

STANDARD CONDITIONS OF SALE

1. DEFINITIONS AND INTERPRETATION

- (i) The "Buyer" means the other company, person, firm, organisation or public authority specified in the order or being a party to any contract to which these terms and conditions apply.
- (ii) The "Company" means Image Composites Ltd
- (iii) The "Contract" means any contract between the Company and the Buyer for the sale and purchase of goods, incorporating these conditions.
- (iv) The "Goods" means the goods specified on the Company's written order acknowledgement.
- (v) A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- (vi) Words in the singular include the plural and vice versa.
- (vii) A reference to one gender includes a reference to the other gender.
- (viii) Condition headings do not affect the interpretation of these conditions.
- (ix) Each order or acceptance of a quotation for the Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy the Goods subject to these conditions.
- (x) No order placed by the Buyer shall be deemed to be accepted by the Company until the Company receives final written confirmation that the particular drawing design, including the required size, relating to a particular product order is accepted by the Buyer, or (if earlier) the Company delivers the Goods to the Buyer.
- (xi) The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.

2. CONTRACT

- (i) These conditions of sale shall be incorporated in all contracts for the supply of goods by the Company to the exclusion of any terms or conditions referred to by the Buyer. Acceptance by or on behalf of the Buyer of any delivery or performance by the Company shall in any event be conclusive evidence of the Buyer's acceptance of these conditions.
- (ii) None of the Company's personnel or any other person is authorised to make any variation to these conditions of sale or any contract or give any representations on behalf of the Company unless confirmed in writing and signed by a director of the Company or the Company secretary.
- (iii) All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues, brochures and website are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample. Any advice given by the Company in relation to the design or use of the Goods shall not form part of the Contract, and shall not be relied upon by the Buyer.
- (iv) Where a design drawing is issued by the Company to the Buyer as an approximate design against a particular customer order, the acceptance of this design by the customer through the signing of the drawing, or through faxed or

emailed agreement referring to a particular drawing will be deemed to be acceptance of the designated size as stated on the drawing and general design of the product(s) as required by the Buyer.

3. PRICE

- (i) The price payable by the Buyer for the Goods shall be the price as stated by the Company at the date of despatch if the Goods are to be delivered, or the date of collection if the Goods are to be collected by the Buyer, unless expressly provided otherwise in writing by the Company.
- (ii) All prices quoted are exclusive of VAT unless stated and the Buyer shall add any other duties or charges relating to the sale or delivery of the Goods to the price payable.
- (iii) Any additional costs for carriage of the Goods will be stated separately and must be paid in full by the Buyer.

4. TERMS OF PAYMENT

- (i) Payment shall be made in full prior to delivery of the Goods. If the Goods are to be made to a non-standard specification, payment must be made in full prior to the manufacture of the Goods. Alternatively, the Company offers credit facilities to particular Buyers entirely at its discretion. Where the Company supplies the Buyer through a credit facility, payment shall be made in full by the end of the calendar month following the month in which the Goods were delivered in accordance with clause 5. All payments shall be made in pounds sterling without any discount, set-off or other deduction whatsoever.
- (ii) The time for payment is of the essence of each contract.
- (iii) In the event of late or non-payment the Company shall be entitled to:
 - a. Charge interest on overdue accounts, from the date on which payment was due to that on which it is made (whether before or after judgment), on a daily basis of 4% over the current base rate of National Westminster Bank, or if greater as determined in accordance with the Late Payment of Commercial Debts (Interest) Act 1998; and/or
 - b. Require all other invoices, whether or not they are due for payment to be paid immediately; and/or
 - c. Suspend outstanding deliveries under this or any other order.
- (iv) The Company shall be entitled, at its reasonable discretion, to withdraw credit facilities at any time in which event all sums outstanding from the Buyer to the Company (whether or not relating to this or any other contract) shall forthwith become due and payable.
- (v) The Buyer shall pay all legal and other costs incurred by the Company in recovering any amounts owing from the Buyer and such costs shall be due for payment immediately on invoice.

