

TERMS AND CONDITIONS

Standard terms and conditions of sale

Applicable to Blend Creative Consultancy.

1. Contracts

- (a) Contracts are made and orders are accepted only upon and subject to these Conditions of Sale. All other conditions are hereby excluded unless expressly accepted in writing by Blend Creative Consultancy (hereinafter called 'the Sellers').
- (b) In entering into a contract with the Sellers, the contracting party (hereinafter called 'the Buyer') acknowledges that the contract has not been induced by any representations orally or in writing made by the Sellers, their servants or agents.
- (c) Any quotation, estimate or tender previously given or made by the Sellers was not an offer but an intimation of the terms upon which the Sellers were prepared to negotiate. The offer to contract with the Buyer made by these conditions may be accepted by the Buyer in a formal manner or may be inferred from the Buyer's acceptance of performance, in whole or in part, by the Sellers. Any conditions contained in any purported acceptance by the Buyer shall be disregarded and the acceptance shall be construed as an unqualified acceptance of these conditions.
- (d) Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Sellers shall be subject to correction without any liability on the part of the Sellers.
- (e) In making its offer of purchase, the Buyer acknowledges and affirms that it is not purchasing as a consumer.

2. Prices

- (a) Unless expressly stated otherwise by the Sellers, all prices quoted are ex works and exclude the cost of packing. Any applicable value added tax or any other sales tax or excise duties paid or payable by the Sellers shall be added to the price and shall be payable by the Buyer.
- (b) The Sellers may, at their absolute discretion, accept or reject any order placed by the Buyer.
- (c) In the event of the Buyer cancelling a part of the order in accordance with the provisions of Clause 17, the Sellers reserve the right to revise the price or prices quoted for goods already delivered.
- (d) The contract price is, unless specifically agreed upon in writing by the Sellers, payable in sterling. The Sellers reserve the right to review the contract price(s) in the event of devaluation of the pound sterling or substantial change in the value of the pound sterling on the foreign exchange markets. In the event that the Sellers agree to payment in a European currency that is subsequently converted into the Euro, the Sellers will accept payment in Euros in place of the currency named.

3. Preliminary Work

All work carried out, whether experimentally or otherwise, at customer's request shall be chargeable.

4. Copy

Where any additional work of whatever nature is necessary as a result of copy supplied by a customer not being clear and/or legible, the Seller shall be entitled to make additional charges on a time and materials basis to cover such additional work.

6. Proofs

Proofs of all work are submitted for customer's approval and the Seller shall incur no liability for any errors not corrected by the customer in proofs so submitted. Additional charges shall be made for any additional proofs that are required as a result of alterations required by the customer.

7. Copyright

Unless negotiated and agreed in writing, the copyright of general artwork, commissioned artwork and illustrations and anything else whatsoever prepared, developed or created by the Seller shall vest in and belong to the Seller. The Sellers may use any artwork or printing produced by itself for the purposes of promoting itself. The customer shall be responsible for obtaining all necessary authorities and consents to reproduce pictures, artwork, photographs, copyright text and/or any other reproducible materials ("Materials") prior to instructing the Seller to reproduce the same. The customer shall indemnify and hold the Seller and its agents and representatives harmless against all claims, demands, actions, costs, expenses (including but not limited to legal costs and disbursements), losses and damages arising from or suffered or incurred by reason of any claim (including but not limited to the defence of such claim) that the reproduction of the Materials by the Seller infringes the intellectual property or other rights of any third party or misuses the confidential information of a third party.

8. Conditions and warranties

- (a) Where samples of goods or a colour chart are provided, these are submitted only as indicative of the class, size or colour of goods quoted for and sales of goods shall not be by reference to any such samples or colour charts.
- (b) Whilst all descriptions and illustrations of the goods in (inter alia) catalogues, brochures and price lists provided by the Sellers have been carefully prepared, they are intended nevertheless for general guidance only and do not form part of any contract for sale of goods and no responsibility is accepted for any errors or omissions therein or for any loss or damage resulting from reliance on such descriptions and illustrations.

