

1. INTERPRETATION

- (a) "Buyer" means the person who accepts a quotation of the Seller for the sale of goods or whose order for the goods is accepted by the Seller or to whom the goods are to be invoiced and (unless the context otherwise requires) any person to whom or for the benefit of whom the goods may be delivered;
- "Goods" means goods (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with these Conditions and in particular as described on the attached quotation;
- "Seller" means Hype Creative Limited having its registered office at The Design Studio 35 Kempton Park Fold, Southport, PR8 5PL and registered in England and Wales under company number 4902563;
- "Conditions" means the standard Terms & Conditions of sale set out in this document and (unless the context otherwise requires) includes any special Terms & Conditions agreed in writing between the Buyer and the Seller;
- "Contract" means the contract for the purpose and sale of the goods;
- "Writing" includes telex, cable, facsimile transmission and comparable means of communications (but does not include SMS text messaging);
- (b) Any reference in these Conditions 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;
- (c) The headings in these Conditions are for convenience only and shall not affect their interpretation;

2. BASIS OF THE SALE

- (a) The Seller shall buy and the Buyer shall purchase the goods in accordance with any written quotation of the Seller which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Seller, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other Terms & Conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or is purported to be made, by the Buyer;
- (b) No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller;
- (c) The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed;
- (d) Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed;
- (e) Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance or 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;

3. ORDERS AND SPECIFICATIONS

- (a) No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in writing by the Seller's authorised representative;
- (b) The Buyer shall be responsible to the Seller for ensuring accuracy of the terms of an order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms;
- (c) The quantity, quality and description of and any specification for the Goods shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller);
- (d) If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with the specifications submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in settlement of any claim for infringement of any patent, copyright, design, trademark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification;
- (e) The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or EC requirement or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance;
- (f) No order which has been accepted by the Seller may be cancelled by the Buyer without the agreement in writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

4. PRICE OF THE GOODS

- (a) The price of the Goods shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of acceptance of the order. Where the Goods are supplied for export from the United Kingdom, the Seller's published export price list shall apply. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer;
- (b) The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, a significant increase in the cost of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions;
- (c) The price is exclusive of any applicable Value Added Tax, which the Buyer shall be additionally liable to pay to the Seller.

5. PAYMENT

- (a) Subject to any special terms agreed in writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods;
- (b) The Buyer shall pay the price of the Goods in full by the 20th day of the month following the month of the date of the Seller's invoice, and the Seller shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipt for payment will be issued only upon request;
- (c) If the Buyer fails to make any payment on the due date then, without prejudice to any other rights or remedy available to the Seller, the Seller shall be entitled to:
- cancel the contract or suspend any further deliveries to the Buyer;
 - appropriate any payment made by the Buyer to such of the Goods (or the Goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer; and
 - charge the Buyer interest (both before and after any judgment) on the amount unpaid at the

rate of 4% per annum above the Bank of England base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

6. DELIVERY

- (a) Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place;
- (b) Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Seller in writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving a reasonable notice to the Buyer;
- (c) Where delivery of the Goods is to be made by the Seller in bulk, the Seller reserves the right to deliver up to 2% more or 2% less than the quantity ordered without any adjustment in the price, and the quantity so delivered shall be deemed to be the quantity ordered;
- (d) Where the Goods are to be delivered in instalments, each delivery shall constitute a separate Contract and failure by the Buyer to make payment in respect of any one or more of the instalments shall result in the Contract as a whole being repudiated;
- (e) If the Seller fails to deliver the Goods (or any instalment) for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar Goods to replace those not delivered over the price of the Goods;
- (f) If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:
- store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
 - sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.
7. PASSING OF RISK
- (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 are 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 delivery of the Goods.

8. PASSING OF TITLE

- (a) Notwithstanding delivery and the passing of the risk in the Goods, or any other provisions in these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has 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 Seller 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 Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties property stored, protected and insured and identified as the Seller's property, but the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business;
- (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 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;
- (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 Seller, but if the Buyer does so all monies owing by the Buyer to the Seller shall (without prejudice to any other rights or remedy of the Seller) forthwith become due and payable;
- (e) the benefit of any contract of sale and the proceeds of any sale shall be the property of the Seller and held in trust for the Seller absolutely;
- (f) the Seller may by written notice terminate the Buyer's power of the sale at any time if the Buyer goes or threatens to go into receivership or liquidation;

9. NOTICE OF DAMAGE OR NON DELIVERY

- (a) The provisions of paragraph (b) shall apply where the Buyer alleges that:
- the Goods, at the time of delivery, do not comply with warranty in Clause 8(a) and the non-compliance should have been apparent on the reasonable visual inspection of the Goods; or
 - the quantity of goods delivered does not correspond with the quantity stated on the Delivery Note.
- (b) The Buyer shall have no claim upon either of the grounds mentioned in paragraph (a) unless:
- the receipt for the goods is qualified by a remark to that effect; and
 - the claim is made upon the Seller within 48 hours of delivery and is confirmed in writing by letter by the Seller within 5 days of delivery.
- (c) The Buyer shall have no claim in respect of any alleged non-delivery of the goods to it unless it gives written notice thereof to the Seller which is received by the Seller within 21 days of the date of the invoice in respect of those Goods.
- (d) In no circumstances shall any of the goods be returned to the Seller without its prior written consent.