5. DELIVERY

- (i) The Company will use all reasonable endeavours to deliver the Goods on the date specified in the Buyer's order and will specify on its order acknowledgement the Company's best estimate of delivery dates. However, the Company shall not be liable for any loss, damage or expense arising from any delay or failure in delivery or performance from any cause whatsoever nor shall any such delay or failure entitle the Buyer to refuse to accept any delivery or performance or to repudiate any contract. For the avoidance of doubt, time of delivery shall not be

of the essence of the Contract and may only be made so by the receipt of 28 days written notice given at any time after the Company acknowledges the estimated delivery date.

- (ii) Delivery shall be deemed to take place on the physical handing over of the Goods to the Buyer, his designated carrier or agent or on transferring the Goods into storage at the Buyer's request, or in accordance with clause 5(iv) (whichever is earlier)
- (iii) Where the Contract or order provides for delivery to the Buyer's premises or site, unless otherwise agreed in writing, the Buyer shall be responsible for:
 - a. The costs and provision of suitable offloading equipment and manpower;
 - b. Safe access to the offloading area; and
 - c. Ensuring that the offloading is completed without undue delay and the Buyer shall be liable for the costs of any such delay.
- (iv) If for any reason the Buyer shall fail to take or refuses to accept delivery of any of the Goods the Company may:
 - a. store such Goods at the risk of the Buyer until actual delivery and charge the Buyer reasonable costs (including insurance) of storage and re-delivery; or
 - b. without affecting the continuation of the contract, sell the Goods.
- (v) The Company may deliver the Goods by instalments each of which shall be deemed to be the subject of a separate contract and, unless otherwise agreed in writing, no failure by the Company in any one or more instalments shall entitle the Buyer to repudiate any contract for goods previously delivered or to refuse to accept any undelivered goods.
- (vi) If the Company delivers to the Buyer a quantity of goods of up to 10% more or less than the quantity accepted by the Company, the Buyer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such goods at the pro rata Contract rate.

6. MISSING/DAMAGED OR LOST IN TRANSIT

- (i) If on delivery any of the Goods are missing, lost or damaged, the Company will at its own expense, make good the discrepancy within a reasonable period by replacement or repair, in its discretion, or, at its option, allow credit for their invoice value.
- (ii) The Company will only entertain a claim by the Buyer for damage in transit or non-delivery provided the Buyer:
 - a. in respect of non-delivery, gives written notice to the Company within 7 days after the date of the Company's advice note or invoice advising of the despatch of the Goods, or
 - b. in respect of damage in transit, gives written notice to the Company, within 3 days after the delivery of the Goods.

7. RISK AND PROPERTY

- (i) Risk of damage to or loss of the Goods shall pass to the Buyer on delivery.
- (ii) The Buyer shall become the legal owner of the Goods only when the Company has received full payment, in cleared funds, for the Goods and for all other goods supplied by the Company to the Buyer until then, the Buyer shall hold the Goods as bailee for the Company.

- a. the Buyer shall store the Goods separately and identifiably as the Company's property, but shall be entitled to resell or use the Goods in the ordinary course of its business; and
 - b. the Buyer shall not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods and maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company; and
 - c. the Company shall be entitled at any time to require the Buyer to make the Goods available for collection and if the Buyer fails to do so immediately the Company may enter any premises occupied or controlled by the Buyer to repossess the Goods.
- (iii) The Company shall, without prejudice to any other remedy, be entitled to maintain an action for the price for the Goods although title in them has not passed to the Buyer.
- (iv) The Company transfers to the Buyer only such title and rights of use as the Company has in any goods and in the case of items provided by any third party shall transfer only such title and rights as that party had and has transferred to the Company.

8. SPECIFICATIONS

Provided that any amended or substituted goods comply in all material respects with any requirements of the Buyer previously made known to the Company in writing and conform to relevant recognised standards and are of reasonably equivalent material and/or finish, the Company may alter the specification of the Goods and/or supply substitute goods without prior reference to the Buyer.

9. SELECTION AND INSTALLATION

- (i) The Company provides a wide range of technical advice in the form of brochures, CD Roms, website publications and verbal and written advice from its Technical Department. However, save where expressly agreed in writing by the Company, the Buyer shall be solely responsible for the selection and installation (except where installation by the Seller is agreed as part of the order) of the Goods and must check the suitability of any advice or information provided by the Technical Department. The Company shall not be responsible for any loss or damage incurred or arising from the inappropriate selection or installation of the Goods or use of any technical advice from its Technical Department.
- (ii) The Company accepts no responsibility for the satisfactory quality or fitness for any purposes of any special or non-standard specifications laid down by the Buyer to which the Goods may have been manufactured.
- (iii) It is the responsibility of the Buyer, to ensure that all external factors that may impact on the performance of the Goods when used are investigated and considered before use and/or installation.

