

## RGVA® Ltd TERMS AND CONDITIONS OF SALE

(Full Version, September 2017)

### 1. INTERPRETATION

1.1 These definitions and rules of interpretation apply to these terms and conditions (Conditions).

**Company:** RGVA Ltd, registered in England with company number 09947235.

**Buyer:** the person, firm or company who purchases the Goods and/or Services from the Company.

**Party or Parties:** Means the Company or the Buyer, or both.

**Company's Proposal:** the Company's issued rate card and/or written proposal and/or quotation for the sale of the Goods and/or Services.

**Contract:** any contract between the Company and the Buyer for the sale and purchase of Goods and/or Services, incorporating these Conditions.

**Confirmation of order or Purchase Order:** All orders placed on the Company by the Buyer must relate to a Proposal or Contract offered by the Company. All confirmation of orders or purchase orders are deemed to be divisible unless specified otherwise, and if divisibility of an order is not acceptable to the Buyer, separate orders must be raised for each part of the specification for Goods and/or Services set out in the Proposal or Contract. If the goods and/or services are delivered or completed in instalments, each completed instalment will be invoiced separately and any invoices for an instalment will be payable in full.

**Deliverables:** any Documents and materials developed by the Company in relation to the Goods in any form, including certificates, calculation details, drawings, data, reports and specifications (including drafts) that are listed in the Contract as being deliverable to the Buyer or that are delivered to the Buyer.

**Document:** includes, without limitation, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, data device or any other device or record embodying information in any form.

**Goods:** any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them).

**Services:** any services agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them).

**In---Put Material:** all Documents, information and materials provided by the Buyer or the agent of the

Buyer relating to the Goods and/or Services including (without limitation), artwork, drawings, data, reports and specifications.

**Delivery:** the place and date where delivery of the Goods and/or Services is to take place.

**Acceptance:** acceptance of the Goods and/or Services by the Buyer.

**Rejection:** rejection of the Goods and/or Services by the Buyer, made in writing within 7-working days of delivery stating in what respect the Goods and/or Services are deficient.

**Warranty:** issued by the Company according to the life, use and location of the Goods, as specified by the Buyer.

**Defect:** where Goods do not conform or perform with the warranty given.

**Insolvency Event:** a Party suffers an insolvency event when he has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a corporate body) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer or suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or ceases to trade.

**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, typography

rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Pre-Existing Materials:** all Documents, information and materials provided by the Company relating to the Goods which existed prior to the commencement of the Contract including artwork, drawings, data, reports and specifications.

**VAT:** value added tax chargeable under English Law for the time being and any similar additional tax.

1.2 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 any subordinate legislation for the time being in force made under it.

1.3 Words in the singular include the plural and in the plural include the singular.

1.4 A reference to one gender includes a reference to the other gender.

1.5 Condition headings do not affect the interpretation of these conditions.

### 2. APPLICATION OF CONDITIONS

2.1 Subject to any variation under condition 2.3 the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer may wish to apply under any confirmation of order, purchase order, specification or other document).

2.2 No terms or conditions endorsed on, delivered with or contained in the Buyer's confirmation of order, purchase order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

2.3 These conditions apply to all the Company's sales and a variation to these conditions and any representations about the Goods and/or Services shall have no effect unless expressly agreed in writing, signed by a Director of the Company and

an official representative of the Buyer, and attached as an Appendix to these Conditions.

2.4 The Company and the Buyer acknowledge that they have not relied on any statement, promise or representation made or given by or on behalf of the other Party that is not set out in this Contract or order confirmation. Nothing in this condition shall exclude or limit the Company's liability or the Buyer's liability for fraudulent misrepresentation.

2.5 Each order or acceptance of a quotation for Goods and/or Services by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Goods and/or Services subject to these conditions.

2.7 No order placed by the Buyer shall be deemed as accepted by the Company until a written Order Confirmation document is e-mailed from the Company to the Buyer.

2.8 Any quotation given by the Company is on the basis that no Contract shall come into existence until the Company e-mails an Order Confirmation document to the Buyer.

2.9 All quotations are valid for a period of 30-days from their issue date provided that the Company has not previously withdrawn it, which will be done by e-mail to the Buyer.

### 3. COMPANY'S OBLIGATIONS

3.1 The Company shall use reasonable endeavours to supply the Goods and/or Services and to deliver the Deliverables to the Buyer, in accordance in all material respects with the Company's Proposal.

