

A B Graphic International Limited

Conditions for the Supply of Goods and Services (2015 Edition)

1. **Interpretation**
- 1.1 In these Conditions the following words shall have the following meanings:
 - 1.1.1 **"Acknowledgement of Order"** the Company's acknowledgement of order form attached to these Conditions
 - 1.1.2 **"Buyer"** the person, firm or company who purchases the Goods and Services from Company.
 - 1.1.3 **"Company"** A B Graphic International Limited or any subsidiary or associated company which supplies Goods and/or Services to Buyer.
 - 1.1.4 **"Conditions"** the standard terms and conditions for the supply of goods and services set out in this document and (unless the context otherwise requires) any special terms and conditions agreed in writing between Company and Buyer.
 - 1.1.5 **"Contract"** the contract between Company and Buyer for the supply of Goods and/or Services, incorporating these Conditions.
 - 1.1.6 **"Goods"** any goods agreed in the Contract to be supplied to Buyer by Company (including any part or parts of any order for Goods).
 - 1.1.7 **"Incoterms"** an Incoterm specified in Incoterms 2010 published by the International Chamber of Commerce.
 - 1.1.8 **"Services"** any services agreed in the Contract to be supplied to Buyer by Company including installation of the Goods and any other services agreed between the parties.
- 1.2 Words in the singular include the plural and vice versa.
2. **Application of Conditions**
- 2.1 These Conditions cancel and supersede any earlier conditions for the supply of goods and/or services of Company and shall govern the Contract to the exclusion of any terms or conditions which Buyer purports to apply under any purchase order, confirmation of order, specification or other document, or which are implied by trade, custom, practice or course of dealing, and Buyer waives any right which it might have to rely on such terms or conditions.
- 2.2 No variation to these Conditions or any representation about the Goods or Services shall have effect unless expressly agreed in writing and signed by a director of Company.
- 2.3 Each order for the Goods and/or the Services by Buyer from Company shall be deemed to be an offer by Buyer to purchase the Goods and/or the Services subject to these Conditions.
- 2.4 No order placed by Buyer shall be deemed to be accepted by Company until Company has confirmed acceptance of the order or (if earlier) Company delivers the Goods or provides the Services to Buyer.
- 2.5 Buyer shall ensure that the terms of its order, any information relating to the Services necessary for Company to supply the Services and any applicable specification submitted by Buyer are complete and accurate. Company shall not be liable to Buyer if such terms, information relating to the Services or specification are not complete or accurate.
- 2.6 Any quotation is given on the basis that no contract will come into existence until Company has confirmed acceptance of Buyer's order or (if earlier) delivers the Goods or provides the Services. Any quotation is valid only for all the Goods and Services referred to in the quotation for a period of 30 days from its date, provided that Company has not previously withdrawn it. Company may reject an order which is for only part of the Goods and Services the subject of a quotation.
- 2.7 Company may notify to Buyer a credit limit for purchasing the Goods and/or the Services from Company. Company shall be entitled to change such credit limit or remove Buyer's credit terms at any time upon giving notice to Buyer.
3. **Description**
- 3.1 All samples, designs, drawings, descriptive matter, specifications and advertising issued by Company and any price lists, descriptions or illustrations contained in catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and the Services described in them and their prices. They shall not form part of the Contract and Company shall be entitled to correct any error without any liability to Buyer.
- 3.2 Company reserves the right to change the specification of the Goods after acceptance of Buyer's order provided that such change does not materially alter the characteristics of the Goods.
- 3.3 The sale of the Goods shall not be a sale by sample.
4. **Delivery**
- 4.1 If Buyer is located in mainland Great Britain, unless otherwise agreed in writing by Company, delivery of the Goods shall be by Company delivering or arranging delivery of the Goods to Buyer's place of business and delivery of the Goods shall be completed on the arrival of the Goods at the delivery location. Buyer shall unload the Goods on delivery.
