

# JAYBEE GRAPHICS LIMITED – TERMS AND CONDITIONS OF SUPPLY

## 1. DEFINITIONS

In these conditions, "**Artwork**" means the films or plates with respect to the artwork used on the Goods; "**Contract**" means any contract for the supply of any goods or services which incorporates these conditions; "**Goods**" means the labels and other goods specified in the Contract; "**Design Services**" means any design services (including graphic design and design of the Artwork and Tooling) and other services specified in the Contract; "**Price**" means the price for the Goods, Design Services, Artwork and Tooling as specified in the Contract; "**Specifications**" means the specifications, designs and requirements for the Goods, Artwork and Tooling provided or approved by you and agreed by us, including any specifications, designs and Artwork and Tooling produced by us as part of the Design Services; "**Tooling**" means the specific tooling to be developed in order to produce the Goods as specified in the Contract; "**Warranty**" means the warranty in Clause 9, and any other warranty term or condition (express or implied) relating to the quality, condition or description of the Goods, Artwork, Tooling or Design Services; "**Working Days**" means Monday to Friday excluding national bank holidays; "**we"/"us"/"our**" means Jaybee Graphics Limited; "**you"/"your**" means the person, firm or company buying the Goods, Artwork, Tooling and Design Services under the Contract.

## 2. APPLICATION OF THESE CONDITIONS

These conditions shall be incorporated into all quotations, offers, acknowledgements of order, and contracts for the supply of goods and services by us. Your terms and conditions are hereby excluded.

## 3. ORDERING

Your order to us is your offer to purchase the Goods, Design Services, Artwork and Tooling on these conditions. Your orders are subject to our written acceptance. Our quotations do not constitute a legal offer unless otherwise stated. Our offers are valid for unconditional acceptance received by us within 2 months of the date of the offer, and we may withdraw them at any time before acceptance. All accepted offers are subject to review and possible re-quotation after 6 months from date of offer regardless of receipt of orders.

## 4. SUPPLY

We agree to supply and deliver and you agree to purchase and take delivery of the Goods, Design Services, Artwork and Tooling, on and subject to these terms and conditions. You may not cancel or vary the Contract without our written agreement. Should a cancellation be agreed, a charge will still be applicable.

## 5. SPECIFICATION

Unless otherwise agreed, you are responsible for providing and approving all Specifications, and ensuring that such Specifications are fit for your purposes. We will not check the Specifications for errors, and we shall have no responsibility for any errors in the Specifications. Where we carry out any Design Services, you shall promptly approve all Specifications, which we develop.

## 6. QUANTITY

Unless we have specifically agreed in writing that we will not supply less than the quantity of Goods specified in the Contract, you agree that we may (at our option) deliver up to 10% more or 10% less than the quantity of Goods specified in the Contract, and you will accept and pay for the quantity so delivered. You acknowledge that the reason for such deviations is that there are normal unavoidable or unpredictable risks of errors in the printing process.

## 7. DELIVERY

- Delivery Time:** We will use our reasonable endeavours to deliver the Goods to you and perform the Contract by the date agreed with you, or if no date has been agreed with you, within a reasonable time. All dates for performance and delivery are estimates only and are always subject to fully signed specification approvals being received. Time for delivery and performance is not of the essence of the Contract. We may deliver by instalments.
- Late Delivery:** If we have failed to deliver the Goods or perform the Contract by any agreed time or (if there is no agreed time) within a reasonable time, we shall not be in breach of the Contract for such failure, unless you have given to us notice requiring performance or delivery and we have failed to do so within 30 days of receipt of such notice.
- Place of Delivery:** If we have agreed to deliver the Goods to a specified address, we will deliver the Goods to that address. If no address is agreed, you will be responsible for collecting the Goods from our premises, and in such case you must collect the Goods within 7 days of notice from us that the Goods are ready for collection.
- Risk:** Risk of damage to or loss of the Goods will pass to you on the earlier of the time when the Goods are delivered to you or your representative, the time when the Goods are collected by you or your representative, and the time when the Goods are left at the agreed delivery address.
- Delivery Arrangements:** If we have agreed to deliver the Goods to premises specified by you, you must make reasonable arrangements to receive and off-load those Goods during normal working hours, or during such times as we may agree with you. We may hand the Goods over to any person who claims to have authority to receive the Goods at those premises.
- Failure to receive the Goods:** If no person is available to receive the Goods, when we tender delivery of the Goods, we may at our option (1) leave the Goods at or immediately outside the delivery address, or (2) return the Goods to our premises, in which case you must pay for the wasted cost of delivery, the cost of returning the Goods to our premises and of storage of the Goods, and (at our option) either collect the Goods from us, or pay for the Goods to be redelivered by us at another time.
- Tooling and Artwork:** We agree to store the Artwork and Tooling. We may ask you to collect it at any time, and destroy it if you fail to collect it within 1 month.
- Stock:** If agreed stock is to be held, we will hold Goods in stock for call-off purposes for a maximum period of 6 months; any alteration must be first agreed in writing. After the 6-month period, all remaining Goods will be delivered and charged for, prior notice of shipping will be provided.