3.2 The Company shall use reasonable endeavours to meet any delivery dates agreed in writing between Parties or specified in the Company's Proposal, but any such dates shall be conditional on the schedules being kept by all related Parties to those dates, including but not limited to; receipt of a confirmation of order or the receipt of a purchase order from the Buyer, the delivery of Artwork, positive approval of visuals, positive approval of colour samples and the availability of Vehicles in accordance with the Company's proposal. In this respect, the schedule dates are estimates only and time shall not be of the essence for delivery of the

Goods and/or Services if any of those pertinent dates varies.

#### 4. BUYER'S OBLIGATIONS

4.1 CO-OPERATION: The Buyer shall co-operate with the Company in all matters relating to the Goods and/or Services and provide to the Company, in a timely manner, a full and concise Purchase Order, correct content for artwork or correct artwork, plus any other information as the Company may require to ensure that the order is accurate in all respects and deliverable on the dates requested.

4.2 ARTWORK: The Buyer or their agent will provide 'print ready artwork' in accordance with the attached artwork specification supplied from the Company. Where the Buyer or their agent does not do this the Company reserves the right to charge the Buyer for Pre-Press time for each artwork piece and for each dimension in which it is required to convert the artwork into 'print ready artwork'. The Company's standard charge for Pre-Press time is £79.85 per hour.

4.3 PRELIMINARIES: Where the Buyer or their agent request the Company to carry out initial artwork, purchase images, engineer layouts or conduct site audits prior to issuing an order confirmation or purchase order, the cost relating to initial works will be included in a subsequent quotation or subsequent proposal from the Company. In situations where there is a delay issuing an order confirmation or purchase order, or an order confirmation or purchase order doesn't materialise, the Company will invoice the Buyer or their agent (whoever requested the initial work to be carried out) on a month-end time-spent basis. For the avoidance of doubt, the Company's standard charge for preliminary works will be £79.85 per hour and other costs incurred will be charged at cost.

4.4 DIMENSIONS (width or widths and height or heights of Goods): For Buyer supplied dimensions, or dimensions supplied by an agent of the Buyer (for example a vehicle bodybuilder), the Buyer will accept the Goods providing they are within 2% or +/- 10mm, whichever is less, of the supplied dimensions specified at the time of placing an order. For dimensions supplied by the Company, which will be the result of a vehicle audit, the

Company will specify and/or confirm those dimensions to the Buyer on the Order Confirmation, and the Buyer will accept the Goods providing they are within 2% or +/-10mm, whichever is less, of the supplied dimensions. In either situation, before production, the Company will supply a schematic 1:10 scaled visual with content for each piece or variant of creative for positive approval by the Buyer at the time of placing an order or during an order process.

4.5 COLOURS: Colour match is only achieved when the Buyer provides the Company with a physical printed piece to match to and/or specifies RAL numbers or coated Pantone numbers to be achieved for designated areas of block colour. Where the Buyer or their agent does not provide such information then the Buyer is deemed to accept the colours on the print(s) produced by the Company's 'print from file processes'.

4.6 PHYSICAL SAMPLES or TEST PRINTS: If requested, the cost of providing samples or test prints will be included in a Proposal or Contract provided by the Company to the Buyer. Where the Buyer requires a sample or test print prior to issuing an order confirmation or purchase order, the Company will provide such prints at a cost of £100 each for up to a maximum of 2 square metres of Traxx® banner print and/or vinyl print (This cost includes delivery of the samples). These charges are not refundable.

4.7 COMPANY'S RIGHT TO USE IMAGES: Unless refused in writing by the Buyer at the time of placing an order with the Company, then the Company will presume, and be so indemnified by the Buyer, that it has the Buyer's permission and/or that of their client, to use images or supplied photographs of the final work to demonstrate the Company's services in its marketing activity. If images or supplied photographs are used, it is the Company's policy to make an image or written reference to the Buyer and/or their client.

4.8 POSTPONEMENT or CANCELLATION: The Buyer can postpone or cancel an order for goods and/or Services at any time. The Company will invoice the Buyer on a pro-rata basis for all Goods already produced, all materials purchased against the order and all costs related to, and if appropriate, Services already delivered, or planned to be delivered where those plans will incur a cost to cancel.

