums due to the Supplier from the Customer.

7.3 Until such time as the legal title to the Goods passes to the Customer, the Customer shall hold the Goods as the Supplier's fiduciary agent and bailee, and shall keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as the Supplier's property, but the Customer shall be entitled to resell or use the Goods in the ordinary course of its business.

7.4 Until such time as the title in the Goods passes to the Customer (and provided the Goods are still in existence and have not been resold), the Supplier shall be entitled at any time to require the Customer to deliver up the Goods to the Supplier and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods. For the purposes of this Clause, the Customer hereby grants to the Supplier an irrevocable licence to enter on any premises or land in the ownership or possession of the Customer where the Goods are stored in order to remove or inspect the Goods and the Customer shall fully indemnify the Supplier against all loss, damage, costs or expenses incurred by the Supplier (including those arising out of any third party claims made against the Supplier) in relation to the exercise of its rights under such licence.

7.5 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Supplier, but if the Customer does so all moneys owing by the Customer to the Supplier shall (without prejudice to any other right or remedy of the Supplier) forthwith become due and payable.

7.6 The Supplier shall be entitled to maintain an action for the price of the Goods, notwithstanding that the legal title to them has not passed to the Customer.

## 8. Warranties and Liability

8.1 If the Goods are not available, the Supplier may offer the Customer alternative and similar goods within a reasonable period after the Customer has placed the order. If the Customer does not wish to accept such alternative goods, the Customer must inform the Supplier in Writing within 14 days of receipt of such goods and the Supplier shall refund any monies paid by the Customer in respect of the Goods.

8.2 The Supplier warrants that the Goods will correspond with their specification (as agreed in accordance with Clause 3.3) at the time of delivery and will be free from defects in materials and workmanship provided that the Supplier shall be under no liability:

8.2.1 Unless the Customer informs the Supplier in Writing within 2 days of delivery of defects in the Goods which are immediately apparent on inspection for example, damage caused in transit;

8.2.2 Unless the Customer informs the Supplier in Writing within 14 days of delivery of any defects in materials or workmanship or of Goods which do not correspond with their specification as referred to above and which are not immediately apparent on inspection as specified in clause 8.2.1;

8.2.3 in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Customer;

8.2.4 if the Goods delivered by the Supplier substantially conforms with any sample approved by the Customer;

8.2.5 under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment.

8.3 Subject as expressly provided in this Agreement, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

8.4 In respect of any breach by the Supplier of the warranties given by it under Clause 8.1 above, the Supplier's liability to the Customer shall be limited at, its sole discretion, to:

8.4.1 Rectifying the defect or replacement of the Goods (or any parts) in question; and/or

8.4.2 repayment of the price, or a proportion of the price, attributable to the Goods in question.

8.5 Goods may only be returned by the Customer if the Supplier and/or its authorised representatives have had the opportunity to inspect the Goods and the Supplier has agreed in Writing to their return.

8.6 The Supplier shall not be liable to the Customer by reason of any negligence or any other tortious action or any representation (unless fraudulent), or any implied warranty, condition or other term, or under the express terms of the Agreement, for any:

8.6.1 loss of anticipated revenues; or

8.6.2 loss of anticipated savings; or

8.6.3 loss of profits; or

8.6.4 loss of business opportunities; or

8.6.5 loss of goodwill; or

8.6.6 damage to reputation; or

8.6.7 any indirect, special or consequential loss or damage, costs, expenses or other such claims for compensation whatsoever;

(whether caused by the negligence of the Supplier, its employees or agents or otherwise) which arises out of or in connection with the Agreement, except as expressly provided elsewhere in this Agreement.

8.7 The entire liability of the Supplier in respect of any and all claims made against it by the Customer under or in connection with the Agreement shall not exceed the total price payable under the Agreement, except as expressly provided elsewhere in this Agreement.