- 4.2 If Buyer is located outside mainland Great Britain, delivery of the Goods shall be in accordance with the relevant Incoterm agreed in writing between Company and Buyer.
- 4.3 Where Company has agreed to be responsible for packing the Goods, the Goods will be suitably packed for withstanding the conditions of normal delivery. Buyer must provide prior written notice to Company in the event that there are any special requirements for packing the Goods and Company will use its reasonable endeavours to comply with such special requirements for packing, subject to Buyer agreeing to pay any additional charges of Company.
- 4.4 Any date specified by Company for delivery of the Goods is an estimate only and time for delivery shall not be made of the essence by notice. Where Company agrees to change the specification or quantity of Goods ordered Company shall be entitled to adjust the delivery date accordingly. If no date for delivery has been so specified, delivery will be within a reasonable time.
- 4.5 Subject to the other provisions of these Conditions, Company shall not be liable for any loss (including but not limited to loss of profit and consequential loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods nor will any delay entitle Buyer to terminate or rescind the Contract.
- 4.6 Company may deliver the Goods by separate instalments and invoice Buyer separately for the price of the Goods delivered in each instalment.
- 4.7 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract provided that:
 - 4.7.1 failure by Company to deliver any one or more of the instalments in accordance with these Conditions or any claim by Buyer in respect of any one or more instalment shall not entitle Buyer to treat the Contract as a whole as repudiated; and
 - 4.7.2 Buyer's refusal to take delivery or make payment in respect of any one or more instalment shall entitle Company to treat the Contract as a whole as repudiated.
- 4.8 If for any reason Buyer will not accept delivery of any of the Goods, or Company is unable to deliver the Goods on time due to vehicles being unduly delayed at the point of delivery or because Buyer has not provided appropriate instructions, information, documents, licences or authorisations, the price shall become immediately due and payable and risk in the Goods will pass to Buyer. Company may store the Goods until actual delivery and Buyer will be liable for all related costs and expenses (including without limitation demurrage, storage and insurance). Without prejudice to Company's right to recover from Buyer any sums due to Company, if Buyer is not collected or accepted delivery of the Goods within 14 days from the date upon which the price became due and payable, Company may dispose of the Goods in such manner as Company may determine.
5. **Shortfalls and Non-Delivery**
- 5.1 The quantity of any consignment of the Goods as recorded by Company upon despatch from Company's place of business shall be conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary.
- 5.2 Company shall not be liable for any non-delivery of the Goods unless written notice is given to Company within 21 days of the estimated date of delivery supplied by Company.
- 5.3 Company shall not be liable for any shortfall in the delivery of the Goods unless written notice is given to Company within 21 days of delivery.
- 5.4 Any liability of Company for non-delivery of the Goods shall be limited to delivering the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.
- 5.5 Any liability of Company for any shortfall in the delivery of the Goods shall be limited to making up the shortfall within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.
6. **Supply of Services**
- 6.1 Company shall provide the Services to Buyer in accordance with the Contract in all material respects.
- 6.2 Company shall use reasonable endeavours to meet any performance dates for the Services agreed in writing between the parties, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 6.3 Company shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and Company shall notify Buyer in any such event.
- 6.4 Company warrants to Buyer that the Services will be provided using reasonable care and skill.
- 6.5 The Buyer shall:
 - 6.5.1 disclose to Company prior to the Contract all information necessary or required by Company to assist Company in determining the price of supplying the Services;
 - 6.5.2 provide Company with free and uninterrupted access to Buyer's premises as reasonably required by Company to provide the Services;
 - 6.5.3 provide Company with such information and materials as Company may reasonably require to supply the Services and ensure that such information is accurate in all material respects; and
 - 6.5.4 provide free of charge to Company, lighting and electricity and a suitable electrical isolator adjacent to the Goods together with extract ducting and lifting gear and all labour equipment or apparatus notified to Buyer by Company for supplying the Services.