10. INSPECTION

The Buyer shall be entitled to inspect and test the Goods prior to delivery, subject to the Buyer giving reasonable notice to the Company. However, the Company reserves the right to charge for any non-standard inspection or testing carried out at the Buyer's request.

11. WARRANTY

- (i) the Goods are warranted (subject to clause 11(ii) below) to be, at the time of delivery:
 - a. fit for the purpose to which they are manufactured if this is applicable; and
 - b. of satisfactory quality and free from defects in materials and workmanship at the time of delivery however, no warranty is given as to the life or wear of the Goods.
- (ii) The Company shall not be liable for any breach of the warranty in clause 11(i):
 - a. which would be apparent on a reasonable examination, unless the Buyer shall have given to the Company written notice within 14 days after receipt of the Goods; or
 - b. which would not be apparent on a reasonable examination, unless such defects shall have been discovered within 12 months after the receipt of the Goods and the Buyer shall have given written notice to the Company within 14 days of such discovery; or
 - c. arising from the Goods being modified or otherwise tampered with or stored in unsuitable conditions for an excessive period or being subject to misuse, faulty installation negligence or accident; or
 - d. if the defect arises because the Buyer failed to follow the Company's oral or written instructions as to storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice.
- (iii) All written notices alleging breach of warranty shall specify the matters complained of and the Buyer shall thereafter afford the Company a reasonable opportunity of inspecting the Goods in their allegedly defective or non-compliant state. The Goods must only be disposed of in accordance with the Company's instructions.
- (iv) The Company will at its option and in full satisfaction of any liability arising from any breach of this clause 11, either replace or repair faulty Goods and satisfy any further substantiated claim subject to clause 12.

12. LIABILITY

- (i) **The Company shall be under no liability to the Buyer for breakage or resultant defects occurring after delivery, or for any attempt by the Buyer to repair or alter the Goods without the written consent of the Company.**
- (ii) **Except to the extent stated in these conditions or otherwise agreed in writing by it:**
 - a. **the Company shall have no obligation, duty or liability in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever under or in connection with any contract for the supply of any goods other than for death or personal injury resulting from its negligence or for fraud on the part of any of its employees whilst acting in the course of their employment; and**
 - b. **in particular, the Company shall have no liability for any consequential loss or damage suffered, directly or indirectly, by the Buyer under or in connection with any contract for the supply of any goods, including but not limited to wasted time or expenditure, loss of profits, production, business revenue, expected savings or goodwill or any claim against the Buyer by any other person.**
- (iii) **The Company's liability under or in connection with any contract for the supply of any goods shall in no circumstances exceed the price or charge**

stated in the Company's quotation or, as the case may be, its invoice, exclusive of VAT.

- (iv) In any event the Company shall be discharged of all liability to which these conditions of sale apply unless proceedings are begun within twelve (12) months after the Buyer becomes or should reasonably have become aware of the facts giving rise to such liability.

13. TERMINATION

- (i) The contract may be terminated forthwith, by the Company, on written notice in the event that the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order (being an individual or firm) becomes bankrupt or (being a Company) goes into liquidation, or if an encumbrancer takes possession, or if a receiver is appointed over any of the property or assets of the Buyer, or the Buyer ceases or threatens to cease to carry on business. PROVIDED ALWAYS that if any of the Goods have been delivered at the time such termination takes place, the price for the Goods shall become immediately due and payable notwithstanding any previous agreement to the contrary.
- (ii) The Contract may be terminated forthwith by the Company, on written notice in the event that the Buyer fails to make any payment when and as due or otherwise defaults in any of its obligations under any contract for the supply of goods by the Company to the Buyer or any other agreement between the Company and the Buyer. The Company shall, without prejudice to any other remedy, be entitled, at its discretion, without liability to the Buyer, by giving the Buyer written notice at any time or times, to suspend its performance of or (whether or not such performance has previously been suspended) terminate the Contract.
- (iii) All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.

