

# **TERMS AND CONDITIONS OF PURCHASE PRITCHARDS CREATIVE COMMUNICATIONS LTD**

All transactions are based upon and subject to the terms and conditions set out below:-

## **1. DEFINITIONS**

1.1 "Buyer" means Pritchards Creative Communications Limited (company number 3102226) whose registered office is at Gratton House, Gratton Street, Cheltenham, Gloucestershire GL50 2AS and its subsidiary companies. 1.2 "Seller" means the person whose name and address appears in the box marked Seller overleaf. 1.3 "Conditions" means the terms and conditions of purchase set out in this document and any special terms and conditions agreed in Writing by the Buyer. 1.4 "Delivery Date" means the date specified by the Buyer when the Goods are to be delivered. 1.5 "Goods" means the articles which the Buyer agrees to buy from the Seller. 1.6 "Price" means the price for the Goods excluding carriage, packing, insurance and VAT. 1.7 "Writing" means letter, email, cable, facsimile transmission and comparable means of communication.

## **2. CONDITIONS OF PURCHASE**

2.1 These Conditions shall apply to all contracts for the purchase of the Goods by the Buyer from the Seller to the exclusion of all other express or implied terms and conditions (except those in favour of the Buyer which are not inconsistent with the Conditions) including any terms or conditions which the Seller may purport to apply notwithstanding the same being endorsed upon, delivered with or referred to in any quotation or other document delivered or sent by the Seller to the Buyer. 2.2 Despatch or delivery of the Goods by the Seller to the Buyer shall be deemed conclusive evidence of the Seller's acceptance of these Conditions. 2.3 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and of the Seller.

## **3. THE PRICE AND PAYMENT**

3.1 The Price shall be the price set out overleaf or if none the Seller's quoted price. 3.2 Subject to any special terms agreed in Writing by the Buyer the Seller shall be entitled to invoice the Buyer for the Price of the Goods on or at any time after acceptance of the Goods by the Buyer. 3.3 The Buyer shall use its reasonable endeavours to pay the Price of the Goods within 30 days of the date of the Seller's invoice. The time of payment of the Price shall not be of the essence of this contract. 3.4 The Buyer may set off against the Price (including any applicable VAT payable) any amounts due from the Seller whether under the applicable contract of sale or otherwise.

## **4. PACKING, CARRIAGE AND DELIVERY**

4.1 Transit and offloading shall be at the Seller's risk and no charges for packing, carriage or insurance will be allowed unless so specified overleaf or otherwise agreed in Writing. 4.2 Unless otherwise agreed in Writing the Goods are to be delivered duty paid as defined by Incoterms 1990 to the address designated by the Buyer. The Buyer reserves the right to make alternative delivery arrangements and to recover the reasonable expenses thereof from the Seller. 4.3 All Goods must be delivered to the address specified by the Buyer for delivery during normal working hours, and until delivery to such address the Goods will be at the Seller's risk in all respects. Unless expressly agreed otherwise in Writing by the Buyer containers and packing must be supplied free but will be returned, if required, at the Seller's risk and expense. 4.4 All Goods must be accompanied by a detailed delivery note stating the order number and giving full particulars (including the part numbers if appropriate) of the Goods supplied.

## **5. THE GOODS**

5.1 The quantity and specifications of the Goods shall be as set out in the Buyer's order (if accepted by the Seller) or the Seller's quotation (if accepted by the Buyer).

## **6. DELIVERY OF THE GOODS**

6.1 The Delivery Date is of the essence of this contract and the Buyer shall make all arrangements necessary to take delivery of the Goods. 6.2 If the Seller fails to deliver all of the Goods in accordance with the contract on the Delivery Date then without prejudice to the Buyer's rights for breach of contract: 6.2.1 the Buyer may terminate this contract. In this event without prejudice to the Buyer's other remedies the Seller shall promptly collect any Goods which have been delivered; 6.2.2 where delivery of a quantity of the Goods which is less than the agreed quantity has been tendered and the Buyer has not exercised its rights of termination under clause 6.2.1 the Buyer may accept such Goods and recover all losses, costs and expenses from the Seller resulting from the failure to deliver the required quantity of Goods; 6.2.3 the Buyer may require the Seller promptly to deliver further Goods to the Buyer which correspond to the quantity required under this contract. 6.2.4 the Buyer may deduct from the Price or (if the Buyer has paid the Price) claim from the Seller by way of liquidated damages for delay one per cent of the Price for every week's delay, calculated on a daily basis, up to a maximum of twelve per cent. 6.2.5 The Buyer may exercise any of these rights by giving a notice in Writing to the Seller. The provisions of clause 6.2.4 shall apply in any event. 6.3 In the event that any or all of the Goods are damaged in any way, the Buyer shall be entitled to serve a notice in Writing upon the Seller requiring the Seller to repair or replace free of charge the Goods so damaged and due delivery of the Goods shall not be deemed to have taken place until replacement or repaired Goods have been delivered by the Seller to the Buyer. The Buyer reserves the right to hold such damaged Goods at the Seller's risk or to return them at the risk and expense of the Seller.