## 8. PAYMENT

- Goods:** You shall pay the Price specified for the Goods.
- Design Services, Artwork and Tooling:** You shall in addition pay the separate agreed Price for the Design Services, Artwork and Tooling. The Price for Tooling is an estimated charge, and if the actual cost of tooling is greater than the estimate, we may charge you the actual cost.
- VAT:** The Price is exclusive of VAT, which will be charged at the prevailing rate.
- Delivery Charges:** Unless otherwise agreed by us in writing, the Price is an ex-works price, and we shall be entitled to make an additional charge for delivery of the Goods to you, including all costs of carriage, packaging and insurance in transit, and all taxes and duties referable to the Goods.
- Invoicing:** We may invoice you for the Price and any other amount payable by you at any time after receiving your order. Any queries regarding invoices received by you must be made in writing within 15 Working Days of date of invoice for valid amendments to be made.
- Payment:** Unless otherwise specified, you must pay the Price and all additional charges within 30 days of delivery of the Goods being tendered by us, or if you are to collect the Goods, when we notify you that the Goods are available for collection.
- Currency and Payment Method:** You must pay the Price and all additional charges in Pounds Sterling by bank transfer to the account nominated by us.
- Interest:** If any amounts payable by you become overdue, then you must in addition pay daily interest on those amounts at the rate of 4% per annum above the base rate of Barclays Bank plc from the due date to the date payment is made (before as well as after any judgement).
- No Set-off:** You must pay the Price and all additional charges in full without any set-off, counterclaim, deduction or withholding, except for deductions or withholdings required by law.
- Suspension of delivery:** In the event that we have reasonable doubts about your ability or willingness to pay on the due date, we may suspend delivery and performance until payment has been received.

## 9. WARRANTY

- Scope of Warranty:** We warrant that the Goods, Design Services, Artwork and Tooling will conform to the Specifications and will be free from material damage on delivery, and that any Design Services will be provided with reasonable care and skill.

- Delivery Inspection:** Any damage or discrepancy of Goods received must be notified to ourselves within 3 Working Days stating the relevant delivery note, after which time we shall not be held liable.
- Inspection:** You must inspect the Goods immediately upon receipt for conformity with the Contract, and we shall not be liable for non-conformities or damage discoverable on reasonable inspection unless you notify us of the same within 1 month after delivery of Goods.
- Warranty Period:** In any event, we will not be liable for any claims relating to breach of Warranty, which are made by you later than 1 month after delivery of the Goods is completed.
- Making Claims:** When making a claim under a Warranty, you must give full particulars of your claim, and (at our option) return the Goods to us or permit us to inspect the Goods. Our reference number detailed on the relevant delivery note must accompany all returns and/or claims.
- Our Liability:** You shall give us a reasonable opportunity to correct any breach of Warranty. Our total liability for breach of any Warranty shall be (at our option) to supply to you replacements for the Goods and re-perform the Design Services, or to repair the Goods, or to refund to you the Price. These remedies shall be our only liability for breach of any Warranty. You shall be responsible for the cost of removing and refitting any Goods or replacements for the Goods from any products or structures to which the Goods were attached or of which the Goods form part.
- False Claims:** We may charge you for any costs and expenses incurred in investigating any claimed breach of warranty if it is subsequently not proved to be a breach of Warranty.
- Warranty Exceptions:** We shall not be liable under any Warranty in respect of any matter, circumstance, malfunction, fault or damage (1) resulting from or constituting normal deterioration or wear and tear; or (2) resulting from any alterations made by any person other than us; or (3) resulting from misuse of the Goods or failure to take reasonable care of the Goods after delivery to you.
- Exclusion of other Warranties:** Except for the warranty stated in Clause 9(a), all warranties, terms or conditions express or implied by statute, common law, custom or otherwise as to the condition or quality, fitness for purpose, or correspondence with any sample or description, of the Goods, Design Services, Artwork or Tooling.

## 10. RETENTION OF TITLE

We will remain owners of the Goods, Artwork and Tooling until you have paid the Price in full for all Goods, Design Services, Artwork and Tooling to be supplied under the Contract, at which time title to the Goods, Artwork and Tooling will pass to you.

