

termsconditions



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Conditions of sale and definitions of Swan Graphics Limited trading as Imagimators

BASIS OF SALE

- 1.1 These conditions apply to this order and every subsequent order placed by the Buyer (whether or not in writing) with us.
- 1.2 All Goods supplied by us are sold only upon the basis that these conditions of sale apply and these conditions supersede any of our earlier sets of conditions and unless otherwise agreed by us in writing these conditions override any terms or conditions or variations written or oral stipulated incorporated or referred to by the Buyer whether in his order or negotiations.
- 1.3 No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of both the Buyer and ourselves.
- 1.4 Our employees or agents are not authorised to make any representations concerning the Goods unless confirmed by us in writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed
- 1.5 Any advice or recommendations given by us or our 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 us is followed or acted upon entirely at the Buyer's own risk and accordingly we shall not be liable for any such advice or recommendation which is not so confirmed.
- 1.6 Any typographical, clerical, mathematical or other error or omission in any sales literature quotation price list acceptance of offer goods or other documents or information issued by us shall be subject to correction without any liability on our part.

ORDERS AND SPECIFICATIONS

- 2.1 Goods are sold subject to any special conditions set out in our price list and/or acceptances of Buyers' orders and such special conditions shall be deemed to be incorporated herein. Estimated prices are subject to acceptance within one calendar month. Estimates based on rough sketches or layouts are approximate only. In all cases we require a confirmation to proceed order before commencing production. If requested to proceed before receipt of confirmation these terms automatically apply.
- 2.2 Any descriptions and illustrations in our catalogues, lists, samples or other advertising material merely present a general idea of the goods described therein and shall not form part of any contract and in particular shall not give rise to any sale by description or sample unless expressly so agreed in writing by one of our Directors.
- 2.3 All specifications as to colour and dimensions are subject to normal tolerance margins.

WARRANTIES AND LIABILITIES

- 3.1 All orders accepted by us are subject to variation and cancellation by us without prejudice to our accrued rights if due performance is impracticable due to Act of God, war, civil commotion strikes, lockouts, fire, drought, flood, destruction of or damage to premises plant or machinery, explosion, shortage or failure of fuel or raw materials, manufacturing problems or other causes concerning production or supply of raw materials or transportation acts of Governments Local or Public Authorities or other causes beyond our reasonable control or owing to the inability to procure materials or goods any other causes. We shall not be held responsible nor deemed to be in breach of contract for any failure or inability to supply due to such contingencies.
- 3.2 Claims for shortages or partial non-delivery or defective goods must be made in writing within 24 Hours of delivery or they will not be entertained and the order will be deemed to have been fulfilled. Signatures for goods "unexamined" or words to that effect are not admissible and will be regarded as clear signatures.
- 3.3 It is the Buyer's responsibility at the time of delivery to check carefully the quantity and type of goods delivered and to sign for accordingly. Every care is taken in the preparation of printed products, but they should be checked on receipt to ensure that they comply with instructions. No responsibility will be accepted for errors evident in proofs that have been passed by customers.

3.4 Claims for non-delivery of any goods must be made in writing within 24 Hours of the date on which they should have been delivered or forthwith upon receipt of our invoices.

3.5 In the event that any such claim is made the Buyer shall take all necessary steps to notify the carrier in writing of any such loss or damage and shall in all cases where applicable enter a note of the same upon the carrier's receipt if the Buyer fails to give such notice at the time stated no claims against us shall be entertained and our obligations under the contract shall have been deemed to have been fulfilled. On payment of the amount in full any claims against the carrier in respect of the carriage shall be assigned to the Buyer.

3.6 No claims will be accepted where the Goods are unusable unless the Buyer shall immediately cease processing the Goods notify us and provide facilities for inspection and testing of the Goods at all times when reasonable required and further that the Buyer will keep the Goods safely and in good condition.

3.7 No claims will be accepted where the goods have been altered after delivery by processing or in any other manner.

3.8 No goods shall be returned without our written consent. In the event of Goods being so returned they must be properly wrapped and in as good a condition as when received by the Buyer .

3.9.1 Subject to sub-clauses 3.9.2 and 3.9.3 and the other terms hereof we warrant that the goods will conform with this specification at the time of delivery and free of defects in materials and workmanship at the time of delivery.

