

GRASSHOPPER LTD - TERMS AND CONDITIONS OF SALE

Please read these terms and conditions carefully, by placing an Order with Grasshopper or by using our design services YOU agree to be bound by the Terms & Conditions of the Company.

1. Definitions and Interpretations

In these conditions "the Company" shall mean the company Grasshopper Ltd or its successors in title, the "Goods" shall mean the products supplied by the Company and "the Customer" shall mean the company, firm or person buying the Goods from the Company.

2. Application of Conditions

All Goods supplied by the Company are supplied on the following terms and conditions and no variation of those terms and conditions shall have effect unless expressly accepted by a director of the Company in writing. The Company's conditions hereby exclude all other terms and conditions which the Customer may seek to impose whether or not the Customer's conditions are contained in any offer, acceptance or counter offer made by the Customer.

3. Quotations

3.1 All quotations given by the Company are subject to acceptance by the Company on receipt of the Customer's order and a contract will only be formed when the Company has accepted the Customer's order. The Company reserves the right to refuse any order tendered after quotation and in the event of any refusal, no damages or expenses of any kind shall be payable by the Company.

3.2 The Company reserves the right to refuse to print any order deemed by it to be improper or unsuitable as it is in its absolute discretion thinks fit, without giving a reason and without liability in respect of such refusal.

4. Accuracy of Description of Goods

4.1 All descriptions, specifications, drawings and particulars of weights and dimensions submitted by the Company or otherwise contained in the Company published matter are approximate only and none of these shall form part of any contract or give rise to any independent or collateral liability upon the Company, being intended merely to present a general idea of the Goods as described therein. All information, advice or opinion given by the Company is given without legal responsibility.

4.2 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document of information issued by the Company, shall be subject to correction without any liability on the part of the Company.

5. Price

All prices quoted are the Company's current prices at the time of quotation and are net exclusive of VAT unless otherwise stated. The price payable for the Goods shall be the price ruling at the date of despatch and the Company shall be entitled to adjust the price of the Goods at any time between the date of confirmation of order and the date of delivery of the Goods, to take account of any increase in costs incurred by the Company. The Company may also adjust the price if the quantity ordered by the Customer is less than the quantity specified in the Company's quotation. We reserve the right to alter specification and price without notice.

6. Delivery

6.1 Delivery shall be deemed to be effected when the Customer or the Customer's nominated recipient signs for acceptance of the Goods.

6.2 Time for delivery is not of the essence and dates given by the Company are advisory only. The Company shall not be liable for any loss or damage caused by late delivery or by non delivery. Claims for shortage or damage must be made in writing within 7 days of delivery.

6.3 The Company shall be entitled to make delivery by instalments and to invoice separately for each instalment. Where delivery is made by instalments, each instalment shall be construed as the subject of a separate agreement to which all the provisions of these conditions shall (with any necessary alterations) apply. A failure by the Company to deliver any one or more instalments in accordance with these conditions or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the contract as a whole as repudiated.

6.4 Where the Company has agreed to deferred deliveries, such deliveries shall be accepted by the Customer (or the Customer shall procure acceptance by its nominated recipient) within one month from the date of order unless otherwise agreed in writing. If the Customer or its nominated recipient fails to take delivery within such period, the risk shall pass to the Customer and the balance remaining undelivered together with storage costs and any additional transport costs shall be invoiced to the Customer.

6.5 Goods which the Customer agrees to collect or have collected ex-works must be collected within seven days of the Company notifying the Customer that the Goods are ready. If the Goods are not collected within this period, the Company shall be entitled to invoice the Customer for the goods and either to deliver or store the Goods and to charge for delivery and/or storage of the Goods, the Goods being held at the Customer's risk.

6.6 Deviations in quantity of the Goods delivered from those stated in the contract shall not give the Customer the right to repudiate the contract, to reject the Goods (save insofar as the quantity varies by more than 10% from the amount ordered and such variation is notified in writing to the Company with three working days from delivery and in any event before the Goods have been used by the Customer) or to claim damages for breach of contract and the Customer shall be obliged to accept and pay at the contract rate for the quantity delivered (except insofar as the Customer has the right to reject any Goods under this condition).

6.7 If special packing is required or if Goods can only be accepted at certain times the Company must be advised in writing at the time an order is placed. All delays or re-deliveries resulting from failure to do this will be chargeable.

6.8 Carriage quoted is for delivery to one mainland UK address unless specifically specified on quotation. Extra charges will be made for special packing, special deliveries and re-deliveries occasioned by a breach of Clause 6.7.

6.9 We reserve the right to pass on any increase levied by our carriers.

6.10 We cannot be held liable for any consequential loss resulting from any failure by our sub-contractors.

7. Time for Payment

7.1 Payment for initial order/s by Pro-forma invoice or card payment. Subject to approval of account application, orders following can be paid during month following date of invoice. In the absence of a credit account or when a large order is placed, advance payment will be required.

7.2 The price of the Goods shall be due and payable by the end of the month following the month of delivery or collection or no later than 30 days from the date of invoices rendered pursuant to Conditions 6.4 and 6.5.

