

Net Factory Limited
TERMS AND CONDITIONS OF SALE

1. Definitions

- 1.1 Contract - these terms and conditions and the Acknowledgement of Order recording the specification provided by the Customer. The Acknowledgement of Order shall have precedence in the event of a conflict.
- 1.2 Contract Price - the price agreed between the Parties for the Goods.
- 1.3 Customer - the person, firm or company with whom the Vendor contracts.
- 1.4 Goods - the goods set out in the Specification.
- 1.5 Guarantee Period - the period of 3 months from the date of delivery of the Goods.
- 1.6 Specification - the specification of the Goods provided by the Customer as recorded in writing on the Acknowledgement of Order.
- 1.7 Delivery Date - the date agreed between the Parties on which the Vendor will endeavour to deliver the Goods.
- 1.8 Vendor - Net Factory Limited, 6 Church Lane, Caldwell, Derbyshire. DE12 6RT

2. Basis of the Contract

- 2.1 The Vendor agrees to supply the Goods to the Customer and the Customer agrees to pay the Contract Price in accordance with the terms of the Contract.
- 2.2 Any quotation provided by the Vendor shall not constitute a contractual offer, and a Contract shall only be formed on acceptance by the Vendor of the Customer's order.
- 2.3 These terms and conditions shall apply to all contracts for the provision of goods and/or services by the Vendor to the Customer to the exclusion of all other terms and conditions (save for clause 2.4) including any terms and conditions which the Customer may purport to apply under any order or other document. In the case of any conflict or ambiguity between the Customer's original specification and the Specification set out on the Acknowledgement of Order, the latter shall prevail.
- 2.4 In the case of contracts with overseas customers only, the relevant provisions of ICC Incoterms 1990 shall be incorporated into the Contract, and to the extent that they are inconsistent with these terms, Incoterms shall take priority save for clause 5.2 below.
- 2.5 Acceptance of delivery of the Goods by the Customer shall be deemed conclusive evidence of the Customer's acceptance of the Contract.
- 2.6 The Vendor may employ sub-contractors to carry out any part of its obligations under the Contract at its sole discretion and it may assign its rights and obligations under this Contract to any other party. The Customer may not assign its rights and obligations under this Contract without the written consent of the Vendor.
- 2.7 Any reference in this Contract to any provision of a statute or to Incoterms shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 2.8 If any provision of this Contract is held by any court or other competent authority to be void or unenforceable in whole or part, this Contract shall continue to be valid as to the other provisions thereof and the remainder of the affected provision.
- 2.9 Where delivery is agreed to be made by instalments, each instalment shall be deemed to be a separate and distinct contract and no default by the Vendor in respect of any one or more instalment shall entitle the Customer to reject or withhold payment in respect of any other instalment.

3. Quotations

- 3.1 Any tender or quotation submitted by the Vendor to the Customer shall unless otherwise stated be subject to these terms and conditions and be valid only on the date of such tender or quotation or so long as the material cost to the Vendor remains unaltered, whichever is shorter, and may be revoked at any time.
- 3.2 If the Vendor quotes separate prices for material and conversion, the conversion costs only shall be valid for a period of 90 days.
- 3.3 The material price shall be the material cost to the Vendor on the date of receipt of a firm order or on the next date on which a firm material cost can be obtained, whichever is later, and subject to contrary agreement.
- 3.4 If the Parties agree to fix the material price at a date after conclusion of the Contract, such price shall be fixed by the date on which the Vendor notifies the Customer the Goods are ready for despatch and in default shall be the material cost to the Vendor at that date.

4. Payment Provisions

- 4.1 The Contract Price shall be agreed between the Parties in writing before delivery of the Goods.
- 4.2 The Vendor reserves the right by giving notice to the Customer at any time before delivery of the Goods to increase the Contract Price if:
 - 4.2.1 the Customer changes the Specification;
 - 4.2.2 the Customer causes any delay;
 - 4.2.3 the Customer fails to give the Vendor adequate or accurate information, instructions or facilities.
- 4.3 The Vendor may submit an invoice or invoices at any time during or after delivery of the Goods in respect of such part of the Goods delivered to that date. The Vendor may submit an invoice for any balance of the Contract Price immediately on delivery of any balance of the Goods. Invoices shall be sent to the Customer's address recorded in this Contract.
- 4.4 All sums due under the Contract will be paid by the Customer by the Vendor's last trading day of the month following the date of invoice and time for payment shall be of the essence. The Vendor may specify which currency and method of payment it requires the Customer to use.
- 4.5 The Contract Price does not include VAT or any similar sales tax, impost or customs duties which will be paid additionally by the Customer at the then prevailing rate.
- 4.6 The Contract Price does not include carriage, packing or insurance unless expressly stated, and such sums may be added by the Vendor to the Contract Price.
- 4.7 If the Customer fails to make any payment within the time specified in this Contract the Vendor may take any or all of the following steps:-
 - 4.7.1 immediately invoice the balance of the Contract Price;
 - 4.7.2 cancel the Contract and any other contract between the Vendor and the Customer;
 - 4.7.3 charge the Customer interest (both before and after any judgement) on the amount unpaid at the rate of 4% per annum above the National Westminster Bank Plc base rate from time to time until payment in full is made;
 - 4.7.4 appropriate any payment made by the Customer and set-off any monies due to the Customer, whether under this Contract or any other contract or otherwise (including any VAT applicable), to or against the unpaid invoice or invoices;
 - 4.7.5 refuse to deliver any balance of Goods or provide any services or guarantee services until payment is made in full;
 - 4.7.6 retain any property of the Customer then in its possession under a general lien for any such payment.
- 4.8 Where payment is made by means of any bill of exchange, cheque or other negotiable instrument, payment shall not be treated as having been made until such instrument has been honoured on presentation for payment.