3.9.2 If any goods do not comply with sub-clause 3.9.1 we will at our reasonable option replace the same rectify the breach (having regard to any benefit already enjoyed in respect hereof) or take back goods.

3.9.3 Except in respect of death or personal injury caused by our negligence we shall not be liable to the Buyer by reason of any representation or implied warranty condition or other terms or any duty at common law under any express terms of the Contract for any or all of the following:-

(i) loss of profits machine time or any other consequential loss or damage whatsoever or

(ii) any excess in total claims over the contract price or

(iii) technical advice or assistance which we were not contractually bound to provide or

(iv) loss caused by delay or non-delivery or defective goods or

(v) any loss which we are precluded from recovering from a carrier by reason of the Buyer's failure to give notice necessary for such recovery (and whether caused by our or our employees or agents negligence or otherwise) which arise out of or in connection with the supply of Goods or their use or resale by the Buyer except as expressly provided by these conditions.

DELIVERY

4.1 Delivery of the Goods shall be made by the Buyer's collecting the Goods at our premises at any time after we have notified you that the Goods are ready for collection or, if some other place for delivery is agreed by us by our delivering the Goods to that place.

4.2 Any date quoted for delivery of the Goods are approximate only and we 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 agreed by us in writing. The Goods may be delivered by us in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

4.3 Where the Goods are to be delivered in instalments each delivery shall constitute a separate contract and failure by us to deliver any one or more of the instalments in accordance with these conditions or any claim by you in respect of any one or more of the instalments shall not entitle you to treat the Contract as a whole as repudiated.

4.4 The performance and discharge of this order is subject to availability of materials and if only part of the materials is available delivery of that part shall at our discretion be deemed to be fulfilment of the order.

4.5 The Buyer shall not be entitled to any compensation damage or other remedy by reason of this order not being discharged or performed in full or otherwise in accordance with the provisions hereof.

4.6 If the Buyer fails to take delivery of the Goods or fails to give us adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond your reasonable control or by reason of our fault) then without prejudice to any other right or remedy available to us we may.

4.6.1 Store the goods until actual delivery and charge you for the reasonable costs (including insurance) of the storage or

4.6.2. Sell the goods at the best price readily obtainable and (after deducting reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge you for any shortfall below the price under the Contract.

PRICE

5.1 Subject to any special terms agreed in writing between us and the Buyer, we shall be entitled to invoice the Buyer for the price of 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 we shall be entitled to invoice the Buyer for the price at any time after we have notified the Buyer that the Goods are ready for collection or (as the case may be) we have tendered delivery of the Goods.

5.2.1 The Buyer shall pay the price of the Goods within thirty days of the date of our invoice 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.

5.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to us we shall be entitled to

5.3.1 Cancel the contract or suspend any further deliveries to the Buyer.

5.3.2 Appropriate any payment made by the Buyer to such of the goods (or goods supplied under any other contract between us and the Buyer) as we think fit (notwithstanding any purported appropriation by the Buyer);

5.4 We shall be entitled to charge the Buyer interest (both before and after any Judgement) on the amount unpaid from the date of the invoice at the rate of 5% per annum above HSBC Bank plc 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 purposes of calculating interest). We shall waive interest if the payment is made within the time specified in the invoice or if none within 30 days of the date of the invoice.

5.5 The price of Goods (notwithstanding any quotation or confirmation) is that ruling at the date of quotation or confirmation and we may vary the quoted price of the goods by additions upwards in accordance with the market conditions at the date of actual supply and the Buyer shall pay such extra sums in addition to the quoted price but without prejudice to the generality of the foregoing the quoted price may be varied upwards in the event of any increase in the cost of labour and/or materials and/or transport.

5.6 The price of the Goods shall be paid in full without any deduction in respect of any claim or alleged claim the Buyer by way of set off defence counterclaim or otherwise howsoever.