7.3 Time for payment shall be of the essence and the Company shall be entitled to charge interest at 2% per calendar month from the date when payment falls due until actual payment on all overdue accounts. Failure to abide by our agreed terms will result in credit facilities being withdrawn and possible legal action.

7.4 The Company reserves the right at any time to demand security for payment before continuing with or delivering any order, and shall be entitled to treat any contract as repudiated if the Customer makes any default in payment or being a Company is wound up or has a receiver appointed or being an individual becomes bankrupt or insolvent or enters into any arrangement with his creditors.

7.5 The Goods must be paid for by the Customer notwithstanding damage thereto or destruction thereof howsoever caused after the passing of risk. No claim for damage, destruction or shortfall shall be made against the Company after the passing of risk.

7.6 Credit limits may be altered or refused at our discretion.

8. Risk and Property

8.1 Risk in the Goods shall pass to the Customer when the Goods are delivered or collected by the Customer, its agent or nominated recipient or as set out in conditions 6.4 and 6.5.

8.2 Property: In spite of delivery having been made, property of the Goods shall not pass from the Company until: (a) the Customer shall have paid the price plus VAT in full; and (b) all other sums, whatsoever, due from the Customer to the Company have been paid in full.

8.2.1 Until property in the Goods passes to the Customer in accordance with Clause 8.2.1 the Customer shall hold or procure that its agent or nominated recipient shall hold the Goods and each of them on fiduciary basis as bailee for the Company. The Customer shall store (or procure as aforesaid) the Goods (at no cost to the Company) separately from all other Goods in its possession and marked in such a way that they are clearly identified as the Company's property.

8.2.2 Notwithstanding that the Goods (or any of them) remain the property of the Company the Customer may sell or use the Goods in the ordinary course of the Customer's business at full market value for the account of the Company. Any such sale or dealing shall be a sale or use of the Company's property by the Customer on the Customer's own behalf and the Customer shall deal as principal when making such sales or dealings. Until property in the Goods passes from the Company the entire proceeds of sale or otherwise of the Goods shall be held in trust for the Company and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as the Company's money. The Customer shall notify third parties to whom it delivers the Company's Goods, in the following manner: "These items are affected by a retention of title condition in a contract between (Customer) and the (Customer's) own supplier".

8.2.3 The Company shall be entitled to recover the price (plus VAT) notwithstanding that property in any of the Goods has not passed from the Company.

8.2.4 Until such time as property in the Goods passes from the Company the Customer shall upon request deliver up such of the Goods as have not ceased to be in existence or resold by the Customer. If the Customer fails to do so the Company may enter upon any premises owned, occupied or controlled by the Customer where the Goods are situated and repossess the Goods. On the making of such request the rights to the Customer under clause 8.2.3 shall cease. If Goods have been sold or used pursuant to Clause 8.2.3, the Customer will use its best endeavours to assist the Company to re-possess the Goods.

8.2.5 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 Company. Without Prejudice to the other rights of the Company, if the Customer does so all sums whatever owing by the Customer to the Company shall forthwith become due and payable.

8.2.6 The Customer shall (and procure the same by its nominated recipient), to the reasonable satisfaction of the Company until the date that property in the Goods passes from the Company, keep the Goods in the same condition in which they were delivered and free from damage or deterioration.

8.3.1 By virtue of the retention in title of conditions 8.2, the Company has the right to retrieve the Goods until paid in full. The Customer shall keep or procure the keeping of the Goods in good condition and the Goods shall be stored in such a way as to be clearly identifiable until paid for in full. The Customer hereby irrevocably authorises the Company to have access to any premises under the Customer's ownership or control to remove the Company's property.

8.4 The Company shall at any time be entitled to appropriate any payment made by the Customer in respect of any such Goods in settlement of invoices as the Company may in its absolute discretion think fit notwithstanding any purported appropriation by the Customer.

8.5 The Company does not operate a "Sale or Return" policy in respect of goods supplied to a Customer.

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9. Inspection/Shortages

9.1 The Customer shall inspect or procure the inspection of the Goods on delivery or, on collection as the case may be and give or procure the giving of notice of any claim of defect or shortage, its nature and extent, in writing, to the Company no later than three working days from delivery or collection.
9.2 In all cases where the Customer or its nominated recipient complains of defects or shortages, the Company shall without prejudice to the question of liability generally be under no liability in any event if it has not been given an opportunity to inspect the Goods before they have been used by the Customer or the recipient.