## 11. FORCE MAJEURE

We will not be liable for any delay in delivering the Goods to you or for failing to deliver the Goods at all, or for any other delay in or failure to perform the Contract, where due to any event or circumstance beyond our reasonable control, including Act of God, legislation, war, civil commotion, fire, flood, drought, failure of power supply, failure of machinery, lock out, strike, stoppage or other action by our employees or third parties, or owing to any inability to procure any necessary supplies of goods, services or materials. If due to any such event or circumstance, we have insufficient manpower, manufacturing capacity, stocks, or other resources to meet all our contractual commitments to you and third parties, we shall be entitled to apportion the available resources to such contracts as we may decide in our sole discretion.

## 12. LIMITATION OF LIABILITY

- Liability which is limited:** We limit and/or exclude in these conditions our liability to you for or arising out of (1) any breach of the Contract or any Warranty; (2) negligence in performing or in connection with the Contract, (3) the acts or omissions of our officers, employees, agents or Contractors; (4) misrepresentation (other than fraudulent) in connection with the Contract, in each case whether such liability is in contract, tort, statute or otherwise howsoever arising (our "**Default Liability**").
- Liability Limit:** Our total default liability to you shall be limited in aggregate for all events and circumstances giving rise to such Default Liability to the total Price agreed at the time the Contract was concluded.
- Excluded Loss:** We exclude our Default Liability to you for: (1) any special, indirect or consequential loss, (2) any loss of profit, use, expectation, anticipated savings, production, business, revenue, use, contract or goodwill, (3) any costs or expenses, liability, commitment, contract or expenditure incurred or wasted in reliance on the Goods being provided in accordance with this Contract, and (4) losses suffered by third parties and your liability to any third party.
- Loss not limited:** Nothing in these conditions shall be construed as limiting or excluding our liability for death or personal injury resulting from our negligence, or for fraud or fraudulent misrepresentation.

## 13. TERMINATION

We may terminate the Contract immediately if:

- the Price or any other amounts payable by you become overdue and you fail to pay such amounts in full within 14 days of notice from us demanding payment;
- you are in breach of the Contract, which is either material and is not capable of remedy, or is any breach capable of remedy, and is not remedied within 30 days of notice of the breach;
- if you (or any partner if a partnership) shall become unable to pay your debts (within the meaning of Section 123 of the Insolvency Act 1986 or Section 268 of the Insolvency Act 1986 as the case may be), or are liquidated, wound-up or have a petition for winding-up presented against you, or pass a resolution for winding up, or a petition for the appointment of an administrator be presented against you, or have any receiver or administrative receiver appointed in respect of all or any of your undertaking or assets, or are subject to an interim order, or commit any act of bankruptcy, or make any arrangement or otherwise compound or compromise with your creditors, or if any equivalent event happens to you under the laws any relevant jurisdiction.

## 14. GENERAL

- Entire Agreement:** The Contract is the entire agreement and cancels all previous and collateral agreements between the parties relating to the subject of the Contract. Except for the express written terms of the Contract, you agree that in entering into the Contract you have not relied on any oral or written statement or representation from us or any of our officers or employees.
- Assignment:** You shall not assign the benefit of the Contract without our prior written consent.
- Sub-Contracting:** We may sub-contract some or all of our obligations under the Contract.
- Third Party Rights:** No person other than the parties to the Contract shall have the right to enforce any term of the Contract, and the Contracts (Rights of Third Parties) Act 1999 shall not apply.
- Variations:** No variation to the Contract shall be valid unless agreed to in writing by us.
- Invalid Terms:** Each of the terms of the Contract is separate and severable. If any term is held to be void or invalid by any court it shall be severed from the Contract and the remaining terms of the Contract shall continue in full force and effect.
- Waiver:** No failure, delay or forbearance by us in enforcing any term of the Contract or exercising any right or remedy under the Contract shall operate as a waiver of such term, right or remedy.
- Notices:** Notices in relation to the Contract shall be in writing and be sent by hand, recorded delivery post, facsimile, or e-mail, to the address of the other party stated in the Contract or such other address as either party may notify to the other for notices. Notices shall be considered to be received: if sent by hand or recorded delivery, on delivery, and if sent by facsimile, on completion of uninterrupted transmission, and if sent by e-mail, on receipt by the mail server of the intended recipient. Notices relating to legal proceedings shall not be sent by e-mail.
- Recovery Costs:** You shall pay to us our reasonable costs and expenses (including legal costs) incurred by us to enforce payment of any amounts payable by you under the Contract, and to recover any Goods in which we retain title.
- Interpretation:** In the Contract a reference to a "**person**" includes a reference to a company or other body corporate, association, partnership or individual; a reference to the singular shall include the plural and vice versa; and a reference to any gender shall include every gender.
- Law and Jurisdiction:** The Contract is governed by English law and you agree that any disputes or claims in relation to the Contract are subject to the exclusive jurisdiction of the English courts.