#### 5. DELIVERY AND ACCEPTANCE PRIOR & AFTER INSTALLATION

5.1 If requested by the Buyer, where Goods relate to the supply of multiple sets, the Company will include in its Proposal or Contract the cost of 1 physical sample or 1 test print for the Buyer to inspect and approve the Goods prior to further Goods being supplied by the Company. It is the Buyer's sole responsibility to inspect the Goods, either at an address specified by the Buyer or at the Company's premises before further production takes place. Inspection should cover; dimension, materials used, colour, print quality, finishing and packaging.

5.2 If requested by the Buyer, where Goods and/or Services relate to multiple vehicles or the rebrand of a fleet, the Company will include in its Proposal or Contract the cost of 1 working prototype for the Buyer to inspect and approve the Goods and/or Services prior to further Goods and/or Services being supplied by the Company. It is the Buyer's sole responsibility to inspect the Goods, either at an address specified by the Buyer or at the Company's premises before further production takes place. Inspection should cover; dimension, materials used, colour, print quality, alignment, accuracy of fitment, and style of finishing.

5.3 In accordance with clause 5.1 and/or 5.2, if the Buyer, at the Buyer's discretion, chooses not to approve or carry out this inspection and the Goods are produced and Services are delivered, then all costs relating to takedown, reprint, reinstallation, remedial work, subsequent loss of media value or any other claims are the sole responsibility of the Buyer.

5.4 If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, the Buyer shall be liable for all related costs and expenses including, without limitation, storage and insurance. For the avoidance of doubt, any payment due upon delivery still remains due on the original date of delivery, and any credit term agreed between the Company and the Buyer will commence on the original date of delivery, even if the Buyer requests a delay to the delivery.

5.5 Where specified in the Proposal or Contract, the Company may split delivery of the Goods and/or

Services. Each delivery shall be invoiced and paid for in accordance with the provisions of the Contract. Services will be invoiced on completion and shall be invoiced and paid for in accordance with the provisions of the Contract.

5.6 If a delivery or installation schedule is changed by the Buyer, or changed by another party related to the Buyer, and those changes materially alter the cost for the Company to deliver the order, the Company will complete the relevant work under the financial provisions of the original order confirmation and seek further authorisation from the Buyer to accommodate a new schedule.

5.7 Subject to the other provisions of these conditions, the Company shall not be liable for any direct, indirect or consequential loss (all three of which 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 any delay is caused by the Company's negligence.

5.8 If in the Buyer's reasonable opinion the Goods and/or Services supplied by the Company are not in accordance with the order, the Buyer shall reject them by giving notice in writing (Rejection Notice) within 7-working days of delivery stating in what respect he believes the Goods and/or Services are deficient.

5.9 In the event of a Rejection Notice, the Buyer shall make the Goods, or the vehicles displaying the Goods, available to the Company for inspection. If the Goods and/or Services have not met the specification, the Company shall repair or replace them.

5.10 If the Buyer fails to issue a Rejection Notice or if the Buyer makes use of the Goods, then acceptance of the Goods and/or Services shall be deemed to have occurred (Acceptance).

5.11 The Company will only issue credit notes against rejected Goods if they have not been used for their intended purpose.

5.12 Any delivery sent by the Company to the Buyer via courier should be signed for as 'unchecked' or 'damaged'. Failure to do so will prevent the Company from making a claim against the courier

and the Company will deem that the Goods have been Accepted by the Buyer.

## 6. RISK & TITLE

6.1 The Goods are at the risk of the Buyer from the date and time of delivery.

6.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full all sums due to it in respect of the Goods.

6.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:

(a) Hold the Goods on a fiduciary basis for the Company;  
(b) Store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third Party in such a way that they remain readily identifiable as the Company's property;  
(c) Not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and  
(d) 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.

6.4 The Buyer may resell the Goods, or incorporate the Goods into or onto the Goods of the Buyer before ownership has passed to it on the following conditions:

(a) Any sale shall be effected in the ordinary course of the Buyer's business;  
(b) Any sale shall be a sale of the Company's property giving rise to a full settlement for the Goods; and  
(c) Any gifting of the Goods of the Company by the Buyer will not affect a full settlement for the Goods.

6.5 The Buyer's right to possession of the Goods shall terminate immediately if:

(a) The Buyer suffers an Insolvency Event;  
(b) The Buyer charges for any of the Goods but does not make a full settlement for the Goods.