5. Goods

- 5.1 Subject to contrary agreement, the Goods shall be at the Customer's risk as from delivery to its address save for damage caused to the Goods by any negligent act of the Vendor or any of its sub-contractors and the Customer will be responsible for insuring the Goods from the time risk passes.
- 5.2 Where the Goods are sold FOB the Vendor's responsibility shall cease immediately the Goods are placed on board ship and the Vendor shall not be obliged to give the Customer notice as specified in the Sale of Goods Act 1979 section 32(3).
- 5.3 In spite of delivery having been made, title in the Goods shall not pass from the Vendor to the Customer until the Contract Price has been paid in full.
- 5.4 Until title in the Goods passes to the Customer, the Customer shall hold the Goods on a fiduciary basis as bailee for the Vendor. The Customer shall store the Goods and any converted or processed goods deriving from them separately from all other goods in its possession.
- 5.5 Notwithstanding that the Goods remain the property of the Vendor, the Customer may sell or use the Goods in the ordinary course of its business and shall deal as principal in any such transactions. Until title in the Goods passes to the Customer, the entire proceeds of any sale or otherwise of the Goods shall be held on trust for the Vendor. The Vendor shall be entitled to recover any such monies notwithstanding that title has not passed to the Customer.
- 5.6 If the Customer converts or processes the Goods or any of them, whether or not that shall involve the addition of any other goods and in whatever proportions, any such conversion or processing shall be effected by the Customer solely as agent for the Vendor which shall have the full legal and beneficial ownership of the new product or the converted Goods and any part of them.
- 5.7 Until such time as title in the Goods passes to the Customer, and provided that the Customer is in default in payment or the Vendor in good faith doubts the solvency of the Customer, the Customer shall on request deliver up such Goods as have not ceased to be in existence or resold, to the Vendor. If the Customer fails to do so, the Vendor may enter upon any premises owned, occupied or controlled by the Customer where the Goods are situated and repossess the Goods or any converted or processed goods derived from them, using only such force as may be necessary. On the making of such request the Customer's rights under clause 5.5 shall cease.
- 5.8 The Customer's rights under clause 5.5 shall automatically cease if any of the grounds for termination of the Contract under clause 10.1 arise, and the other provisions of clause 5.7 shall then apply as if a request by the Vendor had been made.
- 5.9 The Customer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods which are the property of the Vendor. Without prejudice to any other rights of the Vendor, if the Customer does so, all sums whatever owing by the Customer to the Vendor shall forthwith become due and payable.
- 5.10 The Customer shall insure and keep insured the Goods to the full Contract Price against "all risks" to the reasonable satisfaction of the Vendor until the date when property in the Goods passes. Without prejudice to the other rights of the Vendor, if the Customer fails to do so, all sums whatever owing by the Customer to the Vendor shall forthwith become due and payable.
- 5.11 Due to methods of production, where the Goods involved are printed materials, either single or multiple coloured, the Vendor reserves the right for those Goods to be plus or minus 12% of the specified amount stated in a Contract or Quotation
- 5.12 Any intellectual property rights in the Goods or in any designs or specifications produced by the Vendor for the purpose of the Contract shall remain the property of the Vendor. No right or licence is granted except the right to use or resell the Goods.

6. Delivery

- 6.1 The Vendor will be responsible at the Customer's cost for the delivery of the Goods, which unless otherwise stated shall be to the Customer's address set out in this Contract.
- 6.2 The Vendor will use all reasonable endeavours to deliver the Goods on the Delivery Date but this date will be treated as a target date only and time will not be of the essence.
- 6.3 The Vendor reserves the right by giving notice to the Customer at any time before delivery of the Goods to change the Delivery Date if:
 - 6.3.1 the Customer changes the Specification;
 - 6.3.2 the Customer causes any delay;

6.3.3 the Customer fails to give the Vendor adequate or accurate information, instructions or facilities.

