



terms and conditions

1 Definitions

- 1.1 "Seller" shall mean *Jo Digby Designs Ltd* its successors and assigns or any person acting on behalf of and with the authority of *Jo Digby Designs Ltd*.
- 1.2 "Client" shall mean the person or entity described as such on the invoices, application for credit, quotation or any other forms to which these terms and conditions apply, and shall include any person acting on behalf of and with the authority of such person or entity.
- 1.3 "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Client if a Limited Liability Client on a principal debtor basis.
- 1.4 "Goods" shall mean goods supplied by the seller to the client (and where the context so permits shall include any supply of services as hereinafter defined) and are as described on the invoices, quotation or any other forms as provided by the seller to the client.
- 1.5 "Services" shall mean all services supplied by the seller to the client and includes any advice or recommendations (and where the context so permits shall include any supply of goods as defined above).
- 1.6 "Price" shall mean the cost of the goods as agreed between the seller and the client subject to clause 3 of this contract.

2 Acceptance

- 2.1 Any instruction received by the seller from the client for the supply of goods and/or the client's acceptance of goods supplied by the seller shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one client has entered into this agreement, the clients shall be jointly and severally liable for all payments of the price.
- 2.3 Upon acceptance of these terms and conditions by the client and the terms and conditions are irrevocable and can only be amended with the written and signed consent of the seller.
- 2.4 The client undertakes to give the seller at least fourteen (14) days notice of any change in the client's name, address and/or any other change in the client's details.

3 Price and Payment

- 3.1 At the seller's sole discretion;
 - a as indicated on invoices provided by the seller to the buyer in respect of goods supplied; or
 - b the seller's quoted price (subject to clause 3.2) which shall be binding upon the seller provided that the buyer shall accept the seller's quotation in writing within thirty (30) days.

- 3.2 The seller reserves the right to change the price in the event of a variation to the seller's quotation.
- 3.3 At the seller's discretion a non-refundable 20% deposit of the total quotation will be required prior to seller commencing production of goods.
- 3.4 Time for payment for the goods shall be due thirty (30) days following the date of the invoice.
- 3.5 At the seller's sole discretion:
 - a payment shall be due on delivery of goods, or
 - b payment shall be due before delivery of the goods, or payment for approved client's shall be made by instalments in accordance with the seller's payment schedule, or
 - c payment for approved client's shall be made by instalments in accordance with the seller's payment schedule, or
 - d Payment for approved client's shall be due thirty (30) days following the date of an invoice.
- 3.6 Payment will be made by cash, or by cheque, or by direct transfer, or by any other method as agreed to between the client and the seller.
- 3.7 VAT and other taxes and duties that may be applicable shall be added to the price except when they are expressly included in the price.

4 Third Party Expenses

- 4.1 Because of the nature of the goods supplied the seller may incur third party costs, which will be passed on to the client. These may include but are not limited to shipping and handling of special orders, or print and licence of a requested product, and any other costs incurred by the seller on behalf of the client and will be charged as an extra cost on the invoice.

5 Delivery of Goods

- 5.1 At the seller's sole discretion delivery of the goods shall take place when;
 - a the client takes possession of the goods at the seller's address or
 - b the client takes possession of the goods the client's address (in the event that the goods are delivered by the seller or the seller's nominated carrier); or
 - c the client's nominated carrier takes possession of the goods in which event the carrier shall be deemed to be the client's agent.
- 5.2 At the seller's sole discretion the costs of delivery are;
 - a included in the price, or
 - b in addition to the price, or
 - c for the client's account.
- 5.3 The client shall make all arrangements necessary to take delivery of the goods whenever they are tendered for delivery. In the event that the client is unable to take delivery of the goods as arranged then the seller shall be entitled to charge a reasonable fee for redelivery.
- 5.4 Delivery of the goods to a third party nominated by the client is deemed to be delivered to the client for the purposes of this agreement.
- 5.5 The seller may deliver the goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 5.6 Failure of the seller to deliver shall not entitle either party to treat this contract as repudiated.
- 5.7 The seller shall not be liable for any loss or damage whatever due to failure by the seller to deliver the goods(or any of them) promptly or at all.

6 Risk

- 6.1 The seller retains ownership nonetheless, all risk for the goods passes to the client on delivery.
- 6.2 If any of the goods are damaged or destroyed following delivery but prior to ownership passing to the client, the seller is entitled to receive all insurance proceeds payable for the goods. The production of these terms and conditions by the seller is sufficient evidence of the seller's right to receive the insurance proceeds without the need for any person dealing with the seller's to make further enquiries.