- 6.6 If Company's performance of any of its obligations in respect of the Services is prevented or delayed by an act or omission by Buyer or failure by Buyer to perform any relevant obligation ("Buyer Default"):
 - 6.6.1 Company shall, without limiting its other rights or remedies, have the right to suspend delivery of the Goods or performance of the Services until Buyer remedies the Buyer Default, and to rely on the Buyer Default to relieve it from the performance of any of its obligations to the extent the Buyer Default prevents or delays Company's performance of any of its obligations;
 - 6.6.2 Company shall not be liable for any costs or losses sustained or incurred by Buyer arising directly or indirectly from Company's failure or delay to perform any of its obligations as set out in this Condition 6; and
 - 6.6.3 Buyer shall reimburse Company on written demand for any costs or losses sustained or incurred by Company arising directly or indirectly from the Buyer Default.
7. **Price**
- 7.1 Unless otherwise agreed in writing by Company, the price for the Goods, including packing and delivery, and the Services shall be:
 - 7.1.1 the price in force at the date of acceptance of Buyer's order; and
 - 7.1.2 exclusive of packaging costs, costs of unloading the Goods, value added tax and any additional charges agreed for packing, delivery and Services which sum Buyer shall pay at the same time in addition.
- 7.2 Company shall be entitled at any time prior to delivery of the Goods or performance of the Services to increase the price of the Goods and the Services to reflect any increase in the cost of the Goods and the Services to Company after acceptance of Buyer's order which is due to factors beyond Company's reasonable control including, without limitation, currency exchange rate fluctuations, increases in taxes and duties and any other increase incurred by Company in respect of the Goods and the Services.
- 7.3 Company reserves the right to adjust the price of any Goods and Services to reflect any alteration to the specification of the Goods and Services agreed between Company and Buyer after acceptance of Buyer's order.
8. **Payment**
- 8.1 Subject to Condition 8.2, payment of the price for the Goods and Services and any other charges and sums due under the Contract shall be due in such currency and on such dates as are set out in the Acknowledgement of Order. If no currency or dates are set out in the Acknowledgement of Order, payment shall be due pounds sterling within 30 days of the date of invoice. Payment shall be made to the bank account nominated in writing by Company. Time for payment shall be of the essence. No payment shall be deemed to have been received until Company has received cleared funds.
- 8.2 All sums payable by Buyer under the Contract shall become due immediately upon termination of the Contract despite any other provision.
- 8.3 Any issues relating to an invoice must be communicated to Company within seven days of the date of the invoice.
- 8.4 Buyer shall make all payments due under the Contract without any deduction by way of set-off, counterclaim, discount, abatement or otherwise.
- 8.5 If Buyer fails to pay Company any sum due pursuant to the Contract Company shall be entitled to suspend performance of Company's obligations under the Contract or under any other contract between Company and Buyer and/or charge Buyer interest on such sum from the due date for payment at the annual rate of 3% above the base lending rate from time to time of HSBC (or such other bank as Company may notify Buyer in writing from time to time) accruing on a daily basis until payment is made, whether before or after any judgment. Alternatively, Company shall be entitled to charge Buyer interest and compensation in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 as amended. In addition to interest, Company shall be entitled to recover from Buyer such legal costs as are incurred in the recovery of sums due and owing to Company.
- 8.6 Company may at any time set off any liability of Buyer to Company against any liability of Company to Buyer, whether such liability is present or future, liquidated or unliquidated, under the Contract or otherwise.
9. **Risk and Ownership**
- 9.1 The Goods shall be at the risk of Buyer from the time of delivery save for when Condition 4.2 applies, in which case risk shall pass in accordance with the relevant Incoterm.
- 9.2 Ownership of the Goods shall not pass to Buyer until Company has received in full in cash or cleared funds:
 - 9.2.1 all sums payable in respect of the Goods; and
 - 9.2.2 all other sums which are or which become payable to Company from Buyer on any account including any interest on such sums.