10. Artwork Printing/Intellectual Property Rights

10.1 When artwork, origination are supplied by the Company such items will be charged to the Customer, but
10.1.1 All sketches, origination work shall remain the Company's property unless specifically identified on the estimate and in voice and paid for by the Customer.
10.1.2 All design rights, copyright, patent rights and rights in course of acquisition of any description which arise from the design and manufacture of any item for a need or purpose specified by the Customer shall belong to the Company unless otherwise agreed in writing by the Company and neither the Customer nor its agents or nominated recipient shall be entitled to use any aspect of the Company's rights relating to any further reproduction of Goods.
10.1.3 The Company may use illustrations of work produced, in its own publicity material, unless otherwise agreed in writing.
10.2 No responsibility will be accepted by the Company for any errors in product, proofs or printing details which have been passed by the Customer.
10.3 All items of origination (including artwork, film, CD or disk) owned by the Customer and left at the Company's premises or handed to an employee of the Company will be held at the Customer's risk and a receipt for such items should be obtained from the employee to whom the items are handed. The Company is not responsible for accidental damage or corruption of any Customer material.
10.4 Every care will be taken to secure the best results where materials are supplied by the Customer but responsibility will not be accepted for imperfect work caused by defects or unsuitability of materials supplied.
10.5 All orders are accepted on the sole basis and agreement of the Customer that you have all rights to use, disseminate and publish the data you have sent, in particular with regard to text and photographic material. You are liable for ensuring that the data you supply does not infringe proprietary rights of third parties and that the contents of printed matter do not violate the applicable law. You will indemnify us without reservation if claims are asserted against Grasshopper Ltd due to the infringement of the rights of third parties, in particular breaches of copyright, as a result of the use of the data provided by you.

11. Warranties

11.1 The Company warrants that it has title to and the right to sell the Goods.
11.2 Any advice given by the company is given in good faith, but no representation or warranty is given as to the suitability or fitness of the Goods for any purpose or any particular purpose and the Customer shall satisfy himself in this respect and shall be totally responsible therefore.

12. Liability/Exclusions

12.1 Introduction

12.1.1 Nothing in Clause 13 shall exclude or restrict the Company's liability for death or personal injury caused by the Company's negligence.
12.1.2 Each of the sub-clauses in Clause 13 is to be treated as separate and independent.

12.1.3 The Company is willing to undertake liability additional to that provided for by this clause in exchange for a higher price. Any additional testing required by the customer will be subject to an additional charge.

12.2 Defects 12.2.1 Subject to Clauses 4.3, 9.1, 9.2 and 12.3, the Company will either make good the Goods at its own expense or, at its option, replace the Goods if any defects (which the Company is reasonably satisfied are caused by faulty design, manufacture, materials or workmanship) are discovered and notified no later than three working days from the date of delivery or collection. The Company shall not be liable for defects caused by abnormal use, misuse or neglect.

12.2.2 The Customer may only claim the benefit of this clause if he informs or procures the informing of the Company of the relevant defect in writing within the time set out above and (unless otherwise agreed by the Company after being given a right of inspection) he returns or procures the return of the Goods to the Company at his own expense.

12.3 Exclusion of Liability

In consideration of the Company's obligations under Clause 14.2, the Customer acknowledges that the parties have equal bargaining power and agrees that apart from the terms set out herein, no other terms, conditions or warranties, expressed or implied, statutory or otherwise, shall form part of the contract. The Customer hereby indemnifies the Company from and against all action, claims, costs, demands or proceedings which may occur as a result of the use by the Company of any item supplied to it by a Customer for the production of the Customer's order.

12.4 Exclusion of Consequential Loss

12.4.1 The Company shall not be liable for any consequential or indirect loss or damage suffered by the Customer howsoever arising.

12.4.2 Without prejudice to the generality of the foregoing, the Company shall not be liable for loss of profit, loss of contracts and damage to property of the Customer or anyone else whatsoever, howsoever arising.

12.5 Limitation

Without prejudice to the remainder of Clause 13 of these conditions or to the Company's other rights hereunder, the Company's total liability for any one claim or for the total of all claims arising from any one act or default of the Company (whether arising from the Company's negligence or otherwise) shall not in any event exceed the contract price for the Goods.

13. Indemnity

The Customer shall keep the Company indemnified against all costs, claims, demands, expenses and liabilities of whatsoever nature made by third parties caused in whole or in part or arising out of any act or omission of the Customer in connection with the use or storage or sale of the Goods.

14. Assignment

The Customer shall not assign nor transfer nor purport to assign or transfer any contract to which these conditions apply or the benefit thereof to any other person whatsoever.

15. Force Majeure

The Company shall not be liable for any failure to deliver the Goods arising from circumstances outside the Company's control including for example, acts of God, war, riot, explosions, abnormal weather, fire, flood, strikes, lockouts, government action or regulations (UK or otherwise), delays by suppliers, accidents and shortages of materials, labour or manufacturing facilities.

16. Cancellation

No cancellation or reduction of an order by the Customer is permitted unless expressly agreed by a Partner of the Company in writing. In the event of cancellation the Customer will indemnify the Company fully against all expenses incurred by the Company together with a minimum of 15% of the contract price.

17. Jurisdiction

All contracts between the Company and the Customer shall be governed and be construed in accordance with the English law and all disputes arising in relation to such contracts shall be submitted to the jurisdiction of the English courts.

E&OE.

I have read and agree to the and Terms of Conditions of Grasshopper Ltd

PRINT NAME [] SIGNED [] DATED []

please ensure all the boxes are completed

ON BEHALF OF: []

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