5.7 All prices are subject to the addition of Value Added Tax which the Buyer shall additionally pay us.

5.8 The Late Payment of Commercial Debts (interest) Act 1998 (the 'Act'). The Act provides for a statutory right of interest on unpaid debts. It applies to our contract for the supply of goods and services. Under the Act, Imaginators is entitled to charge interest on late payments from the agreed date of payment, or if no such date is agreed, 30 days from the later of the day on which the service/goods were delivered/supplied or notified of the contract price. The Act will only provide simple interest as defined in 5.8.1

5.8.1 The Late Payment of Commercial Debts (Rate of Interest)(No.3) Order 2002 (the 'Order') was made under section 6 of the act. The order came into force on 7 August 2002. The Order provides for the rate of statutory interest to be 8% over the 'official dealing rate' of the Bank of England in force at the time when commercial debt becomes payable. The applicable rate under the Order is the rate in force on either 30 June or 31 December in any year and the six month period following each specific date. The 'official dealing rate' is published daily in the London Financial Times and on the Bank of England website at www.bankofengland.co.uk

INSOLVENCY OF BUYER

6.1 This clause applies if:

6.1.1 The Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation otherwise than for the purposes of amalgamation or reconstruction; or

6.1.2 an encumbrancer takes possession, or a Receiver is appointed or any of the property or assets of the Buyer; or

6.1.3 the Buyer ceases, or threatens to cease, to carry on business; or

6.1.4 the Buyer is in breach of any other contract with us.

6.1.5 we reasonably apprehend that any of the events mentioned above is about to occur in relation to the Buyer or that there is a risk that the Buyer may not pay and notify the Buyer accordingly

6.2 If this clause applies then without prejudice to any other right or remedy available to us we shall be entitled to cancel the contract or suspend any further deliveries under the Contract without any liability to the Buyer and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

GENERAL

7.1 No forbearance or indulgence by us shown or granted to the Buyer whether in respect of these conditions or otherwise shall in any way affect or prejudice our rights against the Buyer or be regarded as a waiver of any of the conditions

7.2 The Buyer whether or not it is a corporate body authorises and agrees with us that we shall be deemed to have effected good service of any notice

demand invoice or Court process (including an originating process) the next working day thereafter by posting the same by prepaid letter post properly addressed to any of the last known trading or the registered office of a company or last known residential address of the Buyer and that our invoices shall be deemed demands for all purposes for the sums therein mentioned

7.3 Whether or not we have to take Court proceedings the Buyer shall pay any legal and professional costs and disbursements on an indemnity basis we incur in connection with any non-observance or breach by the Buyer of these terms and conditions (including but not limited to the non payment of any monies)

7.4 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 of these Conditions and the remainder of the provision in question shall not be affected thereby

7.5 These conditions and all orders and contracts as regards validity performance and construction thereof shall be governed by the Laws of England

RISK AND PROPERTY

8.1 The invalidity of any one part of this clause shall not affect any other part

8.2 Risk of damage to or loss of the Goods shall pass to the Buyer

8.2.1 in the case of goods to be delivered at our premises at the time when we notify the Buyer that the goods are available for collection; or

8.2.2 in the case of the goods to be delivered otherwise than at our premises at the time of delivery or, if the Buyer wrongfully fails to take delivery of the goods, at the time when we have tendered delivery of the goods

8.2.3 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 we 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 us to the Buyer for which payment is then due

8.2.4 The Company accepts no liability for any loss or damages left in their possession unless the customer has given written instructions requiring such materials to be retained and has paid a storage charge including any charge for insurance

8.3 Until such time as the property in the Goods passes to the Buyer the Buyer shall hold the goods as our fiduciary agent and bailiff and shall keep the goods separate from those of the Buyer and third parties and properly stored and protected and insured and identified as our 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 us for the proceeds of sale or otherwise of the goods whether tangible or intangible, including insurance proceeds, and shall keep 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

8.4 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 re-sold) we shall be entitled at any time to require the Buyer to deliver up the Goods to us 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 re-possess the goods.

8.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness of any of the goods which remain our property, but if the Buyer does so all monies owing by the Buyer to us shall (without prejudice to any other of our rights or remedies) forthwith become due and payable.

8.6 Nothing herein shall constitute the Buyer our agent for the purposes of any sale by the Buyer

DEFINITIONS

"Goods" means the goods (including any instalment of goods or any parts of them) which we are to supply in accordance with these Conditions and/or ordered from us by the Buyer.