

Captivate Creative Ltd - Terms & Conditions

DEFINITIONS: BUYER - shall mean the corporate entity, firm, or person seeking to purchase goods from the Seller

CONDITIONS are the terms and conditions of sale as set out in this document and any special terms and conditions agreed in writing by the Seller GOODS are the articles which the Buyer agrees to purchase from the Seller

PRICE is the price for the Goods, excluding VAT and any carriage, packaging, and insurance costs. SELLER means Captivate Creative Ltd.

2.1 These conditions shall form the basis of a contract between the Seller and the Buyer in relation to the sale of Goods, to the exclusion of all other terms and conditions including the Buyer's standard conditions of purchase or any other conditions which the Buyer may purport to apply under any purchase order or confirmation order or any other document.

2.2 All orders for Goods shall be deemed to be an offer by the Buyer to purchase Goods from the Seller pursuant to these Conditions. They cannot be cancelled without written agreement with the Seller.

2.3 An email acceptance from the customer in response to the Seller's Quotation shall be deemed to be conclusive evidence of the Buyer's acceptance of these conditions.

2.4 These Conditions may not be varied except by the written agreement of the Seller.

2.5 These Conditions represent the whole of the agreement between the Seller and the Buyer. They supersede any other conditions previously issued.

3 The price shall be the price quoted on the Seller's Quotation. The price is exclusive of VAT that shall be due at the rate in force on the date of the Seller's invoice.

3.1 The Seller reserves the right by giving notice to the Customer at any time before delivery to increase the price of the Goods to reflect any increase in the costs to the Company (such as without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, increase in the cost of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specification for the Goods requested by the Buyer or failure of the Buyer to give the Seller adequate information or instruction.

4 Payment of the Price and VAT shall be due within 30 days of the Seller's Invoice to the Buyers who have been granted a Credit Account in writing otherwise payment with order, unless otherwise agreed in writing.

4.1 Interest on overdue invoices shall accrue from the date when payment becomes due calculated on a daily basis until the date of payment at the rate of 8% per annum above the Bank of England base rate from time to time in force. Such interest shall accrue after as well as before any judgement.

4.2 The Buyer shall pay all accounts in full and not exercise any rights of set-off or counter-claim against invoices submitted by the Seller.

5 The quantity and description of all the Goods shall be as set out in the Seller's Quotation.

6 The Seller warrants that the Goods will at the time of delivery or collection correspond to the description given by the Seller in the Seller's Quotation. Except where the Buyer is dealing as a consumer (as defined in section 12 of the Unfair Contract Terms Act 1977), all other warranties, conditions or terms relating to fitness for purpose, quality or condition of the Goods are excluded.

7.1 Delivery of the Goods shall be made to the Buyer's address. The Buyer shall make all arrangements necessary to take delivery of the Goods on the day notified by the Seller for delivery.

7.2 The Seller undertakes to use its reasonable endeavours to despatch the Goods on an agreed delivery date, but does not guarantee to do so. Time of delivery shall not be of the essence of the contract.

7.3 The Seller shall not be liable to the Buyer for any loss or damage whether arising directly or indirectly from the late delivery or short delivery of the goods. If short delivery does take place, the Buyer undertakes not to reject the Goods but accept the Goods delivered as part performance of the contract.

7.4 If the Buyer fails to take delivery of the Goods on the agreed delivery date or, if no specific date has been agreed, when the Goods are ready for dispatch, the Seller shall be entitled to store and insure the Goods and to charge the Buyer the reasonable costs for doing so.

7.5 If the Buyer fails to make payment as set out in clause 4 above, the Seller reserves the right to refuse to make delivery of any subsequent orders, and the Buyer shall have no recourse against the Seller for any damages suffered as a result of such refusal to deliver.

8 The Buyer shall be deemed to have accepted the Goods 48 hours after delivery to the Buyer.

8.1 The Buyer shall carry out a thorough inspection of the goods within 48 hours of delivery and shall give written notice to the Seller within 3 working days of delivery of the Goods any defects that a reasonable examination would have revealed.

8.2 Where the Buyer has accepted, or is deemed to have accepted, the Goods the Buyer shall not be entitled to reject Goods which are not in accordance with the contract.

9.1 Risk shall pass on delivery of the Goods to the Buyer's address.

9.2 Notwithstanding the earlier passing of risk, title in the Goods shall remain with the Seller and shall not pass to the Buyer until the amount due under the invoice (including interest and costs) has been paid in full.

9.3 Until title passes the Buyer shall hold the Goods as bailee for the Seller and shall store or mark them so that they can at all times be identified as the property of the Seller.