- 6.4 If the Customer changes the Delivery Date or fails to take delivery on the date the Goods are ready for delivery, or if the Vendor changes the Delivery Date under clause 6.3, the Vendor may add a financing and stocking charge to the Contract Price in respect of the period from that date to the actual date of delivery at the rate of 2% per annum above the National Westminster Bank Plc base rate from time to time.
- 6.5 The Customer shall make such arrangements as are necessary to take delivery of the Goods at its address on the Delivery Date or on such other date as the Vendor notifies the Customer that delivery will be made. If the Customer fails to take delivery or indicates to the Vendor that it will not accept delivery on such date, the Vendor shall be entitled at the Customer's risk and expense to store the Goods at the Vendor's premises and to demand payment as if they had been delivered.
- 6.6 Following delivery of the Goods the Customer shall follow any instructions of the Vendor as to use and maintenance of the Goods.
- 6.7 The Customer shall take delivery of the Goods notwithstanding that the quantity delivered is greater or less than that contained in the Specification, provided that:-
 - 6.7.1 such discrepancy shall not exceed 10%;
 - 6.7.2 the Vendor shall at its discretion either make up any shortfall or adjust the Contract Price pro rata to the discrepancy, provided that it is notified in writing of the shortfall within 7 days of delivery and is given the opportunity, if required to examine the Goods before they are used or resold by the Customer.
- 6.8 The Vendor shall not be liable for any claim for loss or damage to the Goods in transit unless such claim is notified in writing both to the Vendor and the carrier within 7 days of delivery of the Goods. Where the Customer accepts the Goods from the carrier without checking them, the Vendor shall not be liable for such claim unless the Customer has marked the delivery note "not examined".
7. Acceptance, Defects and Guarantee
 - 7.1 Within 7 days of delivery of the Goods the Customer shall notify the Vendor in writing, either that it accepts the Goods and that they are free of defects, or a list of such defects as are known to it at that time.
 - 7.2 If no such notification is received the Customer shall be deemed to have accepted the Goods. After acceptance, whether deemed or otherwise, the Customer shall not be entitled to reject the Goods.
 - 7.3 During the Guarantee Period the Customer shall notify the Vendor in writing within 7 days of discovery of any defects in the Goods.
 - 7.4 The Vendor shall be liable for any defect arising under normal use and (solely) to faulty design (except where supplied by or on behalf of the Customer), materials or workmanship, which is notified to it within the Guarantee Period within a reasonable time of receiving such notification, and may at its discretion:-
 - 7.4.1 carry out such work as is necessary to remedy the defect;
 - 7.4.2 collect or demand that the Customer return such part of the Goods as is necessary to the Vendor's premises to examine the Goods or carry out repair work;
 - 7.4.3 replace all or any part of the Goods;
 - 7.4.4 refund the Contract Price or such part of it as relates to the defective Goods.
 - 7.5 The Vendor may invoice the Customer for the cost of any work or materials brought about by the Customer's notification of any defect where such defect is not attributable to any act or omission of the Vendor or is attributable to:-
 - 7.5.1 misuse of the Goods by the Customer;
 - 7.5.2 failure to follow the Vendor's advice as to use and maintenance of the Goods;
 - 7.5.3 any modification made to the Goods by the Customer or by third parties without the prior written consent of the Vendor.
 - 7.6 If any unauthorised modification is made to the Goods the Vendor shall not be obliged to correct any defects or provide any guarantee services under this Contract.

8. Warranties

- 8.1 The Vendor warrants that the Goods will comply with the Specification.
- 8.2 The Customer will provide the Vendor with a written Specification and such other information as it may reasonably need to perform the Contract. The Customer warrants that such material is accurate and complete. No terms not expressly stated in the Specification shall form part of it.
- 8.3 The Customer shall be responsible for ensuring that the Goods are fit for the purpose for which it or any third party intends to use them, and covenants that the Goods will only be used for purposes for which they are sufficient and suitable.
- 8.4 The Customer warrants that it has not relied on any representations or advice made by or on behalf of the Vendor save for the Specification of the Goods as agreed between the Parties, and the Vendor shall not be liable for inaccuracies in such advice or Specification.