10. PATENT RIGHTS

- (a) The Seller warrants only that the goods themselves and that the delivery or importation thereof would not infringe any patent right published (at the date of Contract) in the United Kingdom or in any other territory specified in this Contract as a territory in which the goods are to be used, and the Seller indemnifies the Buyer against damages and costs awarded for any such infringements always that:
- the indemnity shall not apply to any infringement which is due to the Seller having followed an instruction furnished or given by the Buyer or the use of such material in a manner or for a purpose or in a foreign country not specified or disclosed to the Seller or in combination with any other materials or process; and
 - this indemnity is conditioned on the buyer giving to the Seller the earliest possible, in writing, of any claim being made or action threatened or brought against the Buyer and on the Buyer permitting the Seller at the latter's expense to conduct any litigation that may ensue and all negotiations for a settlement of the claim.
- (b) The Buyer warrants that any instructions furnished or given by the Buyer shall not be such as will cause the Seller to infringe any letter patent or trade mark in execution of the Buyer's order.
- the Seller is given full control of any proceedings or negotiations in connection with any



• fixed point lettering • neon • a - boards • illuminated signage •

packaging • vehicle graphics • display stands • exhibitions • web sites • signage • invoice books • large format posters • banners • vinyl lettering • window signs • fleet decals • shop fronts

such claim:
 (iv) the Buyer shall give the Seller all reasonable assistance for the purposes of any such proceedings or negotiations;
 (v) except pursuant to a final award, the Buyer shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Seller (which shall not be unreasonably withheld);
 (vi) the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do);
 (vii) the Seller shall be entitled to the benefit of, and the Buyer shall accordingly account to the Seller for, all damages and costs (if any) awarded in favour of the Buyer which are payable by or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by, any other party in respect of any such claim; and
 (viii) without prejudice to any duty of the Buyer in common law, the Seller shall be entitled to require the Buyer to take such steps as the Seller may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Seller is liable to indemnify the Buyer under this clause.

11. FORCE MAJEURE

The Seller shall not be liable for any loss or damage caused by delay in the performance or non-performance of any of its obligations hereunder where the same is occasioned by any cause whatsoever that is beyond the Seller's control including but not limited to an Act of God; war; civil disturbance; requisitioning; government or parliamentary restrictions prohibitions or enactments of any kind; import or export regulations; strike, lock-out or trade dispute (whether involving its own employees or those of any other person); difficulties in obtaining workmen or materials; breakdowns or machinery; fire or accident. Should any such event occur the Seller may cancel or suspend this Contract without incurring any liability for any loss or damage thereby occasioned.

12. GOVERNMENTAL CHARGES

The Buyer will reimburse the Seller for any increase in any tax or Governmental charge, or for any new tax or governmental charge hereafter becoming effective, which the Seller may be required to pay to any Government upon the sale, production or transportation of the goods and which has the effect of increasing the cost of the Goods sold hereunder.

13. ASSIGNMENT

This Contract is personal to the Buyer and may only be assigned by it with the prior written consent of the Seller.

14. GOVERNING LAW

This Contract is governed by the Laws of England and the English High Court of Justice (to the jurisdiction of which the buyer hereby irrevocably submits) shall have the exclusive jurisdiction to resolve any disputes arising out of it.

15. EXPORT

- (a) These conditions shall apply to all export sales except as varied in this clause.
- (b) It is hereby expressly agreed that the Uniform Law or International Sales shall not apply to this Contract.
- (c) Where the Goods are to be delivered outside the United Kingdom.
 - (i) payment shall be made in the manner specified on the face hereof;
 - (ii) the Goods shall be delivered upon the terms endorsed upon the face hereof; and terms used shall bear the meaning given to them by incoterms as the same may be from time to time revised;
 - (iii) the Buyer shall reimburse the Seller for any carriage, freight and insurance and other charges to the extent that any such costs incur red by the Seller are not included in the price of the Goods;
 - (iv) the risk in the Goods shall pass to the Buyer in accordance with the terms endorsed on the face hereof.

16. INSOLVENCY OF BUYER

- This clause applies if:
 - (a) the Buyer 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 reconstructions); or
 - (b) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
 - (c) the Buyer ceases, or threatens to cease, to carry on business; or
 - (d) the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifying the Buyer accordingly;
- (e) if this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, unless the Goods have been delivered but not paid for the price should become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

17. GENERAL

- (a) 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 registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving notice;
- (b) No waiver by the Seller of any breaches of Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision;
- (c) If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions in these Conditions and the remainder of the provision in question shall not be affected.

