

General Terms and Conditions

All work to be undertaken by Watermelon Design subject to these conditions:

1. Definitions

- 1.1 The Company means Watermelon Design.
- 1.2 "The Contract" means the particulars appearing on any quotation, order form or contract submitted by the Company and together with the terms and conditions.
- 1.3 "The Client" means any person, firm or company who enters into a Contract with the Company.
- 1.4 "The Goods or Services" means any goods or services specified verbally or on the face of any order.
- 1.5 These terms and conditions supersede earlier conditions of the Company and shall apply to the Contract to the exclusion of any other terms and conditions (if any) of the Clients (or otherwise) and shall override any terms or conditions stipulated by the Client whether in the Contract or in any negotiations insofar as they are in any way inconsistent or in conflict herewith.

2. Contract

- 2.1 Contracts are given and made by the Company subject to and only upon these terms and conditions and unless previously agreed in writing by an authorised person of the Company no verbal written or other addition hereto shall be effective, and these terms and conditions supersede and shall prevail over and exclude any other terms and conditions appearing elsewhere including any terms and conditions of the Client and any course of dealing established between the Company and the Client.
- 2.2 The Company's agents or representatives are not authorised to make, and Crystalblue Solutions shall not be bound by any representation made by its agents or employees unless specifically authorised by a Director of the Company nor are any such persons empowered to contract or accept orders on behalf of the Company or, to vary the terms of quotations, offers, or contracts.
- 2.3 The variations of these terms and conditions or any Contract to which they apply shall not be binding unless made in writing and signed by the authorised director of the Company.
- 2.4 Tenders and quotations may be withdrawn or varied by the Company at any time and unless otherwise specified shall be deemed to be withdrawn automatically at the expiry of 30 days from their date of issue. No binding contract will in any case arise until the Client's order is accepted in writing by the Company. The Contract may not be cancelled by the Client following acceptance by us.

3. Specifications

The Client shall be responsible for ensuring that any artwork, sketches, specifications, descriptions, data, materials, information or other instruction supplied by the Client or by any agent or representative of the Client in connection with the manufacture or sale of any goods are accurate, unambiguous and clearly legible and meet the Client's requirements, and the Client shall indemnify and hold the Company harmless in respect of any liability, loss, injury, damage, demand, cost, charge of expense which may be incurred or sustained by the Company by reason of or arising directly or indirectly out of any claim in respect of any inaccuracy ambiguity or illegibility in respect of such artwork, sketches, specifications, descriptions, data, materials, information or other instruction in relation thereto.

4. Proofs and additional works

- 4.1 Preliminary work carried out by the Company at the Client's request whether experimentally or otherwise will be charged for unless specifically stated otherwise.
- 4.2 All work undertaken by the Company is subject to a continual proofing and approval process and the Company shall incur no liability for any errors not corrected by the Client in proofs so submitted.
- 4.3 All proofs, whether in colour or monochrome are not claimed as true representations of the final printed item in respect of finish (colour and materials) and all corrections made to artwork during this proof stage are subject to Client approval.
- 4.4 Final artwork is to signed off by a representative of the Client's organisation and received either in writing, via post, fax or email before being processed into its final completed stage. The Client is bound to the terms that any further alterations are subject to additional cost. When style, type or layout is left to the Company's judgement changes therefrom made by the client shall be charged extra. A charge may also be made to cover any additional work involved where copy supplied is not clear and legible.

5. Design, Illustrations and photography including copyright

- 5.1 Any samples, illustrations, photography or descriptive material made available by the Company including any design, artwork, and specifications or weight capacity or dimensions shall not form part of the contract but shall be treated as approximate only unless specifically stated otherwise. All documents containing such illustrative or descriptive material (as well as the copyright therein) will remain the exclusive property of the Company and must not be copied or loaned or transferred.
- 5.2 For the avoidance of Doubt, the Company retains copyright in any material contained in any presentation made in competition with
- 5.3 The copyright for all purposes in all artwork, copy, storyboards, presentations and all other work created by the Company for the Client for whatever purpose is vested in the Company.
- 5.4 Once all relevant invoices are settled, the company will not unreasonably withhold an unlimited free licence for the client to use the material covered in clauses 5.2 and 5.3 above.