6.6 The Company shall be entitled to recover payment for the Goods and/or Services

notwithstanding that ownership of the Goods has not passed from the Company.

6.7 The Buyer grants the Company, its agents and employees, an irrevocable licence at any time to enter premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them or to make them available to recover, which in the case of Goods and/or Services that have been incorporated into or onto a vehicle or vehicles, means returning the vehicle or vehicles to the premises of the Company so they may be removed.

6.8 Where the Company is unable to determine if the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold the Goods as they were invoiced to the Buyer.

6.9 With the exception of termination by way of non-payment, on termination of the Contract, howsoever caused, the Parties rights contained in this condition 6 shall remain in effect.

## 7. PRICE

7.1 Unless otherwise agreed by the Company in writing, the price for the Goods and/or Services shall be the price set out in the Company's Order Confirmation document.

7.2 The price for the Goods and/or Services shall be dependent on the payment date and/or terms offered or agreed by the Company.

7.3 The price for the Goods and/or Services shall be exclusive of any VAT.

7.4 Unless otherwise stated in the Company's Order Confirmation document the price excludes all costs or charges in relation to packaging, loading, unloading, carriage, access equipment and insurance - all of which are amounts the Buyer shall pay in addition when it is due to pay for the Goods and/or Services.

## 8. PAYMENT

8.1 Unless otherwise agreed by the Company in writing, payment will become due in pounds sterling 30-days from the invoice date, with all

invoices raised after goods and/or Services were delivered.

8.2 Where special conditions are offered or agreed by the Company, the payment date or account term will be set out on the Order Confirmation and payment will become due in pounds sterling on the date or terms agreed.

8.3 Where either standard payments in condition 8.1 are accepted, or special payment dates or account terms in condition 8.2 are agreed, the Company may apply a surcharge of 7% for each 30-day delay in payment.

8.4 In all cases, time for payment shall be of the essence.

8.5 No payment is considered received until the Company has cleared funds in the Company's bank account or has received cash.

8.6 Disputed invoices must be declared with 7-days of the invoice date. With the exception of legitimately disputed invoices, or invoices relating to goods that have been rejected in accordance with condition 5.5, all payments payable to the Company under a Contract shall become due immediately on its termination despite any other provision.

8.7 The Buyer shall make all payments due under the Contract in full without any deduction whether by 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 the Company to the Buyer.

8.8 If the Buyer fails to pay the Company any sum due under this Contract on the due date or dates agreed and in accordance with conditions 8.1, 8.2 & 8.3, any additional sums that may become due, the Buyer agrees to pay interest and compensation to the Company.

8.9 Without prejudice to any other right or remedy that it may have, if the Buyer fails to pay the Company on the due date, the Company may suspend the production and delivery of further Goods and/or Services until a due payment has been made in full.

## 9. QUALITY & WARRANTY

9.1 The Company is a 3M™ Select Gold Partner, supplying Goods and/or Services under the 3M™ Select Gold Partner Warranty on all self-adhesive Goods produced using 3M™ Graphic Materials, 3M™ Inks and 3M™ Graphic Protection on approved equipment. The Warranty offered is dependent on specification. Specific warranty details are available from the Company, or direct from 3M™ at [www.3m.com](http://www.3m.com).

9.2 The Company is an authorised 3M™ AVW™ (Authorised Vehicle Wrapper) and offers the 3M™ MCS™ (Match Component System) Warranty on the Services relating to application of Goods. The Warranty offered is dependent on specification. Specific warranty details are available from the Company, or direct from 3M™ at [www.3m.com](http://www.3m.com).

9.3 The Company is a Licensed Traxx® System Distributor and offers the Traxx® System Warranty on all installations using approved techniques as set out in published guidelines. Specific warranty details are available from the Company, or direct from Traxx® at [www.traxx.eu.com](http://www.traxx.eu.com).

9.4 Where in condition 9.1 and condition 9.3 the Company is not the primary manufacturer of materials used to prepare the Goods, the Company shall, at a minimum, transfer to the Buyer the benefit of any individual component warranty or guarantee given to the Company.

