

# Conditions of Sale

## 1. GENERAL

In these conditions:

- (a) The "Buyer" means the person, firm or company who accepts a quotation from the Seller for sale of Goods.
- (b) The "Seller" means Hoggett Creative Ltd. of Bridge House, 7 High Street, Annan, Dumfries & Galloway, DG12 6AD.
- (c) The "Goods" means the services and/or materials, which the Seller is to supply and which is the subject of the contract between the Seller and the Buyer.
- (d) The contract between the Seller and the Buyer shall be subject to these conditions, which shall govern the said contract to the exclusion of any other terms and conditions subject to which any quotation is accepted or purported to be accepted or any order is made or purported to be made by the Buyer.
- (e) No variations of these conditions shall be binding unless agreed in writing by a Director or designated person of the Seller.
- (f) Any typographical, clerical or other error or omission in any sales literature, quotation, list price, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.
- (g) The headings in these conditions are for convenience only and shall not affect their interpretation.

## 2. QUOTATIONS AND PRICE

- (a) Unless previously withdrawn by the Seller, quotations and tenders are open for acceptance for the period stated within them or if no period is stated within them, then within one month from the date of the quotation and/or tender.
- (b) All prices specified in quotations and tenders are subject to variation by the Seller without prior notice to the Buyer.
- (c) Quotations and tenders are subject to confirmation by the Seller upon receipt of orders from the Buyer.
- (d) The Seller is not currently registered to charge VAT. All prices quoted or accepted are exclusive of VAT. VAT will be charged in accordance with HMRC guidance and at the appropriate rate if registration is required.
- (e) All prices, unless otherwise stated, are exclusive of all transport, storage, parking, insurance, forwarding and other costs. If necessary, these costs shall be added to the Buyer's account.
- (f) Subsequent to the date of any quotation or tender any increase in the cost of fulfilling the contract to the Seller for any reason whatsoever prior to the date of delivery shall be charged to the Buyers.
- (g) Notwithstanding that the price paid by the Buyer to the Seller includes the cost of any labels and or sleeves to be used in the production and packaging of the Goods are to be supplied by the Seller. Upon termination for whatever reason of the contract, all properties will be retained by the Seller and the Buyer shall not be entitled to the property nor the return of the price of the said property nor any part thereof until all payments are met.

## 3. TERMS OF PAYMENT

- (a) Unless otherwise stated, payment is due when an order is placed. If the Seller agrees to deliver Goods when payment has not yet been made then payment will be due within 28 calendar days of the invoice date.
- (b) Should work be suspended at the request of or delayed, through any default, by the Buyer for a period of 28 days, the Seller shall be then entitled to payment for any work already undertaken and any materials used.
- (c) The paper content of any order will be invoiced upon receipt of paper at the place of printing and is payable within 28 days or prior to printing, whichever is the sooner. Such invoice item/s will be termed "Part Production Cost". The balance of the order will be invoiced upon completion and, unless otherwise stated, is payable within 28 calendar days.
- (d) If the Buyer has not paid in full by the due date then the Seller will be entitled to charge the Buyer interest at 4% or £35.00, whichever is the greater, on the first day after the 28 day term and per calendar month thereafter on the amount outstanding until it has been paid in full.
- (e) In the case of contracts involving more than one delivery, default in payment by the due date shall entitle the Seller at its discretion to treat the contract and any other contract between the Buyer and Seller as repudiated by the Buyer and able the Seller to claim damages accordingly.
- (f) The Seller will be entitled to sue the Buyer for the money and Seller costs incurred whether or not property in the Goods have passed to the Buyer at any time after the 28 day term. Notice will be given in writing.
- (g) If the Buyer has any dispute or counterclaim against the Seller, the Buyer will not be entitled to make any reduction in, or deferment of payment because of that dispute or counterclaim

## 4. DELIVERY

- (a) Time shall not be of the essence for the purpose of delivery of Goods by the Seller. Delivery terms are quoted without guarantee or penalty and the time for delivery shall run from the date the order is received or the tender or quotation accepted or the date on which sufficient information is received from the Buyer to enable the Seller to proceed with the execution thereof whichever is the later.
- (b) Subject to the provisions of paragraph (a) above:
  - (i) Where contracts provide for a single delivery without specifying a date, Goods shall be delivered and accepted as soon as available for delivery.
  - (ii) Where contracts provide for a deferred delivery without specifying a date or dates for such deferred deliveries, delivery shall be made and accepted within six months of the specified first delivery date.
  - (iii) In the event of failure by the Buyer to accept any delivery, that delivery shall be deemed to have occurred and any storage or other costs incurred by the Seller as a result of the Buyer's failure shall be added to the Buyer's account with interest as aforesaid.
  - (iv) Where any subsequent deviation is made from these terms at the request of the Buyer any additional costs incurred by the Seller as a result thereof shall be added to the Buyer's account.
  - (v) Every effort shall be made by the Seller to fulfill delivery in accordance with these terms and conditions but the Seller will not be liable for any loss or damage arising due to delay on delivery however caused.
  - (vi) Each delivery shall constitute a separate contract that shall be subject to these terms and conditions and any failure or defect in any one delivery shall not entitle the Buyer to repudiate the contract as to the remaining deliveries.