14. CANCELLATION CHARGES

In the event that the Buyer seeks to cancel the Contract or any part thereof, for any reason, the Company may, in its discretion, agree to such cancellation on such terms as it sees fit, including as to indemnification against all costs, expenses and loss of profits arising from such cancellation. Suspension of deliveries, withdrawal of credit facilities or sale of the Goods in accordance with clauses 4(iii), (iv) and 5(iv)(b) shall not constitute cancellation of the Contract for this purpose.

15. INTELLECTUAL PROPERTY

- (i) The Buyer acknowledges that it shall neither have nor acquire any intellectual or industrial property rights in the Goods, except where the Goods are manufactured to the Buyer's own design and in respect of which the Buyer has provided prior written evidence of the existence of such rights. Where, notwithstanding the provision of written evidence to the contrary, a claim is made against the Company in respect of goods which were manufactured to the Buyer's own design, the Buyer shall indemnify the Company against all losses, damages, costs and expenses awarded or incurred by the Company in connection with any such claim.
- (ii) Where an industrial or intellectual property rights claim is made against the Buyer in respect of Goods which were manufactured to the Company's design, the Company shall indemnify the Buyer against all losses, damages, cost and

expenses awarded against or incurred by the Buyer in connection with any claim that the Goods infringe or that their use or resale infringes the patent, copyright, design, trademark, or other industrial or intellectual property rights of any other person provided always that the Company is given full control of any proceedings or negotiations in connection with any such claim.

16. DISPUTE RESOLUTION

If any dispute arises out of the Contract the Parties will attempt to settle it by mediation in accordance with the Centre for Dispute Resolution's (CEDR) Model Mediation Procedure.

17. INDULGENCE OR FORBEARANCE

The rights of the parties shall not be prejudiced or restricted by any indulgence or forbearance extended to them by the other party and no waiver by either party in respect of any breach shall operate as a waiver in respect of any subsequent breach.

18. ENTIRE AGREEMENT

- (i) The conditions of sale contained herein together with any amendments agreed and referred to on the face of the order acknowledgement shall constitute the entire contract between the parties.
- (ii) Save as expressly set out in these conditions of sale, or otherwise expressly acknowledged in writing by the Company all other conditions, terms or warranties implied by statute or common law are excluded to the fullest extent permitted by the law.
- (iii) Both parties acknowledge that the other party will have no liability in relation to any representation made by or on behalf of that party, save to the extent that such representations are set out in the Contract, or have been set out by the Buyer on its purchase order and that such representations are expressly acknowledged in writing by the Company.
- (iv) If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

19. FORCE MAJEURE

The Company shall not be liable for any delay or other failure to perform the whole or any part of any contract resulting from any cause whatsoever beyond the Company's control existing at the date of the Contract or arising thereafter including but not limited to fire, explosion, breakdown or failure of plant or machinery, lack or failure of transportation facilities, or the supply of labour, materials or power, strike, lockout or labour dispute (whether or not at the Company's works), illness, epidemic, flood, drought, war, civil commotion, or restriction of any authority or governmental agency and the time for performance shall be extended for a reasonable period (whether or not it has been made of the essence in accordance with clause 5(i)).

20. NOTICE

Any notice to be given to either party shall be in writing and if sent by facsimile or electronic mail or forwarded by prepaid first class post to the receiving party at its business address as

last notified in writing to the other party shall be deemed to have been given on the date of the facsimile or electronic mail transmission (if sent during normal office hours and provided a copy is sent the same day by post as aforesaid) or 2 working days following the date of posting.

21. ENGLISH LAW

Every contract to which these conditions of sale shall apply shall be construed in accordance with and governed in all respects by the Laws of England and Wales and the Company and the Buyer irrevocably submit to the non-exclusive jurisdiction of the English Courts.

22. ASSIGNMENT AND THIRD PARTIES

- (i) The Company may at its discretion assign or sub-contract all or any of its obligations under any contract but the Contract shall not be assigned by the Buyer without the Company's prior written consent.
- (ii) No right is granted to any third party to enforce any rights relating to the supply of goods.

23. WEBSITE

The Company's website may provide links or references to third party websites. The Company disclaims any responsibility for the contents of such websites, and shall not be liable for any damage or injury of any kind arising from access to, or inability to access or use such a website, or the information contained therein. Any such links to third party websites are provided for information and convenience purposes only.