- 9.3 Until ownership of the Goods has passed to Buyer, Buyer shall:
 - 9.3.1 hold the Goods on a fiduciary basis as Company's bailee;
 - 9.3.2 store the Goods (at no cost to Company) separately to other goods of Buyer or any third party in a way that they remain readily identifiable as Company's property;
 - 9.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 9.3.4 maintain the Goods in satisfactory condition insured for their full price against all risks and hold the proceeds of insurance on trust for Company and not mix them with any other money, nor pay the proceeds into an overdrawn bank account; and
 - 9.3.5 notify Company immediately if it becomes subject to any of the events listed in Condition 9.5.
- 9.4 Buyer may resell the Goods before ownership has passed to it solely on the condition that any sale shall be on Buyer's own behalf in the ordinary course of Buyer's business at full market value and Buyer shall deal as principal when making such sale.
- 9.5 Buyer's right to possession of the Goods shall terminate immediately and all sums shall become due and payable immediately and Buyer agrees that Company shall have the right to rescind or terminate the Contract and/or to suspend any further deliveries under the Contract if any of the following events, or Company reasonably believes that any of the following events will, happen:
 - 9.5.1 Buyer has a bankruptcy order made against it or makes an arrangement or composition with its creditors or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors or (being a body corporate) convenes a meeting of creditors or enters into liquidation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof; or documents are filed with the court for the appointment of an administrator of Buyer or notice of intention to appoint an administrator is given by Buyer or its directors or by a qualifying floating charge holder; or a resolution is passed or a petition presented for the winding up of Buyer; or for the granting of an administration order in respect of Buyer; or any proceedings are commenced relating to the insolvency or possible insolvency of Buyer; or
 - 9.5.2 Buyer encumbers or in any way charges any of the Goods or suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under the Contract or any other contract between Company and Buyer, or is unable to pay its debts or Buyer ceases to trade.
- 9.6 Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from Company.
- 9.7 Buyer grants Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where Buyer's right to possession has terminated, to recover them.
- 9.8 Where Company is unable to determine whether any Goods are the goods in respect of which Buyer's right to possession has terminated, Buyer shall be deemed to have sold all goods of the kind sold by Company to Buyer in the order in which they were invoiced to Buyer.
- 9.9 On termination of the Contract, howsoever caused, Company's (but not Buyer's) rights contained in this Condition 9 shall remain in effect.
10. **Warranty**
- 10.1 Company does not give any guarantee or warranty in respect of second hand Goods which are sold by Company and purchased by Buyer in their condition as seen by Buyer.
- 10.2 Company warrants (subject to these Conditions) that for a period of one year from the date of installation, or 2,000 hours single shift working (whichever occurs first) the Goods will be free from defects in workmanship and materials when installed and used in accordance with Company's manuals, technical specifications and other guidelines published by Company ("User Instructions").
- 10.3 The warranty in clause 10.2 is subject to the following conditions and exclusions:
 - 10.3.1 any defect with the Goods must be notified to Company within 48 hours of the defect becoming apparent;
 - 10.3.2 the warranty does not apply to general wear and tear or where, in Company's opinion, the Goods have been modified, misused, neglected or wilfully or accidentally damaged. If a defect is found to be caused in accordance with this clause 10.3.2, Company will provide a quotation for the necessary remedial works or parts;
 - 10.3.3 the warranty does not apply in the event that the serial number affixed to the Goods by Company has been removed, obliterated or defaced;
 - 10.3.4 the warranty does not apply to materials, components or services provided by third parties or to the erection or installation of the Goods performed by a third party, except for those provided or performed by a third party authorised by Company;
 - 10.3.5 the Goods must have been installed, operated and maintained in accordance with the User Instructions. In the event of a claim:
 - (a) the Company must be given the opportunity to inspect the Goods where they have been installed, if Company requests to do so. The Goods should not be removed before inspection without Company's consent;
 - (b) where Company is satisfied that a defect has arisen because of faulty workmanship or materials Company will, at its option, repair or replace the Goods or the faulty component free of charge. If Company chooses to replace the Goods or the faulty component and Company no longer manufactures the identical model or component Company will replace it with the nearest equivalent in Company's then current range;
 - 10.3.6 If Company supplies replacement Goods the warranty shall apply to the replacement Goods for the balance of the original warranty period for the relevant Goods.