7 Title

- 7.1 It is the intention of the seller and agreed by the client that ownership of the goods shall not pass until;
 - a the client has paid all amounts owing for the particular goods, and
 - b the client has met all other obligations due by the buyer to the seller in respect of all contracts between the seller and the client.
- 7.2 Receipt by the seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the seller's ownership or rights in respect of the goods shall continue.
- 7.3 It is further agreed that;
 - a where practical the goods shall be kept separate and identifiable until the seller shall have received payment and all other obligations of the client are met; and
 - b until such time as ownership of the goods shall pass from the seller to the client the seller may give notice in writing to the buyer to return the goods or any of them to the seller. Upon such notice the rights of the client to obtain ownership or any other interest in the goods shall cease; and
 - c the seller shall have the right of stopping the goods in transit whether or not delivery has been made; and
 - d if the client fails to return the goods to the seller then the seller or the seller's agent may enter upon and into land and premises owned, occupied or used by the client, or any premises as the invitee of the client, where the goods are situated and take possession of the goods; and
 - e the client is only the bailee of the goods and until such time as the seller has received payment in full for the goods then the client shall hold all proceeds from the sale or disposal of the goods on trust for the seller; and
 - f the client shall not deal with the money of the seller in any way which may be adverse to the seller; and
 - g the client shall not charge the goods in any way nor grant otherwise give any interest in the goods while they remain the property of the seller; and
 - h the seller can issue proceedings to recover the price of the goods sold notwithstanding that ownership of the goods may not have passed to the client; and
 - i until such time that ownership in the goods passes to the client, if the goods are converted into other products, for example made into a bigger collection or gift set, the parties agree that the seller will be the owner of the end products.

8 Buyer's Disclaimer

- 8.1 The client hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to the client by the seller and the client acknowledges that the goods are brought relying solely upon the client's skill and judgement.

9 Defects

- 9.1 The buyer shall inspect the goods on delivery and shall within three (3) days notify the seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The client shall afford the seller an opportunity to inspect the goods within a reasonable time following delivery if the client believes the goods are defective in any way. If the client shall fail to comply with these provisions the goods shall be presumed to be free from any defect or damage. For defective goods, which the seller has agreed in writing that the client is entitled to reject, the seller's liability is limited to (at the seller's discretion) replacing the goods.
- 9.2 No goods shall be accepted for return except in accordance with 9.1 above.

10 Returns

- 10.1 Returns will be accepted provided that;
- a the client has complied with the provisions of clause 9.1; and
 - b the seller has agreed in writing to accept the return of the goods; and
 - c the goods are returned at the client's own cost within seven (7) days of the delivery date; and
 - d the seller will not be liable for goods which have not been stored or used in a proper manner; and
 - e the goods are returned in the condition in which they were delivered and with all packaging material in as new condition as reasonably possible in the circumstances.
- 10.2 The seller will not accept the return of goods for credit
- 10.3 The seller may (in its discretion) accept the return of goods for credit or refund but this may incur a handling fee of 10% of the value of the returned goods plus any freight.

11 Warranty

- 11.1 The seller shall not be bound by nor responsible for any term, condition, representation or warranty other than by the manufacturer of the goods.
- 11.2 To the extent permitted by law, no warranty is given by the seller as to the quality or suitability of the goods for any purpose and any implied warranty is expressly excluded. The seller shall not be responsible for any loss or damage to the goods, or caused by the goods, or any part thereof howsoever arising.

12 Sale of Goods Act 1983 and Sale of goods and supply of services act 1980.

- 12.1 This agreement is subject to the provisions of the Sale of Goods Act 1983 and the Sale of Goods and the Supply of Services Act 1980 in all cases except where the client is contracted within the terms of trade/business (which cases are specifically excluded).
- 12.2 Notwithstanding clause 12.1 nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Sale of Goods Act 1983 or the Supply of Goods and Services Act 1980, except to the extent permitted by those acts where applicable.

13 Intellectual Property

- 13.1 Where the seller has designed, drawn, supplied digital files or written services for the client, then the copyright in those designs, drawings and files shall remain vested with the seller, and shall only be used by the client at the sellers discretion.
- 13.2 Where the seller has designed and supplied digital files for the client, then the native files shall remain vested with the seller, and shall only be supplied to the client at the sellers discretion.

13.3 The client warrants that all designs or instructions to the seller will not cause the seller to infringe any patent, registered design or trademark in the execution of the client's order.

14 Archiving

14.1 Seller shall not archive products for client (including in particular data and media) without prior written agreement and upon such payment terms as seller shall in its sole discretion determine. Client shall be responsible for insuring such archived products.