## 5. CLAIMS

The Buyer shall inspect the goods forthwith upon delivery or deemed delivery as specified in clause 4(b)

- (iii) and shall within three days of such delivery (and time shall be of the essence) notify the Seller in writing of any matter by reason whereof the Buyer alleges that the goods are not in accordance with the contract. The return of any goods will not be accepted unless the Seller or its authorised representative shall first have had the opportunity of considering the Buyer's reasons for resuming the goods and to accept the return thereof. If the Buyer shall fail to give notice as aforesaid the goods shall be deemed to be in all respects in accordance with the contract and the Buyer shall be deemed to have accepted the goods.

## 6. LIMITATION OF SELLER'S LIABILITY

Any express or implied statement, condition or warranty, statutory or otherwise, not stated herein is hereby excluded and deemed to be inconsistent herewith, and no responsibility is accepted by the Seller for any damage or loss arising directly or indirectly out of goods, supplied or for any damage or loss arising by reason of any failure of goods to comply with the specification or with statutory requirements whether attributable to Seller's negligence or otherwise save to the extent that exclusion of liability is prohibited by law.

- (a) Subject to paragraph 5 and 6(a) the Seller's liability for any loss and or damage whether direct or indirect consequential or howsoever caused shall be limited, at the Seller's discretion, the replacement or repair of the goods supplied or return of the purchase price and or the price paid for services less a one twelfth part of such price for each month that has elapsed since delivery or the re-supply of the services.

## 7. BUYERS PROPERTY

Any property of the Buyer supplied to the Seller for the purposes of the Contract will be held at the Buyer's risk. Every care will be taken to secure the best results where materials are supplied by the Buyer but no responsibility will be accepted for imperfect work caused by any defects or the unsuitability of materials so supplied.

## 8. FORCE MAJEURE

The Seller shall not be liable to the Buyer or deemed to be in breach of contract by reason of any delay in performing or failing to perform any of the Seller's obligations in relation to the goods if the delay or failure was due to any cause beyond the Seller's control. Without prejudice to the generality of the foregoing any act of God, war, strikes, lockouts, fire, flood, tempest and inability of the Seller to procure materials or articles required for the performance of the contract which may prevent the fulfilment thereof shall be regarded as causes beyond the Seller's reasonable control. In the event of any failure or delay to perform any contract as a result of the said causes such contracts, at the Seller's discretion, may be varied or cancelled by the Seller or delivery may be wholly or partly suspended and time for discretion, may be varied or cancelled by the Seller or delivery may be wholly or partly suspended and time for delivery may be extended by the Seller without the Seller being liable to the Buyer or being deemed to be in breach of contract.

## 9. PROPERTY IN GOODS

- (a) Risk of damage to or loss of the Goods shall pass to the Buyer in the case of Goods to be delivered at the Seller's premises at the time when the Seller notifies the Buyer that the goods be available for collection or in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered the delivery of the Goods.
- (b) Notwithstanding delivery and the passing of risk in the Goods, or any other provisions of these Conditions, the property in the Goods or any part of them shall not pass to the Buyer until the Seller has received in cash or cleared funds, payment in full the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.
- (c) Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property. Until that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to the Seller for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any moneys or property of the Buyer and third parties, and, in the case of tangible proceeds properly stored, protected and insured.
- (d) Until such time as the property in the goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- (e) The Buyer 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 Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

## 10. LIMITS OF CONTRACT

Quotations or tenders include only such goods and work as are specified therein. Each order shall be deemed to be a separate contract to which these terms and conditions shall apply (and no liability can be accepted by the Seller for the working in combination of goods, which have been ordered in separate parts and/or at different times).

## 11. DESIGN

- (f) The Buyer will indemnify the Seller against all damages, penalties, costs and expenses to which the Seller may become liable as a result of work done in accordance with the Buyer's specification which involves the infringement of any letters patent or registered design.
- (a) No warranty or representation is given by the Seller that the Goods do not infringe any letters patents trademarks, registered designs or other industrial rights.
- (b) The seller will retain ownership of all copyrights attaching to design work carried out by the seller until such design work is invoiced and paid in full by the buyer.

## 12. PRELIMINARY WORK

All work carried out at the customer's request, whether experimentally or otherwise will incur charges for labour and materials.

## 13. PROOFS

Buyer's corrections and amendments including alterations in style and the cost of additional proofs necessitated by such actions will incur extra charges. Proofs of all work may be submitted for customer's approval, and in that event no responsibility will be accepted for any errors in them.

## 14. WAIVER

No concession or indulgences granted to the Buyer shall prejudice future exercise of the Seller's full right hereunder.

## 15. ALTERATIONS

Alterations to any orders cannot be accepted without the Seller's consent in writing and any additional costs involved will be chargeable to the Buyer.

## 16. CANCELLATIONS

No order accepted by the Seller can be canceled without the Seller's consent in writing and in no circumstances can the Seller allow cancellation of orders for goods made or specially adapted to the Customer's requirements.

## 17. ASSIGNMENTS

The contract of which the Conditions form part is personal to the Buyer who shall not assign the benefit thereof without the Seller's written consent.

## 18. DIGITAL ASSET STORAGE

Hoggett Creative Limited are not responsible for any loss or damage to digital files or final artwork files. Clients are able to request copies of any files produced once all invoices are paid in full. There may be a small charge for this service to cover studio time and expenses.

## 19. LEGAL CONSTRUCTION

Any contract whether written or verbal entered into between the Seller and the Buyer shall in all respects be construed and operate as a Contract subject to the Law. Only Scottish law will govern the construction, validity and performance of this contract, and the Scottish Court will have exclusive jurisdiction. The interpretation of any clause or sub-clause above will not in any way be limited or restricted by reference to or interference from any other clause or sub-clause is unenforceable according to its terms then the others will remain in full force and effect.