9.5 Regardless of assurances and statements given in conditions 9.1 - 9.4, the Company warrants that, subject to the other provisions of these conditions, the Goods shall be of satisfactory quality within the meaning of the Sale of Goods Act and be fit for use on the vehicle for which details have been reviewed and accepted by the Company. The warranty issued will vary according to the life, use and location of the Goods, as specified by the Buyer. The Company reserves the right to revoke any warranty where the Buyer, contrary to advice given by the Company, insists on a specification of Goods that is deemed by the Company to be unsuitable for the intended life, use or location as notified by the Buyer, or where eventual use of the Goods exceeds the life or is used in a different location originally stated by the Buyer.

9.6 The Company shall not be liable for a breach of any of the warranties in conditions 9.1 - 9.5 unless;

- (a) The Buyer gives written notification of the defect to the Company; or
- (b) The defect is as a result of damage in transit by the carrier; or
- (c) The Company is given a reasonable opportunity after receiving notification of the defect to examine such Goods.

9.7 The Company shall not be liable for a breach of any of the warranties conditions 9.1 - 9.5 if;

- (a) The Buyer makes any further use of such Goods after giving such notice; or
- (b) The defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, use or maintenance of the Goods; or
- (c) The Buyer alters the Goods without the written consent of the Company; or
- (d) The buyer repairs the Goods without following the guidelines issued by the Company; or
- (e) The buyer repairs the Goods using another Party.

9.8 Regardless of assurances and statements given in conditions 9.1 - 9.4, if any of the Goods do not conform with the warranty described in condition 9.5 the Company shall at its option repair or replace the Goods (or the defective part) or refund the price of the Goods at the pro-rata Contract rate.

9.9 If the Company complies with condition 9.8 it shall have no further liability for a breach of any of the warranties in condition 9.5 in respect of such Goods.

9.10 Any Goods replaced or repaired will benefit from the term of the original warranty set out in condition 9.5.

## 10. INTELLECTUAL PROPERTY RIGHTS

10.1 Intellectual Property Rights in the Company's Goods and Services, and all other rights in the Company's Deliverables and the Company's Pre-Existing Materials are owned by the Company, including those Intellectual Property Rights that were developed by the Company to deliver Goods and Services to the Buyer.

10.2 As far as is necessary for the Buyer to procure the Company's Goods and Services, and to benefit

from the Company's Deliverables, the Company licenses rights to the Buyer to the extent necessary to enable the Buyer to make reasonable use of the Goods, Services and Deliverables. If the Contract terminates, this licence shall automatically terminate.

10.3 The Company and the Buyer acknowledge that, where the Parties do not own any Pre-Existing Materials, the Parties use of rights in Pre-Existing Materials is conditional on;

- (a) The relevant Party obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle the use of those Pre-Existing Materials to the extent necessary to enable the supply of Goods and Services without infringing the rights of a third Party, or
- (b) The relevant Party demonstrating that the existing Materials are paid-up and therefore licence-free or owned to the extent necessary to enable the supply of Goods and Services without infringing the rights of a third Party.

## 11. CONFIDENTIALITY & THE PROPERTY OF OTHER PARTIES

11.1 Both Parties shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes, initiatives or intentions which are of a confidential or commercially advantageous nature, whether the disclosure to the other Party was in the context of employee, officer, representative, advisor, agent, consultant or subcontractor, and shall keep in strict confidence any other confidential information concerning the other Parties business or its products which the other Party may obtain.

11.2 The Buyer may disclose such information:

- (a) To its employees, officers, representatives, advisors, agents, consultants or subcontractors who need to know such information for the purposes of carrying out the Buyer's obligations under the Contract; and
- (b) As may be required by Law, Court Order or any governmental or regulatory authority.

11.3 The Buyer shall ensure that its employees, officers, representatives, advisors, agents,

consultants or subcontractors to whom it discloses such information comply with condition 11.

11.4 The Buyer shall not use any such information for any purpose other than to perform its obligations under the Contract.

11.5 All materials, equipment and tools, drawings, specifications and data supplied by the Company or the Buyer (including Pre-Existing Materials and Equipment) for the purpose of supplying Goods or Services shall, at all times, be and remain as between the Company and the Buyer the exclusive property of the applicable Party and shall not be disposed of or used other than in accordance with the Company's or the Buyer's written instructions or authorisation.