14.1 Seller will archive products for own records (including in particular data and media) for three (3) years from published date. Seller shall not be responsible for insuring such archived products.

15 Default and Consequences of Default

15.1 Interest on overdue invoices shall accrue from the date that payment becomes due until the date of payment at a rate of 5% over the base rate per calendar month and such interest shall compound monthly at such a rate after as well as before any judgement in addition an per late payment law an administration amount will be charged; or

15.2 If the client defaults in payment of any invoice when due, the client shall indemnify the seller from and against all costs and disbursements incurred by the seller in pursuing the debt including but not limited to legal costs on a solicitor and own client basis and the the seller's collection agency costs.

15.3 Without prejudice to any other remedies the seller may have, if at any time the client is in breach of any obligation (including those relating to payment), the seller may suspend or terminate the supply of goods to the client and any of its other obligations under the terms and conditions. The seller will not be liable to the client for any loss or damage the client may suffer because the seller exercised its right under the clause.

15.4 Without prejudice to the seller's other remedies through the law the seller shall be entitled to cancel all or any part of any order of the client's which remains undelivered in addition to and without prejudice to any other remedies and all amounts owing to the seller shall, whether or not due for payment become immediately payable in the event that;

a any monies payable to the seller becomes overdue, or in the seller's opinion the client will not be able to meet its payments as they fall due; or

b the client becomes insolvent, convenes a meeting with its creditors or proposes to enter into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or

c a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the client or any asset of the client.

16 Security and Charge

16.1 Despite anything to the contrary contained herein or any other rights which the seller may have howsoever;

a where the buyer and/or guarantor (if any) is the owner of of land, property or any other asset capable of being charged, both the client and/or the guarantor agree to mortgage and /or charge all of their joint and/or several interest in the said land , property or other asset to the seller or the seller's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The client and/or the guarantor acknowledge and agree that the seller or the seller's nominee shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.

b should the seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the client and/or guarantor shall indemnify the seller from and against all the seller's costs and disbursements including legal costs on a solicitor and own client basis.

c The client and/or the guarantor (if any) agree to irrevocably nominate, constitute and appoint the seller or the seller's nominee as the client's and/or guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 15.1.

17 Cancellation

- 17.1 The seller may cancel these terms and conditions or cancel delivery of goods at any time before the goods are delivered by giving written notice. On giving such notice the seller shall repay to the client any sums paid in respect of the price. The seller shall not be liable for any loss or damage whatever arising from such cancellation.
- 17.2 In the event that the client cancels delivery of the goods or service the client shall be liable for any and all costs incurred by the seller including but not limited to any loss of profits up to the time of cancellation.

18 Data Protection Act 1988 and 2003

- 18.1 The client and the guarantors if separate to the client authorise the seller to;
- a collect, retain and use any information about the client, for the purpose of assessing the client's creditworthiness or marketing products and services to the client; and
 - b to disclose information about the client, whether collected by the seller from the client directly or obtained by the seller from any other source, to any other credit provider or any credit reporting agency for the purpose of providing or obtaining a credit reference, debt collection or of listing default by the client on publicly accessible credit reporting databases.
- 18.2 Where the client is an individual the authorities under clause 17.1 are authorities or consents for the purpose of the data protection act 1988 and data protection act 2003.
- 18.3 The client shall have the right to request the seller for a copy of the information about the client retained by the seller and the right to request the seller to correct any incorrect information about the client.

19 General

- 19.1 If any provision of these terms and conditions shall be invalid, void illegal or unenforceable the validity, existence, legality, and enforcement of remaining provisions shall not be affected, prejudiced or impaired.
- 19.2 These terms and conditions and any contract to which they apply shall be governed by the laws of England and Wales and are subject to the courts of Sussex and/or Surrey.
- 19.3 The seller shall be under no liability whatever to the buyer for any indirect loss and/or expense suffered by the client arising out of a breach by the seller of these terms and conditions.
- 19.4 In the event of any breach of this contract by the seller the clients remedies shall be limited to damages not to exceed the price of goods under any circumstances.
- 19.5 The client shall not be allowed to off set against or deduct from the price any sums owed or claimed to be owed to the client by the seller.
- 19.6 The seller may licence or subcontract any or all of its rights and obligations without the client's consent.
- 19.7 The seller reserves the right to review or amend these terms and conditions at any time. The change would have immediate effect and clients should check the terms and conditions which apply at the time of ordering.

19.8 Neither party shall be liable for any default due to any act of God, war terrorism, strike, lock out, industrial action, fire, flood drought, storm or other event beyond the reasonable control of either party.

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