## **7. ACCEPTANCE OF GOODS**

7.1 The Buyer shall not be deemed to have accepted any part of the Goods until after the Buyer has or the Buyer's sub-buyers (if any) have actually inspected the Goods and ascertained that they are in accordance with the contract. The Buyer shall be entitled to reject Goods which are not in accordance with the contract for a reasonable time after such inspection. 7.2 If the Buyer rejects any Goods which are not in accordance with the contract the Buyer may set off against any payment due to the Seller (whether under this contract or otherwise) the Price of such Goods. Unless within a reasonable time of receipt of notice in Writing of rejection the Seller collects such Goods the Buyer may dispose of them as the Buyer shall think fit (provided that if the Buyer sells such Goods the Buyer shall account to the Seller for the net proceeds of such sale after deduction of all costs and expenses reasonably incurred in relation thereto).

## **8. TITLE AND RISK**

8.1 Title to and risk in the Goods shall pass to the Buyer upon acceptance of the Goods by the Buyer. 8.2 Where any payment is made in advance by the Buyer the property, but not the risk in the Goods or in any materials purchased or allocated by the Seller for the purpose of this Contract shall immediately vest in the Buyer but not so as to prejudice the Buyer's right to reject the Goods. 8.3 In the event that the Buyer shall make payment for any Goods before they are delivered, the Seller shall keep such Goods separate and apart from all property of other persons and shall clearly mark the Goods "Property of Pritchards Creative Communications Limited". In such circumstances the Buyer is granted irrevocable authority to enter the Seller's premises to take the Goods at any time.

## **9. FAILURE TO COMPLY WITH INSTRUCTIONS**

9.1 Failure to comply with any reasonable instructions of the Buyer will delay payment. Such delay will not however affect the Buyer's rights to any cash discount to be allowed on the Price of Goods supplied under this contract. 9.2 The Seller will provide the Buyer with such invoices, advice notes, delivery notes, statements and other documentation as the Buyer may from time to time specify.

## **10. WARRANTIES AND LIABILITIES**

10.1 All representations, statements or warranties made or given by the Seller, its servants and agents whether orally in Writing or in any of the Seller's brochures catalogues and advertisements regarding the quality and fitness for purpose of the Goods or any of the Goods shall be deemed to be express conditions of the contract of sale. 10.2 The Seller shall ensure that all the Goods shall be manufactured, stored, tested and packed in accordance with all British Standards applicable to them and that all the Goods are of satisfactory quality and comply with specification. 10.3 The Seller shall permit the Buyer to inspect and test the Goods during their manufacture and processing. 10.4 If the Buyer is not reasonably satisfied that the Goods or their manufacture or processing comply in

all material respects with the contract the Seller without extra cost to the Buyer shall take all steps necessary to ensure due compliance. 10.5 Where any specifications or designs of the Goods or any of the Goods have been provided by the Buyer the copyright, design right or other intellectual property in them shall remain the property of the Buyer.

#### **11. CHANGES IN SPECIFICATION**

11.1 The Buyer may at any time make changes in Writing relating to this contract, including changes in the drawings and specifications, method of shipment, quantities, packing or time or place of delivery. If such changes result in an increase in the cost of, or time required for, the performance of the contract, an equitable adjustment shall be made to the Price, Delivery Date or both. Any claim or adjustment by the Seller must be approved by the Buyer in Writing before the Seller proceeds with such change.

#### **12. EXCLUSIVE MANUFACTURE**

12.1 The Seller will not either during the period of this contract or at any time thereafter:- 12.1.1 manufacture or procure to be manufactured for any person or company other than the Buyer any Goods or designs or specifications originated or owned by the Buyer; or 12.1.2 disclose to any person or company any manufacturing process, design, negative, engineering drawing or data, information, or any other trade secret of whatsoever nature relating to the Buyer and being supplied to the Buyer under the contract provided always that this restriction shall not apply to any information:-12.1.2.1 which at the time of disclosure is in the public domain or which becomes public after disclosure otherwise than through the actions of the Seller; 12.1.2.2 which the Seller can show by satisfactory proof to have been in its possession prior to disclosure hereunder.12.2 This contract must be performed by the Seller personally and no part of it may be assigned sub-let or sub-contracted by the Seller without the Buyer's express written permission.

