

Terms and Conditions of Supply

1. Definitions

- a) In these conditions
“**Buyer**” is the purchaser of the Goods.
“**Contract**” is any agreement between Brandinc and the Buyer for the sale and purchase of the goods incorporating these conditions.
“**Goods**” are goods and products of any kind sold by Brandinc.
“**Brandinc**” is Brandinc Limited of 41 Mitchell Street, London EC1V 3QD and members of its corporate group.
- b) A reference to a 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 legislation for the time being in force made under it.

2. Application of Conditions

- a) All Goods are sold by Brandinc on the following conditions, which shall apply to the supply of all goods of services supplied by Brandinc unless otherwise agreed in advance in writing by Brandinc.

3. Prices

- a) Prices quoted in Brandinc's price list are subject to change upon prior written notice. The price payable by the Buyer will be the price current at the date of despatch.
- b) The price for the Goods shall be exclusive of any value added tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts the Buyer shall pay in addition to the basic cost of the Goods when it is due to pay for the Goods.

4. Acceptance

- a) Each order or acceptance of a quotation for Goods by the Buyer from Brandinc shall be deemed to be an offer by the Buyer to buy Goods subject to these conditions.
- b) No order placed by the Buyer shall be deemed to be accepted by Brandinc until a written acknowledgment of order is issued by Brandinc or (if earlier) Brandinc delivers the Goods to the Buyer.

5. Delivery

- a) Any dates specified by Brandinc for delivery of the goods are intended to be an estimate and time for delivery shall not be of the essence. If no dates are so specified, delivery shall be within a reasonable time.
- b) Subject to the other provisions of these Terms and Conditions Brandinc shall not be liable for any direct, indirect or consequential loss (which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the goods (even if caused by Brandinc's negligence), nor shall any delay entitle the Buyer to terminate or rescind the contract unless such delay exceeds 180 days.
- c) Brandinc may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.
- d) Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.
- e) For the avoidance of doubt Brandinc shall not be liable to Buyer for delayed delivery due to delayed air freight, sea freight, customs holding for inspection, Goods lost in transit by a 3rd party, or any other event outside of Brandinc's direct control.

6. Non-Delivery

- a) No liability for alleged shortages of delivery or non-delivery of goods will be accepted by Brandinc unless such claims are notified in writing to Brandinc within 7 days of delivery (for shortages) or 10 days from date of invoice (for non-delivery).
- b) Any liability of Brandinc for non-delivery arising from 6 a) above shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for the Goods.

7. Description and Quality of Goods

- a) Whilst Brandinc shall use all reasonable efforts to ensure that Goods are supplied to the appropriate quality, Brandinc is not the manufacturer of the Goods and gives no guarantees about the quality or suitability of the Goods for the Buyer's purposes.
- b) The Buyer is responsible for verifying the suitability and quality of the Goods prior to use, and the use of such Goods shall represent the acceptance by the Buyer of such Goods.
- c) Subject to Conditions 5, 6, 7 a) and 7 b), the following provisions set out the entire financial liability of Brandinc (including any liability for the acts or omissions of its employees, agents and sub contractors) to the Buyer in respect of:
 - i. Any breach in these Terms and Conditions;
 - ii. Any use made or resale by the Buyer of any of the Goods, or any product incorporating any of the Goods; and
 - iii. Any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- d) All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the contract.
- e) Nothing in these conditions excludes or limits the liability of Brandinc:
 - i. For death or personal injury caused by Brandinc's negligence;
 - ii. Under section 2(3) of the Consumer Protection Act 1987;
 - iii. For any matter which it would be illegal for Brandinc to exclude or attempt to exclude its liability; or
 - iv. For fraud or fraudulent misrepresentation.
- f) Subject to Condition 7d) and Condition 7e):
 - i. Brandinc's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance of the Contract shall be limited to the Contract price; and
 - ii. Brandinc shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (however caused) which arise out of or in connection with the Contract.

8. Return of Goods

- a) Brandinc will not accept the return of Goods that have been altered in any way.
- b) The Buyer has no right to return any Goods supplied pursuant to a Contract without prior written authorisation by Brandinc. All requests for the return of Goods must be made within 3 days of delivery.
- c) Brandinc reserves the right to apply a handling charge in respect of any Goods returned in accordance with this clause 8.