6. Delivery

- 6.1 The Company shall take reasonable steps to execute the contract within any quoted period and is given in good faith but such time is not guaranteed, nor deemed to be of the essence of the contract. The Company shall not be liable for loss or injury damage or expense arising directly or indirectly from any delay caused by negligence or otherwise. The time for the Company to perform any obligation hereunder is not and cannot be the essence of the Contract. The estimated time for despatch or delivery shall be extended by a reasonable period if there is any delay caused by industrial dispute or by any cause beyond the reasonable control of the Company, if a shorter delivery period is agreed than any quoted period an additional charge may be made reflecting any overtime or additional costs involved.
- 6.2 If work is suspended at the request of or delayed through default of the Client the Company shall be entitled to payment for work already carried out, materials specially ordered and other additional costs including storage.

7. Loss or Damage in Storage

- 7.1 If the goods have not been received within seven clear working days of the delivery date notified to the client by the Company or if they have been received but appear to be in a damaged condition, if there are shortages, then the Client shall immediately give notice to the Company of the relevant facts. If such notice is not so given the Company shall not be liable to the Client in respect of any loss or damage suffered by reason of non delivery, short delivery or damage which is apparent upon inspection and the client shall accept liability as if all the goods had been received and shall not claim against the Company in respect of non delivery, short delivery or damage in transit. The Company shall not in any case be liable for any loss to the client arising from delay in transit not caused by the company.