#### **13. CARE AND RETURN OF BUYER'S PROPERTY**

13.1 All patterns, dyes, moulds and other tooling supplied by the Buyer to the Seller or prepared or obtained by the Seller for and at the cost of the Buyer shall be the property of the Buyer. 13.2 The Seller shall maintain all such items in good order and condition (fair wear and tear expected) and shall at its own cost insure them against all risks for their full replacement value. 13.3 The Seller shall at its own cost promptly return all such items to the Buyer upon demand in good order and condition. 13.4 Should the Seller fail to return the items, the Buyer may (without prejudice to any other rights it may have) withhold payment of monies due to the Seller to the value of the items until return of the items. 13.5 The Seller shall not use such items nor shall it permit any other person to use such items for or in connection with any purpose other than pursuant to this contract unless authorised in Writing by the Buyer.

#### **14. PATENTS AND DESIGNS**

14.1 The Seller warrants that the sale or use of Goods supplied pursuant to this contract will not infringe any Patent, Registered Design, Industrial Design, Design Right, Trade Mark or Trade Name or other protected right in any country and undertakes to indemnify the Buyer against all judgements, decrees, orders, damages, costs and expenses arising from actual or alleged infringements of the same.

#### **15. RIGHT TO TERMINATE**

15.1 The Buyer shall be entitled to terminate this contract without liability and without prejudice to the Buyer's other rights in any of the following circumstances:- 15.1.1 Any increase in the Price of the Goods ordered not approved by the Buyer; 15.1.2 The Seller fails to deliver the Goods on the Delivery Date time being of the essence; 15.1.3 Notwithstanding any guarantee given by the Seller the quality of the Goods supplied by the Seller in performance of this contract or as a sample is such that they do not conform to specification, drawing, samples or other descriptions or they are not of satisfactory quality or defective in material or workmanship; 15.1.4 The Seller has had a bankruptcy order made against it or has made an arrangement or composition with its creditors or otherwise taken the benefit of any Act for the time being in force for the relief of insolvent debtors or has suffered or allowed any execution whether legal or equitable to be levied on its property or obtained against it or (being a body corporate) has had convened a meeting of creditors (whether formal or informal) or has entered into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation or has a receiver manager administrative receiver or administrator appointed over its undertaking or any part thereof or a resolution has been passed or a petition presented to any Court for the winding-up of the Seller or any proceedings have been commenced relating to the insolvency or possible insolvency of the Seller; 15.1.5 The Seller in the sole opinion of the Buyer comes under the ownership or control of a competitor of the Buyer; 15.1.6 Any breach of the Seller of a term of the Conditions or the contract.

#### **16. PAYMENTS ON TERMINATION**

16.1 The Buyer may at any time give notice in Writing to the Seller to terminate the contract forthwith and in such event the Buyer shall pay and the Seller shall accept in settlement of all claims under the contract such a sum as shall reasonably compensate the Seller for work done and raw materials received and paid for by the Seller in and for the performance of the contract prior to its termination. 16.2 The provisions of Clause 16.1 shall not apply if the Contract is terminated by the Buyer pursuant to Clauses 6 and 15 hereof.

#### **17. PRE-DELIVERY INSPECTION**

17.1 Prior to delivery to the Buyer the Seller shall adequately inspect and test the Goods and if the Buyer so requires the Seller shall furnish the Buyer with test certificates. The Seller shall allow the Buyer or its authorised representative or any prospective customer of the Buyer unrestricted access to any area of any premises where the Goods or any part are being manufactured or stored or where any of the Buyer's Goods are being kept in order that the Buyer or its authorised representative may inspect test or inspect tests of the same or verify conformance of Goods with the specification requirements of the Buyer. The Seller shall afford the Buyer or its authorised representative such use of the Seller's equipment and employees as is reasonable in the circumstances in order to facilitate such inspection testing or verification.17.2 No inspection or testing by the Buyer pursuant to this Clause shall imply any acceptance of the Goods by the Buyer or in any way relieve the Seller of its obligations and duties under this contract or otherwise.

