

TERMS & CONDITIONS OF BUSINESS

1. DEFINITIONS

In these Terms and Conditions of Business:

- a. **'Company'** means Brand Fusion International Ltd, a company incorporated under the laws of England and Wales with registration number 04455736 and whose registered office address is at Station House, Station Road, Betchworth, Surrey RH3 7BZ.
- b. **'Buyer'** means the person, firm or company purchasing goods from the Company.
- c. **'Goods'** means the products to be supplied by the Company to the Buyer under the Order or the Purchase Order Form.
- d. **'Order'** means the Buyer's instructions to the Company to supply the Goods.
- e. **'Contract'** means the agreement between the Company and the Buyer for the sale of the Goods which agreement is governed by these Terms and Conditions.
- f. **'Location'** has the meaning set out in paragraph 6.b.
- g. **'Price'** has the meaning set out in paragraph 4.a.
- h. **'Price List'** has the meaning set out in paragraph 4.a.
- i. **'Purchase Order Form'** has the meaning set out in paragraph 4.
- j. **'RMA Request'** means a return merchandise authorisation request.
- k. **'Specification'** any specification for the Goods, including any related plans and drawings, that are agreed in writing by the Buyer and the Company.

2. APPLICABLE TERMS

- a. These Terms and Conditions comprise the terms under which the Company agrees to sell the Goods to the Buyer and unless otherwise provided these Terms and Conditions shall prevail over any other terms issued by the Company to the Buyer, whether referred to or stipulated.
- b. Quotations for the supply of Goods and acceptance of all Orders for such quotations are subject to these Terms and Conditions and shall govern the Contract to the exclusion of all other terms and conditions. The Buyer shall be deemed to have accepted these Terms and Conditions upon placing an Order. These Terms and Conditions apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- c. No variation of these Terms and Conditions shall be effective unless made in writing and signed by a Director of the Company.

3. ACCEPTANCE OF ORDERS

- a. The Order constitutes an offer by the Buyer to purchase the Goods in accordance with these Terms and Conditions.
- b. Orders placed via the Company's website are only accepted from the Company's authorised trade customers. Unless the Company confirms otherwise in writing, any orders for Goods from non-authorised trade customers will not be accepted.
- c. A Contract will come into existence on acceptance of the Buyer's Order by the Company, be it verbally, in writing or by automatic acknowledgement from the Company's website. A quotation for the supply of Goods given by the Company shall not constitute an offer by the Company. A quotation shall only be valid for a period of seven (7) working days from its date of issue.
- d. It is the Buyer's sole responsibility and obligation to the Company for ensuring the accuracy of the details of the Order and any applicable Specification submitted to the Company.

- e. The Buyer must provide the Company at the time of placing the Order, with all information in writing necessary to enable the Company to proceed with the Contract.
- f. If the Goods are to be manufactured or any process is to be applied to the Goods by the Company in accordance with any Specification submitted by the Buyer, the Buyer shall unconditionally and irrevocably indemnify the Company, and keep the Company indemnified, against all losses, damages, costs and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Company's use of the Specification. This paragraph shall survive termination of the Contract.
- g. The Goods are described on the Company's website or catalogue, as modified by any applicable Specification. The Company reserves the right to amend the specification of the Goods or the Specification (as the case may be) if required by any applicable statutory or regulatory requirement, and the Company shall notify the Buyer in any such event.
- h. All Orders are accepted subject to availability of the Goods at the time of despatch.

4. PRICE

- a. The price payable for the Goods shall be the Company's invoice price as stipulated in writing on the Company's invoice (the **Price**). The Price shall be that which is specified on the Company's published price list (the **Price List**) as at the date of the Company's invoice, or if the Buyer is placing an Order via the Company's website, then that Price which is specified on the purchase order form (the **Purchase Order Form**) at the time of placing the Order.

5. PAYMENT

- a. Unless otherwise specified by the Company in writing to the Buyer, all payments for Goods are due to the Company in full satisfaction, in cleared funds no later than forty-five (45) days from the date stated on the Company's invoice presented to the Buyer.
- b. The Company reserves the right to charge interest on overdue payments for Goods at the rate applicable from time to time under the Late Payment of Commercial Debts (Interest) Act 1998, (as amended) or, if none, then at 4% over Barclays Bank Plc base rate per month, from the due date for payment for Goods under the relevant invoice until receipt by the Company in cleared funds in full satisfaction of the relevant invoice.
- c. All prices are exclusive of value added tax (chargeable under the Value Added Tax Act 1994 and any similar replacement or additional tax), which will be charged in addition to the purchase price of the Goods.
- d. Should the Buyer's direct debit or other method of payment in settlement for the Goods under the relevant invoice be returned or unrepresented by the Company's bankers, then a service charge of £20.00 per presentation will be levied against the Buyer.