18. WARRANTY

- (a) The Seller warrants that the Goods shall at the time of delivery correspond to the published specifications of the Seller when used for purposes for which the goods of that type are ordinarily used. In the absence of any published specifications to the Goods the Seller warrants that the goods shall at the time of delivery be of normal industrial quality. If any Goods do not conform to that warranty the Seller will at its option:
 - (i) replace the goods found not to conform to the warranty;
 - (ii) bring the Goods into conformity with the published specifications of the Seller (as the case may be) normal industrial quality; or
 - (iii) take back the goods found not to conform to the warranty and refund the appropriate part of the purchase price.
- Provided that:
 - (a) the liability of the Seller shall in no event exceed the purchase price of the goods;
 - (b) performance of any one of the above options (as limited by (iii))

- (a) above) shall constitute an entire discharge of the Seller's liability under this warranty.
- (b) The foregoing warranty is conditional upon:
 - (i) the Buyer giving written notice to the Seller of the alleged defect in the goods such notice to be received by the Seller within seven days of the time when the buyer discovers or ought to have discovered the defect;
 - (ii) the Buyer affording the seller a reasonable opportunity to inspect the goods;
 - (iii) the buyer making no further use of the goods that the alleged to be defective after the time at which the buyer discovers or ought to have discovered that they are defective.
- (c) Save as provided in paragraph (a) hereof and in Section 12 of the Sale of Goods Act 1893:
 - (i) all conditions and warrants express or implied are hereby expressly excluded;
 - (ii) the Seller shall be under no liability for any loss or damage whether direct, indirect or consequential howsoever arising which may be suffered by the Buyer.
- (d) Without prejudice to the generality of paragraph (c) all recommendations and advice given by or on behalf of the Seller to the Buyer as to the methods of storing, applying the Goods, the purposes to which the Goods may be applied and the suitability of using the Goods in any manufacturing process or in conjunction with any other materials are given without liability on the part of the Seller its servants or agents.
- (e) In the event that, notwithstanding the provisions of the paragraphs (c) and (d), the Seller is found liable for any loss or damage suffered by the Buyer, that liability shall in no event exceed the purchase of the Goods.

19. NOTICE OF DAMAGE OR NON DELIVERY

- (a) The provisions of paragraph (b) shall apply where the Buyer alleges that:
 - (i) the Goods, at the time of delivery do not comply with warranty in Clause 8(a) and the non-compliance should have been apparent on the reasonable visual inspection of the Goods; or
 - (ii) the quantity of goods delivered does not correspond with the quantity stated on the Delivery Note.
- (b) The Buyer shall have no claim upon either of the grounds mentioned in paragraph (a) unless:
 - (i) the receipt for the goods is qualified by a remark to that effect; and
 - (ii) the claim is made upon the Seller within 48 hours of delivery and is confirmed in writing by letter by the Seller within 5 days of delivery.
- (c) The Buyer shall have no claim in respect of any alleged non-delivery of the goods to it unless it gives written notice thereof to the Seller which is received by the Seller within 21 days of the date of the invoice in respect of those Goods.
- (d) In no circumstances shall any of the goods be returned to the Seller without its prior written consent.

20. PATENT RIGHTS

- (a) The Seller warrants only that the goods themselves and that the delivery or importation thereof would not infringe any patent right published (at the date of Contract) in the United Kingdom or in any other territory specified in this Contract as a territory in which the goods are to be used, and the Seller indemnifies the Buyer against damages and costs awarded for any such infringements always that:
 - (i) the indemnity shall not apply to any infringement which is due to the Seller having followed an instruction furnished or given by the Buyer or the use of such material in a manner or for a purpose or in a foreign country not specified or disclosed to the Seller or in combination with any other materials or process; and
 - (ii) this indemnity is conditioned on the buyer giving to the Seller the earliest possible, in writing, of any claim being made or action threatened or brought against the Buyer and on the Buyer permitting the Seller at the latter's expense to conduct any litigation that may ensue and all negotiations for a settlement of the claim.
- (b) The Buyer warrants that any instructions furnished or given by the Buyer shall not be such as will cause the Seller to infringe any letter patent or trade mark in execution of the Buyer's order.

21. FORCE MAJEURE

The Seller shall not be liable for any loss or damage caused by delay in the performance or non-performance of any of its obligations hereunder where the same is occasioned by any cause whatsoever that is beyond the Seller's control including but not limited to an Act of God; war; civil disturbance; requisitioning; government or parliamentary restrictions prohibitions or enactments of any kind; import or export regulations; strike, lock-out or trade dispute (whether involving its own employees or those of any other person); difficulties in obtaining workmen or materials; breakdowns or machinery; fire or accident. Should any such event occur the Seller may cancel or suspend this Contract without incurring any liability for any loss or damage thereby occasioned.

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The Buyer will reimburse the Seller for any increase in any tax or Governmental charge, or for any new tax or governmental charge hereafter becoming effective, which the Seller may be required to pay to any Government upon the sale, production or transportation of the goods and which has the effect of increasing the cost of the Goods sold hereunder.

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 - (iii) the Buyer shall reimburse the Seller for any carriage, freight and insurance and other charges to the extent that any such costs incurred by the Seller are not included in the price of the Goods;
 - (iv) the risk in the Goods shall pass to the Buyer in accordance with the terms endorsed on the face hereof.