9. Ownership of Goods and Intellectual Property

- a) All Goods shall be at the Buyer's risk from the time of delivery but will remain the property of Brandinc until all payment in respect of any Goods delivered by Brandinc to the Buyer have been paid for in full.
- b) Brandinc may, at any time when payment is due to Brandinc for any Goods, retake possession of such Goods then in the custody of the Buyer.
- c) The Buyer's right to hold or deal in any way with Brandinc's Goods shall terminate automatically and Brandinc shall be entitled to immediately recover Goods if:-
 - i. The Buyer, being an individual, becomes Bankrupt or is the subject of a Bankruptcy Petition or enters into any arrangements with creditors or,
 - ii. The Buyer, being a limited company is subject to the appointment of an Administrative Receiver or goes or is forced into any form of Insolvency.
- d) The Buyer authorises Brandinc, its employees or agents to enter the Buyer's premises for the purpose of enforcing these provisions.
- e) Notwithstanding that such artwork has been delivered and accepted, the ownership of all artwork commissioned and produced by Brandinc including artwork, design, originating Goods, packaging and any other services shall not pass to the Buyer until payment of the contract price in respect of products, goods and all other services has been received in full, or an appropriate fee has been paid.
- f) Copyright of all work produced by Brandinc will vest in Brandinc, unless otherwise agreed in writing. The Buyer confirms and warrants that it owns or controls all intellectual property rights (including but not limited to copyright, trademarks, registered and unregistered design rights in all materials designs and logos submitted to Brandinc and the Buyer has obtained all necessary licences required in respect of such intellectual property rights.

- g) The Buyer shall indemnify Brandinc and keep Brandinc indemnified against all claims, demands, actions, costs, royalties, expenses, losses and/or damages arising from or incurred by reason of any infringement or alleged infringement (including the settlement for the defence of such infringement or alleged infringement of any intellectual property right (including but not limited to copyright, trademarks, registered and unregistered design rights) by the provision of the goods to the Buyer or by the performance of Brandinc's obligations under this contract or by the exercise of Brandinc's rights under this contract.
- h) Brandinc shall not be held liable or responsible for any breach of copyright whatsoever if they have acted in good faith without knowing or believing that they are in breach of such copyright.

10. Payment

- a) Unless otherwise specifically agreed in writing by Brandinc, payment for the Goods is due to Brandinc within 30 days of Invoice
- b) Brandinc reserves the right to charge interest at the rate of 4% above the base rate at National Westminster Bank PLC on any amount overdue from the Buyer from the date such amount fell due to the date of payment, and Brandinc further reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- c) Brandinc may offset against any overdue account any sums due for any reason from Brandinc to the Buyer.
- d) Time for payment shall be of the essence.
- e) No payment shall be deemed to have been received until Brandinc has received cleared funds in respect of the same, and Brandinc shall be entitled to withhold any delivery until payment has been received in full in respect of the Goods such delivery relates to.
- f) All payments payable to Brandinc under the Contract shall become due immediately on its termination despite any other provision to the contrary.
- g) The Buyer shall make all payments due under the Contract in full without any deduction whether by the way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by Brandinc to the Buyer.

11. Cancellation

- a) Any orders placed by the Buyer shall be treated as a firm commitment and cancellation will not be accepted unless agreed in writing by Brandinc.
- b) Brandinc will make all reasonable efforts to fulfil its obligations under such orders but shall not be liable for any cancellation or suspension of such orders caused by events beyond the control of Brandinc.

12. Representations

- a) No statement, information, warranty, condition or recommendation made by Brandinc's employees or agents shall vary or override these conditions.

13. Waiver

- a) The failure of Brandinc to exercise or enforce any right under the Contract shall not be deemed to be a waiver of that right nor operate to bar the exercise or enforcement of it at any time or times thereafter.

14. Entire Agreement

- a) This Contract constitutes the entire understanding between parties with respect to the subject matter of the Contract and supersedes all prior agreements, negotiations and discussions between the parties relating to it.

15. Force Majeure

- a) Buyer agrees that Brandinc shall not be liable for any and all losses, (including loss of data) damages, costs, claims and other liabilities which arise as a result of any delay or interruption in, or any non-delivery, or missed delivery or failure of the Equipment and/or Services due to circumstances beyond Brandinc or any of its suppliers' reasonable control (including, but not limited to, fire, lightning, explosion, war, disorder, flood, industrial dispute, sabotage, weather conditions or acts of local or central Government or other competent authorities).
- b) Should any event, referred to at Clause 15.b) above, continue for more than 90 days, then either Brandinc or Buyer may terminate the Agreement forthwith.

16. Third Party Rights

- a) The parties to this Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

17. Law

- a) These conditions and all transactions between Brandinc and the Buyer shall be governed by English Law and any disputes arising shall be resolved by the English Courts.
- b) If any condition herein becomes or shall be declared by a Court to be invalid or unenforceable that shall not impair or affect all other Conditions, which will remain in full force and effect.

18. General

- a) Unless specified to the contrary the Buyer hereby agrees that Brandinc may display any design or logo on their premises or in their company literature for the purpose of marketing of its goods and services.
- b) Brandinc will use its best efforts to carry out the work in the time notified to Brandinc, but time shall not be of the essence in this respect.
- c) Verbal instructions will only be accepted on the understanding that Brandinc will not be responsible for any mistakes, errors or liability arising from accepting such verbal instructions.
- d) Alterations and cancellation of Contracts entered into by Brandinc with third parties on behalf of the Buyer will only be made when permitted by the terms of such Contracts entered into by Brandinc with such third parties.
- e) Brandinc will take all reasonable steps to safeguard all Goods entrusted to the care of Brandinc but in the absence of negligence Brandinc will not be responsible for any loss, damage, destruction or authorised use of the Goods.