8.8 Notwithstanding anything to the contrary in this Agreement, the Supplier's liability to the Customer:

8.8.1 for death or personal injury caused by the negligence of the Supplier, its employees, agents or subcontractors; or

8.8.2 for damage suffered by the Customer as a result of any breach by the Supplier of the condition as to title or the warranty as to quiet possession implied by Section 12 of the Sale of Goods Act 1979; or

8.8.3 for fraud (including, but not limited to, fraudulent misrepresentation), is not limited (but nothing in this Clause confers any right or remedy upon the Customer to which it would not otherwise be entitled).

## 9. Intellectual Property

9.1 Unless otherwise agreed in Writing and with the exception of any materials, logos and/or trade marks provided by the Customer, all Intellectual Property of whatever kind:

9.1.1 in the Goods shall remain (as between the Supplier and the Customer) the absolute property of the Supplier;

9.1.2 created or developed by the Supplier ("the Works") shall remain the absolute property of the Supplier.

9.1.3 and no rights in such Intellectual Property or Works are granted to the Customer save for a non-exclusive licence to use or resell the Goods for the purposes contemplated by the Agreement.

9.2 The Customer shall indemnify and keep the Supplier indemnified against all costs and expenses (including legal costs), claim, damages and losses suffered and incurred by the Supplier in connection with any materials including but not limited to any logos provided by the Customer and used by the Supplier in creating the Goods and/or Works which infringes any third party intellectual property rights.

## 10. Force Majeure

10.1 The Supplier shall not be liable to the Customer or be deemed to be in breach of the Agreement by reason of any delay in performing, or any failure to perform, any of the Supplier's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Supplier's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Supplier's reasonable control:

10.1.1 Act of God, explosion, flood, tempest, fire or accident;

10.1.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;

10.1.3 acts, restrictions, regulations, bye-law, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

10.1.4 import or export regulations or embargoes;

10.1.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Supplier or of a third party);

10.1.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;

10.1.7 power failure or breakdown in machinery.

Provided that if any such cause shall delay or prevent the due performance by the Supplier of the Agreement for more than 90 days, the Supplier shall so notify the Customer in writing and the Customer may, within 7 days of such written notification, cancel the part of the Agreement which has been affected by such delay or failure of performance.

10.2 In the event that the Customer cancels the Agreement the Supplier shall deliver to the Customer its work in progress and the Customer shall pay a fair proportion of the price for this.

## 11. Termination

11.1 This Clause applies if:

11.1.1 the Customer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

11.1.2 an encumbrancer takes possession, or a receiver is appointed, over any of the property or assets of the Customer; or

11.1.3 anything analogous to any of the foregoing occurs to the Customer under the law of any jurisdiction; or

11.1.4 the Customer ceases, or threatens to cease, to carry on business; or

11.1.5 the Supplier reasonably believes that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly; and/or

11.1.6 the Customer commits any material breach of any of the provisions of the Agreement and in the case of a breach capable of remedy fails to remedy the same within 30 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied.

11.2 If this Clause applies then, without prejudice to any other right or remedy available to the Supplier:

11.2.1 the Supplier shall be entitled to terminate the Agreement or suspend any further deliveries of Goods without any liability to the Customer; and

11.2.2 if any of the Goods have been delivered but not paid for, the price payable by the Customer under the Agreement shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## 12. Assigning the Agreement

The Customer shall not be entitled to assign any of its rights under the Agreement without the prior written consent of the Supplier. The Supplier may assign any of its rights and obligations under the Agreement without the consent of the Customer.

## 13. Waiver of Rights and Remedies

No delay or failure on the part of any party in enforcing any provision in the Agreement shall be deemed to be a waiver or create a precedent or in any way prejudice any party's rights under the Agreement. The rights and remedies provided in the Agreement are cumulative and are not exclusive of any rights or remedies provided by law.

## 14. Severability

If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision.

## 15. Entire Agreement

The Agreement constitutes the entire agreement and understanding between the parties with respect to its subject matter and the terms of the Agreement shall supersede any previous agreements.

## 16. Third Parties

For the avoidance of doubt, nothing in this Agreement is intended to confer on any third party any benefit or the right to enforce any term of the Agreement.

## 17. Governing Law and Jurisdiction

The Agreement shall be governed by and construed in accordance with the laws of England and shall be subject to the exclusive jurisdiction of the English Courts.