#### **18. GUARANTEE AND INDEMNITY**

18.1 Without prejudice to the Buyer's rights under any condition warranty or other term implied by statute or by Common Law or under any term of the contract, the Seller will be liable to the Buyer for and indemnify and keep the Buyer indemnified against all claims, liabilities, loss or damage on a full indemnity basis (including the stopping of or interference with the production or manufacture or supply or recall by the Buyer of any of the Goods):- 18.1.1 caused by any defect in any Goods supplied by the Seller or by their not complying with the appropriate specification pursuant to Clause 5.18.1.2 in the event of delays, defaults or non-deliveries arising other than as a result of negligence on the part of the Buyer, against any increase in:-18.1.2.1 the cost of labour or material required to produce the Goods 18.1.2.2 the cost of transportation 18.1.2.3 the cost of any other item in connection with the Goods which would not have been incurred but for such delay, default or non-delivery 18.1.2.4 the costs incurred by the Buyer under contracts entered into by the Buyer the performance of which has been delayed or rendered impossible by the Seller's breach of its obligations hereunder 18.1.3 the costs arising directly or indirectly out of any breach by the Seller of this contract. Any sums expended by the Buyer so caused or arising shall be reimbursed to the Buyer by the Seller on demand 18.2 In connection with any liability claim proceeding loss or damage under this Clause the Seller must provide all such facilities assistance or advice as requested by the Buyer for the purpose of contesting the same and further must, if so requested by the Buyer, accept as final and binding the decision of any Court (whether in the United Kingdom or anywhere else in the world) in relation to the same.18.3 The Seller consents to the Buyer transferring any guarantee or similar rights given by the Seller to the Buyer in relation to the Goods supplied to any other person or company to whom the Buyer sells hires or disposes of such Goods to the intent that such guarantee or similar right may be enforced against the Seller not only by the Buyer but also by any person or company claiming through the Buyer

#### **19. ADVERTISING**

19.1 The Seller will not without first obtaining the written consent of the Buyer in any way whatsoever advertise or publish the fact that the Seller has contracted to supply to the Buyer the Goods herein mentioned.

#### **20. HEALTH AND SAFETY AND QUALITY ASSURANCE**

20.1 Any Goods supplied or installed under this contract shall be so formulated, designed, constructed, finished and packaged as to be safe and without risk to health and all Goods will be supplied with full instructions for their proper use maintenance and repair and with any necessary warning notices clearly displayed. 20.2 The Seller agrees before delivery to furnish the Buyer in Writing with a list by name and description of any harmful or potentially harmful properties or ingredients in the Goods supplied whether in use or otherwise and thereafter information concerning any changes in such properties or ingredients. The Buyer will rely on the supply of such information from the Seller in order to satisfy its own obligations under all applicable health and safety legislation. 20.3 In respect of all Goods supplied the Seller will maintain and observe quality control and supplier quality assurance standards in accordance with the requirements of the Buyer from time to time, its customers, relevant British Standards, statute and regulatory bodies. 20.4 The Seller will maintain detailed quality control and manufacturing records for the period of at least 12 years from the date of supply of the Goods. 20.5 It is the responsibility of the Seller to fully acquaint itself with the purposes for which the Goods are to be used.

#### **21. EXCESS QUANTITIES AND EARLY DELIVERY**

21.1 No excess quantities of Goods supplied under this contract or Goods supplied earlier than the Delivery Date will be accepted or paid for unless the Buyer notifies the Seller in Writing of its intention to accept the same. 21.2 Any Goods referred to in Clause 22.1 which are not accepted by the Buyer will remain at the Seller's risk and the Buyer may return the same to the Seller at the Seller's risk and expense.

#### **22. EUROPEAN CURRENCY**

22.1 The Seller and the Buyer confirm to each other that, except as expressly agreed between them in Writing, the occurrence or non-occurrence of an event associated with economic and monetary union in the European Community will not have the effect of altering any term of, or discharging or excusing performance under, this Agreement, nor give either party the right unilaterally to alter or terminate the contract. An "event associated with economic and monetary union in the European Community" includes, without limitation: 22.1.1 the introduction of a single or unified European currency; 22.1.2 the fixing of conversion rates between a member state's currency and a new currency or between the currencies of member states; 22.1.3 the substitution of a new currency for the ECU as the unit of account of the European Community; 22.1.4 the introduction of a new currency as lawful currency in a member state or the withdrawal from legal tender of any currency which, before that, was lawful currency in a member state; and/or 22.1.5 the disappearance or replacement of a relevant price source for the ECU or the national currency of any member state, or the failure of the agreed sponsor or any successor to publish a relevant rate, index, price, page or screen.

#### **23. GENERAL**

23.2 Failure or waiver to enforce any of these Conditions will not be construed as a waiver of the Buyer's rights. 23.3 Where the Seller is aware expressly or by implication that the Goods are required to enable the Buyer to fulfil a contract with a specific customer this contract will be deemed to be made subject to the contract conditions between the Buyer and his customer. 23.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby. 23.5 The headings in these Conditions are for reference purposes only and do not form part of the Conditions. 23.6 This Contract will be construed and operate in accordance with English Law. The Seller hereby irrevocably submits itself to the jurisdiction of the English Courts to which all disputes relating to this contract will be referred.

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