- (c) Where the Sellers agree to provide a specially designed plan, the Buyer agrees that he is obliged to check the accuracy and suitability of the plan and that the Sellers shall not be liable for any omissions or inaccuracies in the measurements given. The copyright in the plan drawn up by the Sellers is, and remains, their property and may not be reproduced in whole or in part without written consent.
- (d) If the Buyer claims or detects a defect in the goods, the Buyer will either return those goods to the Sellers or, if the goods are retained by the Buyer, indemnify and keep the Sellers indemnified against all liability and claims which may arise out of or incidental to the defect.
- (e) The Buyer shall not be entitled to accept part only of the goods.

9. Delivery by the Sellers

- (a) Any dates quoted for delivery of the goods are approximate only and the Sellers shall not be liable for any delay in delivery of the goods howsoever caused. Time for delivery shall not be of the essence unless previously and expressly agreed by the Sellers in writing.
- (b) Where goods are offered for delivery to a site, the Sellers' obligation is to deliver as near to the site as safe hard roads permit. The Buyer is to provide at its own expense the labour required for unloading and stacking.
- (c) Where goods are offered for delivery 'Free on Truck', delivery will be made to the site or port nominated by the Buyer or, if no such site is nominated, to a site or port chosen by the Seller and notified to the Buyer.
- (A recent decision of the Court of Appeal has held that if there is no provision for a place of delivery in a F.O.T. contract the Seller was obliged to notify the Buyer where and when he was to take delivery.)

- (d) The Sellers reserve the right to deliver goods by installments and in such event each installment shall be treated as a separate contract save that the delivery of further installments may be withheld until goods contained in earlier installments have been paid for in full.
- (e) Where goods are held by the Sellers awaiting delivery instructions, they may be subject to a storage charge. For account holding customers, payment for these goods must be made on or before the last day of the month following the month of invoice; for non-account holding customers, payment must be at the time of ordering.

10. Damage, loss, short delivery

- (a) On delivery, the Buyer shall examine the goods for defects and completeness. Thereafter no claim for damage in transit, for shortage in delivery or for loss of goods will be entertained unless, in the case of damage, a separate notice in writing is given to the Carriers or to the Sellers within three days of the receipt of the goods, followed within 14 days of the date of advice of despatch by a complete claim in writing; or, in the case of loss of goods, a separate notice in writing and a claim is given to the Sellers and Carriers within 14 days of the date of the Sellers' advice of despatch to the Buyer. In all cases a signature 'unexamined' shall be deemed to be an unconditional acceptance of the goods.
- (b) The Sellers shall not in any circumstances be liable, whether in contract or tort, to the Buyer for any indirect or consequential loss or damage (including, without limitation, loss of profits, loss of contracts or damage to property) or for any claim against the Buyer by any third party.
- (c) The Sellers' liability for damage or non-delivery of goods duly notified in accordance with the above shall in any event be limited to replacement of the goods within a reasonable time (or, at the Sellers' option, refunding the price thereof) whether the damage or non-delivery is due to the Sellers' negligence or otherwise.

11. Credit agreements

- (a) Where the Sellers have granted the Buyer a credit facility, the price for the goods and/or services shall be paid by the Buyer on or before the last day of the month immediately following the month in which the goods are invoiced ('the due date') or, if the Sellers shall so require under Clause (b) of this Clause, to be paid on demand without any period of notice.
- (b) The Sellers reserve the right to withdraw or vary credit facilities at any time by summary written notice to the Buyer without either giving any reason for so doing, or thereby incurring any liability to the Buyer.
- (c) If the Buyer takes goods from the Sellers in excess of the Buyer's credit limit, the Sellers may require payment on delivery for such excess of goods.

12. Terms of payment

- (a) Any deposit paid against goods or services to be supplied by the Seller are non-refundable.
- (b) Unless credit facilities have been granted to the Buyer or unless otherwise specifically provided in writing, the price for the goods shall be paid by the Buyer in cash on delivery and in default the Sellers shall be entitled to withhold delivery until payment. In the case of non-cash sales, the Sellers shall be entitled to charge and recover interest from the Buyer on the price of the goods calculated at whichever shall be the greater: the statutory interest payable under the Late Payment of Commercial Debts (Interest) Act 1998 or the rate of 2 per cent per annum above the National Westminster Bank base rate from time to time from the due date until date of full payment.