- 7.2 In the case of goods delivered to the Client, the client shall remain responsible for complying with the provisions of the clause.
- 7.3 If the contract provides for delivery by installments, delay in delivery or non delivery of any installment shall not entitle the Client to treat the contract as at an end or to reject any other installment.
- 8 Delivery Risk and Passing of Property**
- 8.1 Goods shall be at the Client's risk from the moment of delivery, whether or not property in the goods has passed or payment or part payment made therefore, and thereafter the Client shall be responsible for insuring the goods.
- 8.2 Property in the goods and in all goods supplied or to be supplied by the Company to the Client shall not pass to the Client until the full amount due hereunder has been paid to the Company.
- 8.3 Where property remains with the Company after delivery, the client may use the goods in the processing or manufacture of other items, property in the items so created shall immediately upon creation be with the Company and the items shall be held by the Client in a fiduciary capacity for the Company unless and until the full amount hereunder has been paid to the Company.
- 8.4 In the event of the Customer becoming insolvent the right to resell the goods shall be suspended and the Company by its servants or agents may enter upon the premises of the Customer to recover any goods as yet unsold by the Customer.
- 9 Price**
- 9.1 The contract price excludes Value Added Tax or any other tax or duty payable, the amount of such taxes or duties shall be added to the contract price and shall be payable by the Customer in the same manner as the contract price.
- 9.2 The Company shall be entitled to adjust the contract price by such amount as it thinks fit at any time before delivery of the relevant goods in the event of any increase in the cost to the Company in supplying any goods whether such increase shall result from higher costs of raw materials, labour, transport or overhead expenses or from any other cause whatsoever.
- 9.3 Unless otherwise agreed in writing between the Company and the Client the contract price is based upon the assumption that the goods will be supplied in one batch and to the Client's address as set out in any estimate and accordingly the Company may, at its discretion at any time increase the contract price to take account of any additional costs to the Company (including but not limited to storage and delivery costs) by reason of the supply of the goods in more than one batch or to a different address.
- 9.4 Without prejudice to any other remedy which the Company may have in the event of the Client cancelling the contract the Company shall be entitled to charge the Client for all expenses incurred by the Company in respect of such contract to the date of cancellation and any loss of profit arising by means of the cancellation of such contract.
- 10. Payment**
- 10.1 Invoices will be rendered at completion of the Contract. On receipt of an invoice the client shall pay the Contract Price to the Company. Invoices are due for payment strictly within the stated days of the date of invoice unless otherwise specified. Payments shall be made in full without deduction in respect of any set-off or counterclaim other than settlement discount, where offered.
- 10.2 All invoices remaining unpaid at the due date will be subject to a surcharge of 5% per calendar month.
- 10.3 Any levy payable by Clients through agencies to the Advertising Standards Board of Finance will be invoiced separately.
- 10.4 The Client shall not make any set off against the Company or its associated or connected companies or against any person connected with the Company in any matter.
- 10.5 In case of a Client's non-residence in the UK, all payment shall be made in pounds Sterling or at the sole nomination of the Company in a foreign currency and all invoices and accounts shall be rendered by the Company in pounds Sterling or such foreign currency at the exchange rate prevailing at the date of due payment. It shall be a condition of Contract with such clients that all necessary governmental and other consents are obtained within the time of performance and in any event prior to due payment.
- 10.6 Time of payment is of the essence of the Contract.
- 10.7 The contract price shall be payable by the Client notwithstanding any adjustments or correction or defects which may be required to the goods.
- 10.8 Payments are deemed to have been received only when the full amount of the invoiced value has been credited to the account of the Company without recourse or the Company has received the full amount in pounds Sterling cash.
- 11. Insolvency**
- If the Customer ceases to pay their debts in the ordinary course of business or cannot pay his debts as they become due or being a company is deemed to be unable to pay its debts or has a winding-up petition issued against it or being a person commits an act of bankruptcy or has a bankruptcy petition issued against them, the Company without prejudice to other remedies shall:
- i) have the right not to proceed further with the contract on any other work for the Client and be entitled to charge for work already carried out (completed or not) and materials purchased for the Client, such charges to be an immediate debt due to them, and:
- ii) in respect of all unpaid debts due from the Client to the Company, have a general lien on all goods and property in the Companies possession (worked on or not) and shall be entitled on the expiration or fourteen (14) working days notice to dispose of such goods or property in such manner and at such price as the Company thinks fit and apply the proceeds towards such debts, and:
- iii) in respect of all unpaid debts due from the Client to any group company (as defined in section 736 of Companies Act 1985) of the Company, have a general lien on all goods and property in the Company's possession (whether worked on or not) and shall be entitled on the expiration of fourteen (14) working days notice to dispose of such goods or property in such manner and at such price as the Company thinks fit and to apply the proceeds toward such debts.
- 12. Liability**
- 12.1 The Company shall not be liable in any circumstances whatsoever, whether in contract, tort, or otherwise, for loss of anticipated revenue or contracts for any other indirect or consequential loss or damage arising from any cause whatsoever.
- 12.2 The Company shall not be liable for failing to perform the contract whether wholly or in part if the failure is caused wholly or in part by any circumstances outside the Company's control.
- 12.3 If the Customer wishes to rely upon any representations made by or on behalf of the Company but not expressly embodied in any tender, quotation or contract to which these Conditions apply, the Customer shall give the Company written notice of such reliance before the Company incurs any obligation consequent upon such representation and shall not otherwise be entitled to rely upon such representation.
- 12.4 All property supplied to the Company by or on behalf of the Client shall while it is in the possession of the Company or in transit to and from the Client be deemed to be at the Client's risk unless otherwise agreed in writing and the client should insure accordingly.
- 12.5 The Company may reject any paper, data or materials supplied or specified by the Client which appear to be unsuitable. Additional costs incurred if materials are found to be unsuitable during production may be charged. Where materials are so supplied or specified, the Company will take every care to secure the best results, but responsibility will not be accepted for imperfect work caused by defects in unsuitability of materials so supplied or specified and quantities must be adequate to cover spoilage.
- 12.6 The Client shall indemnify the Company in respect of any claims, costs and expenses arising from the printing or other treatment by the Company of any libellous matter or any infringement of copyright, patent, design or other intellectual property right attaching to any material printed by the Company.