 - 10.3.7 Nothing in the warranty affects Buyer's statutory rights.
11. **Limitation of Liability**
- 11.1 Subject to Conditions 2.5, 4, 5, 6.6.2 and 10, the following provisions set out the entire liability of Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to Buyer in respect of any:
 - 11.1.1 breach of the Contract or these Conditions;
 - 11.1.2 use made or resale by Buyer of any of the Goods, or of any product incorporating the Goods; and
 - 11.1.3 representation, statement or tortious act or omission, including negligence, arising under or in connection with the Contract.
- 11.2 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 and section 2 of the Supply of Goods and Services Act 1982) are, to the fullest extent permitted by law, excluded from the Contract.
- 11.3 Nothing in these Conditions excludes or limits the liability of Company:
 - 11.3.1 for death or personal injury caused by Company's negligence;
 - 11.3.2 under section 2(3) of the Consumer Protection Act 1987;
 - 11.3.3 for any matter which it would be illegal for Company to exclude or attempt to exclude its liability; or
 - 11.3.4 for fraud or fraudulent misrepresentation.
- BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CONDITION 11.4**
- 11.4 Subject to Conditions 11.2 and 11.3:
 - 11.4.1 Company shall not be liable to Buyer for any pure economic loss, loss of profit, goodwill, business opportunity or production downtime or of any type of indirect or consequential loss or damage, costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract; and
 - 11.4.2 Company'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 paid or payable for the Goods and the Services the subject of a valid claim.
12. **Intellectual Property Rights**
- 12.1 Buyer shall not use Company's name, logo or other intellectual property rights in Company's designs, drawings, specifications advertising or publicity without Company's prior written consent.
- 12.2 Where the Goods are manufactured by Buyer's specification, Buyer shall indemnify Company against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by Company in connection with any claim made against Company for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Company's use of the specification. This Condition 12.2 shall survive termination or completion of the Contract.
13. **Termination**
- Without limiting its other rights or remedies and without prejudice to Condition 9.5, Company may terminate the Contract with immediate effect by giving written notice to Buyer if Buyer commits a material breach of its obligations under the Contract or on the occurrence of any of the events set out in Condition 9.5.
14. **Events beyond Company's control**
- Company reserves the right to defer or suspend the date of delivery or performance of the Services or to cancel the Contract or to reduce the volume of the Goods ordered by Buyer (without liability to Buyer and without prejudice to Company's right to recover all sums owed to it by Buyer in respect of consignments delivered and costs incurred prior to the date of such deferment, cancellation or reduction) if Company is prevented from delayed in the carrying on of its business due to circumstances beyond the reasonable control of Company including, without limitation, acts of God, governmental actions, war, national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.
15. **General**
- 15.1 Buyer shall not assign the Contract or any part of it without the prior written consent of Company.
- 15.2 Company shall be entitled to assign the Contract or any part of it to any person, firm or company and shall be entitled to subcontract or delegate in any manner any or all of its obligations under the Contract.
- 15.3 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. Failure or delay by Company in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.
- 15.4 Any waiver by Company of any breach of, or any default under, any provision of the Contract by Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- 15.5 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its principal place of business or such other address as may be at the relevant time have been notified pursuant to this provision to the party giving notice.
- 15.6 Subject to Conditions 15.1 and 15.2, nothing in these Conditions confers on any third party any benefit or any right to enforce any of these Conditions.
- 15.7 Nothing in the Contract excludes the statutory rights of consumers.
- 15.8 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the jurisdiction of the English courts.