- (c) Unless otherwise expressly agreed upon in writing, no other discounts or commissions are to become due or allowable to the Buyer (any previous course of dealing between the parties notwithstanding).
- (d) Where it is a term of the contract that payment of any of the Sellers' invoices is dependent upon the issue of the certificate of a third party, the due date for payment of the invoice is not later than 14 days after the issue of the relevant certificate.

13. Late payment

- (a) When payment of any of the Sellers' invoices is overdue, the Sellers may suspend their performance of the contracts or services to which the invoice relates and/or of any other contract or service then subsisting between the Sellers and the Buyer.
- (b) In the event of legal action being taken by the Sellers against the Buyer for breach of payment obligations hereunder, the Buyer shall be responsible for all costs and disbursements incurred by the Sellers on a full indemnity basis.

14. Risk and liability

Risk of damage to or loss of the goods shall pass to the Buyer at the time of delivery or, if the Buyer wrongfully fails to take delivery of the goods, the time when the Sellers have tendered delivery of the goods. For the purpose of this Clause, 'delivery' shall mean the arrival of the goods at the place of delivery of the Buyer where delivery is by the Sellers, or the safe loading of the goods into the Buyer's vehicles at the Sellers' premises where delivery is through collection by the Buyer.

15. Retention of title

- (a) Notwithstanding delivery and the passing of risk in the goods or any other provision of these conditions, the property in the goods shall not pass to the Buyer until the Sellers have received in cash (or cleared funds) payment in full of the price of the goods and all other goods agreed to be sold by the Sellers to the Buyer for which payment is then due.
- (b) Until such time as the property in the goods passes to the Buyer, the Buyer shall hold the goods as the Sellers' fiduciary agent and bailee, and shall keep the goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Sellers' 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 Sellers 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 monies or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.
- (c) 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 Sellers shall be entitled at any time to require the Buyer to deliver up the goods to the Sellers 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.
- (d) 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 Sellers, but if the Buyer does so, all monies owing by the Buyer to the Sellers shall (without prejudice to any other right or remedy of the Sellers) forthwith become due and payable.

16. Customer cancellation of orders

Contracts and orders and parts thereof may be cancelled only by the Sellers' written acceptance of such cancellation. Where the Sellers accept such cancellation, the Sellers reserve the right to charge the Buyer with the amount of any losses or expenses directly or indirectly resulting from such cancellation. Where the Sellers do not accept such cancellation, they, the Sellers, reserve the right to recover the invoice price from the Buyer and to charge the Buyer with additional losses both direct and indirect resulting from such cancellation. In any case where the Sellers were required to place a deposit with a manufacturer or supplier in respect of an order, the Sellers may require the Buyer to reimburse such sum in the event of cancellation.

17. Consents

The obtaining of any necessary consents for the installation of the goods, whether from local or other authorities or for ensuring that the installation of the goods is in accordance with the provisions of any by-laws, regulations or statutes shall not be the responsibility of the Sellers.

18. Force majeure

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

- (a) act of God, explosion, flood, tempest, fire or accident;
- (b) war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- (c) Acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- (d) import or export regulations or embargoes;
- (e) strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Sellers or of a third party);
- (f) difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- (g) power failure or breakdown in machinery.

19. Insolvency, bankruptcy

The Sellers shall have the right to terminate the contract forthwith where the Buyer becomes insolvent or bankrupt or makes arrangements with its creditors or suffers a receiver to be appointed or being a body corporate enters into liquidation (other than in connection with a reconstruction or amalgamation) or ceases to pay its debts in the ordinary course of business or being a company is deemed to be unable to pay its debts or has a winding-up petition issued against it in any of which cases the Sellers shall have no further obligation hereunder and the price for all goods delivered and work done shall become immediately due and payable. In respect of all unpaid debts due from the customer have a general lien on all goods and property in the Sellers possession (whether worked on or not) and shall be entitled on the expiration of 14 days' notice to dispose of such goods or property in such manner and at such price as the Seller thinks fit and to apply the proceeds towards such debts.

20. Variation to Terms and Conditions

These terms and conditions may be amended from time to time. The latest version of these terms and conditions may be accessed via the website <http://www.blend-creative.co.uk> and are also available on request.

21. Law applicable

These conditions shall be governed and construed in accordance with English law and all disputes arising in connection therewith shall be submitted to the jurisdiction of the English courts.