- 12.7 Without prejudice to any other remedy which the Company may have in the event of goods or services falling short of that ordered or the quantity falling short of that which is reasonably expected bearing in mind the nature of the materials, or the work containing errors which could have reasonably been avoided then
- a) the Company reserves the right to correct such errors, quality or quantities, at no additional expense to the Client, to bring the goods or services back to a level to which was ordered by the Client: or
 - b) the Company may reimburse the Client for the proportion of the work in dispute in the form of a credit against the amount due for the contract; or
 - c) the Company may, if the options in clause 12.7a or clause 12.7b are not exercised, agree to the Client correcting the quality, quantity or any errors provided that the cost of doing so shall be agreed by both parties in writing in advance and shall not exceed that level agreed. Such level not to exceed the equivalent replacement value and in no case to exceed the total worth of the goods or services of the contract.
- 12.8 The Company reserves the right to invoke independent arbitration to settle any dispute, such arbitration to be carried out by a reputable industry body.
13. **Websites, Domains and Hosting**
- 13.1 Where the Company may purchase a domain name on the Client's behalf there is no Company responsibility for registering or otherwise ensuring the Client's future interest in that name; or for rights or breaches caused by the domain name registration.
- 13.2 If the Company deems any website produced by the Company to breach reasonable acceptable use then the Company reserves the right to suspend hosting and/or support services.
- 13.3 If any complaints are made to the Client about a website designed by the Company, the Company must be informed immediately. The Company reserves the right to remove anything from a website designed by the Company where reasonably practical.
14. **Service of Notice**
- Any notice required or authorised to be given hereunder may be given personally or by fax, email or post addressed to such other party at its last known address or any other address furnished to the other by written notice. Notice so given by letter shall be deemed to have been served seventy two (72) hours after the same is posted and proof that the envelope containing the notice was properly addressed and sent by recorded delivery shall be sufficient evidence of service. Notice so given by fax or email shall be deemed to have been served twenty four (24) hours after it shall have been despatched and that proof that the fax or email containing the notice was properly addressed and sent shall be sufficient evidence of service
15. **Disclosure of Information and Safeguarding of Documents**
- 15.1 Information relating to the Contract obtained in the course of providing the Services may be communicated by the Company to such persons only as shall be necessary for the purposes of the contract.
- 15.2 The Company shall use all best endeavours to safeguard from loss or damage every document or thing supplied by or obtained from the Client for the purposes of the Contract and to protect every such document or thing from unauthorised use, disclosure or copying and shall forthwith upon termination or expiry of the Contract, return to the Company in good and usable condition every such document and thing.
16. **Dispute Resolution**
- 16.1 The parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract.
- 16.2 If the dispute cannot be resolved by the parties pursuant to paragraph 16.1 of this condition, the dispute may, by agreement between the parties, be referred to mediation. The neutral advisor or mediator shall be chosen by agreement between the parties.
- 16.3 All negotiations shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings.
- 16.4 If the parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the parties once it is signed by both the Company and the Client.
- 16.5 If the parties fail to reach agreement in the structured negotiations within 60 days of the mediator being appointed then any dispute or difference between them may be referred to the courts.
17. **Force Majeure**
- Whilst every reasonable effort is made by the Company to carry out the Contract, should the Company be prevented or delayed in carrying out its obligations hereunder by Act of God; legislation; war; rebellion; sabotage; fire; flood; drought; delay in transit; riot; strike; lock out; failure of power supply; failure of equipment, inadequacy or unsuitability of any instructions, electronic fire or other data or materials supplied by the client, supplier or subcontractor; weather conditions; postal delay or any other unexpected or exceptional causes of circumstances beyond the company's control, any time for performance of the company's obligation shall be extended until a reasonable time after such an event preventing or interfering with the due execution of the Contract of any part thereof has ceased and in those circumstances the Company shall not be liable for any loss or damage suffered directly or indirectly by the Client as a result thereof. If such events exceed in duration a period of three (3) months, the Company may at its option terminate the Contract and the client shall as a term thereof reimburse the Company on a quantum meruit or on the basis of a reimbursement of all costs incurred by the Company prior to termination of the Company.
18. **Miscellaneous**
- 18.1 Unless otherwise specifically agreed, goods shall not be required to comply with any direction, regulation or provision of any foreign law or government activity.
- 18.2 The last Quotation and/or Order Acknowledgement and/or Service Level Agreement issued by the Company and accepted by the Customer, explicitly or by default by not being disputed, is deemed to form part of the terms and conditions of this contract.
- 18.3 Notwithstanding that any provisions of this contract may prove to be illegal or unenforceable the remaining provisions shall continue in full force and effect.
- 18.4 Contract prices are exclusive of delivery costs, unless otherwise specified.
- 18.5 The Company shall be entitled to subcontract to third parties any work to be done pursuant to an order accepted by the Company.
- 18.6 All points as above are correct at the time of writing, but shall be reviewed and rewritten, if necessary, and will be available upon request. These terms of trade supersede all previous versions.
- 18.7 In respect to fees that relate to time based services a minimum charge of one hour will be levied for all work at a rate of £50.00 + VAT per hour unless specifically detailed otherwise.

Correct at July 2009