9. Limitation of Liability

- 9.1 The Vendor shall not be responsible for any defects in the Goods which are not notified in writing to it within the Warranty Period nor for any defects notified to it within this period but not in accordance with the time limits set out at clauses 7.1 and 7.3 above nor for any defects which are the fault of the Customer or any third party.
- 9.2 The terms of this Contract represent the whole agreement between the Parties and, except where the Customer is dealing as a consumer, all other warranties, conditions, terms, undertakings or representations of any kind, whether express or implied, statutory or otherwise relating to the provision of any goods or services under or in connection with the Contract (including (without limitation) as to the condition, quality, performance, merchantability or fitness for purpose of the Goods or any of them or the standard of care used in the provision of any services) are hereby expressly excluded from the Contract save for the undertakings implied by the Sale of Goods Act 1979 section 12 in respect of title to any goods.
- 9.3 The Vendor shall not be liable under contract, tort (including negligence) or otherwise for any loss of production, loss or corruption of data, loss of profits or of contracts, loss of operation time, loss of goodwill and loss of anticipated savings, nor for any indirect or consequential loss, damage, cost or expense of any kind whatever and however caused.
- 9.4 The Vendor accepts liability for death or injury caused by the negligence of the Vendor or that of its employees, agents or sub-contractors acting in the course of their engagement under this Contract, and liability which cannot be excluded under the Consumer Protection Act 1987 Part I, without limit.
- 9.5 In all other cases not falling within clause 9.4, the Vendor's total liability (whether in contract, tort including negligence or otherwise) under or in connection with this Contract or based on any claim for contribution or indemnity shall not exceed the Contract Price in aggregate.
- 9.6 The Customer agrees that except as expressly provided in this Contract, the Vendor will not be under any liability of any kind whatever and however caused, arising directly or indirectly in connection with this Contract.
- 9.7 Any liability of the Vendor under the Contract shall be subject to and conditional upon the due performance by the Customer of all its obligations under this Contract and, subject to these terms, the Customer shall not be entitled to withhold or delay payment or exercise any right of set-off which might otherwise have been available to it.
- 9.8 The Customer shall be responsible for insuring against any liability arising as a result of the operation of this clause 9.

10. Termination

- 10.1 The Vendor may terminate this Contract or suspend its performance with immediate effect on written notice if:-
 - 10.1.1 the Customer ceases or threatens to cease to carry on its business;
 - 10.1.2 a Receiver, Administrator or similar Officer is appointed over all or any part of the assets or undertaking of the Customer;
 - 10.1.3 the Customer makes any arrangement for the benefit of its creditors;
 - 10.1.4 the Customer goes into liquidation save for the purposes of a genuine amalgamation or reconstruction;
 - 10.1.5 the Customer commits a material breach of this Contract and (in the case of a breach capable of remedy) fails to remedy it within 7 days of receipt of written notice from the Vendor specifying the breach and containing a warning of an intention to terminate if the breach is not remedied;
 - 10.1.6 the Customer refuses to take delivery of the Goods or any part of them or collect them within 14 days of the Delivery Date or such later date as they are ready for delivery;
 - 10.1.7 the Customer defaults in paying the Contract Price or any part of it.
- 10.2 In the event of a suspension, the Vendor shall be entitled to demand pre-payment of any part of the Contract Price not yet due for payment as a condition of re-commencing its performance.
- 10.3 Upon termination of this Contract for whatever cause, the Customer shall pay to the Vendor all monies due to the Vendor at that date, after taking into account amounts previously paid, including:-
 - 10.3.1 the total value of Goods delivered up to the date of termination;
 - 10.3.2 any cancellation charges payable to the Vendor's sub-contractors;
 - 10.3.3 any other costs incurred by the Vendor in connection with the Contract or its termination including but not limited to loss of profits, processing costs already incurred and any reduction in the value of the material used.
- 10.4 Termination of this Contract shall not affect any rights of the Parties accrued to them up to the date of termination.

11. Miscellaneous

- 11.1 Neither Party shall be liable for any delay in performing or failing to perform any of its obligations under this Contract due to any act of God, war, strike, lock-out, industrial action, fire, flood, drought, pest or other event beyond the reasonable control of either Party.
- 11.2 All notices to be given under this Contract shall be in writing and shall be sent to the normal business address of the Party concerned by first class post or by hand.
- 11.3 No delay or failure by the Vendor to exercise any of its powers, rights or remedies under this Contract will operate as a waiver of them and any waiver, to be effective, must be in writing.
- 11.4 If any part of this Contract is found by a court or other competent authority to be invalid, unlawful or unenforceable then such part will be severed from the remainder of this Contract which will continue to be valid and enforceable to the fullest extent permitted by law.
- 11.5 This Contract is the complete and exclusive statement of the agreement between the Parties relating to the subject matter of the Contract and supersedes all previous communications, representations and other arrangements, written or oral.
- 11.6 This Contract will be construed in accordance with and governed by the laws of England and Wales and each Party agrees to submit to the jurisdiction of the courts of England and Wales.