9.4 The Seller may at any time before title passes and without any liability to the Buyer

9.4.1 repossess and dismantle and use or sell all or any of the Goods and by doing so terminate the Buyer's right to use, sell or otherwise deal in them; and

9.4.2 for that purpose (or determining what if any Goods are held by the Buyer and inspecting them) enter any premises of or occupied by the Buyer.

9.5 The Seller may maintain an action for the price of any Goods notwithstanding that the title in them has not passed to the buyer.

10 Carriage will be chargeable on all sales delivered unless otherwise agreed in writing.

11 In the event that any latent defect in the Goods is discovered by the Buyer during the period of 3 months from the date of delivery of the Goods, and the customer informs the Seller of the said defect in writing within 7 days of discovery and the said defect having been caused by faulty design, manufacture, materials or workmanship but not by abnormal use, misuse or neglect the Seller will, at its option either repair the goods at its own expense, replace the goods or refund the purchase price of the Goods

11.1 The goods are supplied on the basis that they conform to the written descriptions contained on the Seller's Quotation. No warranty can be given that the Goods supplied conform to sketch plans or drawings provided by the Seller or the Buyer or to illustrations or descriptions in catalogues or trade literature

11.2 In the event that the Seller provides estimates of quantities or measurements on the basis of drawings and/or Bills of Quantities and/or specifications submitted by the Buyer, the Seller shall exercise reasonable care in so doing but the Seller accepts no liability for inaccuracies in the estimates or calculations.

11.3 Any goods manufactured to the design or specification of the Buyer or its experts are produced without warranty of any kind except their compliance with the design or specification. The Customer will unconditionally fully and effectively indemnify the Seller in respect of any claim resulting therefrom including the infringement of patent, copyright, design, trademark or any other industrial or intellectual property rights resulting from the company's use of the said design or specification.

11.4 Design and Advisory Services (including preparation of drawings, specifications, contract particulars and the like) are provided with reasonable care and skill, but no other representation or undertaking is made or is to be implied in connection with any such services nor shall the Seller be under any liability whatsoever in respect of these services if erection is carried out before any necessary approvals are obtained.

11.5 If the Buyer arranges processing of Goods on behalf of the Buyer by a third party such processing will be carried out under Standard Terms and Conditions of the third party (copies available on written request) and entirely at the Buyer's own risk and cost. No undertakings or warranties either express or implied are given in respect of any processed goods.

11.6 The customer is deemed to be fully conversant with the nature and performance of the Goods including any harmful or hazardous effects resulting from their usage and shall not be reliant in any way upon the advice, skill or judgement of the Seller. The Buyer's employees or agents are not authorised to make any representations concerning the Goods whatsoever, other than those confirmed by the company in writing.

11.7 Notwithstanding anything to the contrary, contained in these conditions, if and to extent that any person by whom the Seller has been supplied hereunder validly excludes, restricts or limits his liability to the Seller in respect of the Goods supplied or any loss or damage arising in connection therewith then the liability of the Seller to the Buyer in respect of the said Goods shall be correspondingly excluded, restricted or limited. The Seller, will upon request, supply the Buyer with details of such exclusion, restriction or limitation.

11.8 Save as set out in the foregoing sub-clauses no other terms, whether conditions, warranties or innominate terms express or implied, statutory or otherwise shall form part of this contract. (Except where the Buyer deals as a consumer within Section 12 of the Unfair Contract Terms Act 1977 when the terms implied by sections 13,14 and 15 of the Sale of Goods Act 1979 shall be implied in the Contract).

11.9 The seller shall not be liable for any consequential loss or indirect loss suffered by the Buyer or any third party in relation to this contract (except personal injury directly attributable to the negligence of the Seller) and the Buyer shall not hold the Seller fully and effectively indemnified against such losses whether arising from breach of a duty in contract or tort or in any way including losses arising from the Seller's negligence.

11.10 In no circumstances whatsoever shall the Seller's liability (in contract, tort or otherwise) to the Buyer arising under, out of or in connection with this Contract or the goods supplied hereunder exceed the invoice price of the particular Goods concerned.

12 If any provision of these conditions is held by a competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the conditions and the remainder of the provisions in question shall not be affected thereby.

13 All invoices, concerning credit account customers, are due for payment 30 days after the invoice. Any invoice outstanding beyond this period may be referred to the Seller's solicitor and will be subject to a surcharge of 15% plus VAT and £50 to cover the collection costs incurred. This surcharge with all other charges and legal fees incurred will be the responsibility of the customer and will be legally enforceable.

14 In the event that the Seller is forced to take legal action for the recovery of any debt, any legal proceedings will be carried out at the appropriate court closest to the Seller.