## 12. LIMITATION OF LIABILITY

12.1 Subject to condition 3 and condition 9, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

- (a) Any breach of the Contract;
- (b) Any use made or resale by the Buyer of any of the Goods, the Deliverables or of any product incorporating any of the Goods; and
- (c) Any representation, statement or tortious act or omission including negligence arising under, or in connection with, the Contract.

12.2 All warranties, conditions and other terms not contained in these Terms and Conditions of Sale are, to the fullest extent permitted by law, excluded from the Contract.

12.3 Nothing in these conditions excludes or limits the liability of the Company:

- (a) For death or personal injury caused by the Company's negligence; or
- (b) Under section 2(3), Consumer Protection Act 1987; or
- (c) For any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
- (d) For fraud or fraudulent misrepresentation.

12.4 Subject to condition 12.2 and condition 12.3, the Company shall not be liable to the Buyer for loss

of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever, howsoever caused, which arise out of or in connection with the Contract.

## 13. ASSIGNMENT

13.1 Unless agreed otherwise in writing between Parties the Company may assign or sub-contract the Contract or any part of it to any person, firm or company.

## 14. TERMINATION

14.1 Without prejudice to any other rights or remedies that the Parties may have, either Party may terminate the Contract without liability to the other immediately on giving notice to the other if:

- (a) The other Party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14-days after being notified in writing to make such payment; or
- (b) The other Party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30-days of that Party being notified in writing of the breach; or
- (c) The other Party suffers an Insolvency Event.

14.2 On termination of the Contract for any reason:

- (a) The Buyer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest that are rightly due and undisputed and, in respect of Goods and/or Services supplied but for which no invoice has been submitted, the Company may submit an invoice, which is rightly due and undisputed shall be payable immediately on receipt;
- (b) The Buyer shall return all of the Company's Equipment, Pre-Existing Materials and Deliverables. If the Buyer fails to do so, then the Buyer gives rights to the Company to enter the Buyer's premises and take possession of them; and
- (c) The accrued rights and liabilities of the Parties as at termination and the continuation of any provision expressly stated to survive termination, shall not be affected.

14.3 On termination of the Contract (however arising), the following conditions shall survive and continue in full force and effect:

- (a) Condition 10;
- (b) Condition 11;
- (c) Condition 14; and
- (d) Condition 18.

#### **15. FORCE MAJEURE**

The Company shall have no liability to the Buyer under the Contract if it is prevented from, or delayed in performing, its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including (without limitation) strikes, lock-outs or other industrial disputes (whether involving the workforce of the Company or any other Party), failure of a utility service or transport network, economic conditions, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of contractors or subcontractors.

#### **16. GENERAL**

16.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

16.2 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 be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

16.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

16.4 Any waiver by the Parties of any breach, or any default under any provision of the Contract by the other Party shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

16.5 The Parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts Act 1999 by any person that is not a Party to it.

#### **17. COMMUNICATIONS**

17.1 All communications between the Parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or e-mail.

17.2 Communications shall be deemed to have been received:

- (a) If sent by pre-paid first class post, two days after posting (excluding Saturdays, Sundays, bank and public holidays); or
- (b) If delivered by hand, on the day of delivery; or
- (c) If sent by e-mail, on the day of sending where there is a 'delivered' notification.

#### **18. GOVERNING LAW & JURISDICTION**

18.1 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non- contractual disputes or claims), shall be governed by, and construed in accordance with, the Law of England and Wales.

18.2 The Parties irrevocably agree that the Courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, the Contract or its subject matter or formation (including non- contractual disputes or claims).

#### **19. FINAL PROVISION**

19.1 Engaging with the Company on an initial consultancy basis, or requesting initial artistic work from the Company to establish a need, or requesting prototype work from the Company is done so in full agreement with these Terms and Conditions of Business.

19.2 Any failure by the Company to enforce any or all of these Conditions, or any leniency offered by the Company to the Buyer in respect of these Conditions shall not be construed as a waiver of any rights.

19.3 The Company reserves the right to vary, change, alter, amend, add to or remove any of these Conditions.

19.4 If Services are governed by a separate Contract relying on a previous version of these Conditions, the Buyer will be written to informing of changes.

19.5 If Services do not rely on a separate Contract, the Buyer must ensure that the Conditions accompanying each Proposal or Contract offered by the Company to the Buyer are reviewed as the Buyer will be deemed to have accepted a variation after a variation has been made.