6. DELIVERY

- a. The Company will endeavour to arrange delivery of the Goods on the date as quoted at the time of acceptance of the Buyer's Order. However, any dates provided by the Company are estimates only and the Company shall not be liable for any failure to meet such estimates, nor for any loss or expenses incurred by the Buyer or any third party as a result of such failure.
- b. It is the Buyer's responsibility to ensure that the information relating to the location for delivery of the Goods shown on the Purchase Order Form (the **Location**) is correct and accurate and there is suitable access to the Location. A responsible person appointed by the Buyer must be available to take delivery of the Goods during the 'delivery times' (as specified by the Company) and failure to do so may result in a failed delivery and the Goods being returned to the Company. In this instance the Company may, at its discretion, pass on any associated costs for the failed delivery to the Buyer.

- c. A delivery charge (as specified at the time of ordering) will be added to the invoice for the Goods where the invoiced total (excluding VAT) for the Goods is less than the free delivery threshold as specified at the time of ordering.

7. RISK AND PROPERTY

- a. Risk of damage to or loss of the Goods shall pass to the Buyer upon delivery at the Location.
- b. Delivery will have deemed to have taken place when the Goods are delivered to the Location, or any other place stipulated in writing by the Buyer to the Company (prior to the despatch of the Goods by the Company) for their delivery to the Buyer; or
- c. Where the Buyer undertakes to collect the Goods or where the Goods are sold 'ex works' to a Buyer outside of the UK, then risk of damage to or loss of the Goods shall pass to the Buyer when the Goods are made available to the Buyer for collection. The Buyer shall collect the Goods from the Company's premises as advised by the Company prior to delivery (the **Collection Location**) within seven (7) working days of the Company notifying the Buyer that the Goods are ready.
- d. Delivery is completed on the completion of unloading or loading (as the case may be) of the Goods at the Location or Collection Location.
- e. Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Company shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event (as defined in paragraph 14) or the Buyer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

8. RESTRICTIONS OF SALE

- a. The Buyer shall not distribute or re-sell any Goods purchased from the Company outside of the country where the originating Order was placed and the Goods delivered.
- b. No Goods can be sold into other parts of Europe or the rest of the World, without prior written agreement from the Company. Failure to comply with this agreement will result in the Buyer's account and any outstanding Orders, being suspended, pending further investigation.

9. RETURNS

- a. The return of unsold or unwanted Goods by the Buyer for credit will not be accepted without the Company's prior written approval, and subject thereto, the following process being complied with by the Buyer:
 - i. the Buyer accessing its online account with the Company by visiting;
www.brandfusion.co.uk;
 - ii. selecting 'my orders' from the account admin menu;
 - iii. selecting the order from which the item(s) are to be returned;
 - iv. selecting the individual item(s) to be returned;
 - v. under 'merchandise return', providing a full description of the reason for the return;
 - vi. Clicking 'make an RMA slip' to complete the return request.
- b. Following completion of the above process, the Buyer will receive a response from the Company, including any instructions for returning the Goods within two (2) working days (the **Confirmation Date**) and the Buyer must then return the relevant Goods for return (the **Return Goods**) no later than fourteen (14) days after the Confirmation Date. Any returns are at the Buyer's own risk. For the Buyer's protection, the Company recommends that the Buyer returns the Return Goods via registered post. The following provisions shall apply to all Goods returned by the Buyer:
 - i. the Company is not responsible for product shipping costs nor any other charges incurred for Goods returned to a facility other than the Company's Logistics Centre;
 - ii. the Goods must be in the same condition as they were sold to the Buyer;

- iii. the Goods must still be listed on the Company's website or catalogue (on the date of the request for the return of the Goods referred to in paragraph 9.a) as being current stock; and
 - iv. be accompanied by a valid proof of purchase.
 - c. The return of any Goods for exchange, replacement, credit or refund will not be accepted without the Company's prior written approval. Unwanted Goods or Goods ordered in error by the Buyer will be subject to the Company's returns and restocking charge. This charge shall be imposed at the Company's discretion, and shall be either a minimum of £10.00 or 10% of the value of the Goods, whichever is the greater.
 - d. Goods returned for credit that are not in the same condition as they were when sold to the Buyer, will be deemed to be damaged or used and shall be returned to the Buyer, with any associated costs being passed on to the Buyer.
 - e. No returns will be accepted without an approved RMA Request.

10. WARRANTY

- a. The Goods supplied by the Company shall be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Buyer in writing to the Company.
- b. The Company warrants, at its discretion, that the Goods shall be free from material defects in design, material and workmanship and remain so for a "reasonable period of time" from the date of purchase of the Goods by the Buyer. The Company considers a "reasonable period of time" to be a period of time, that in its own opinion is appropriate, fair and sensible in the circumstances.
- c. The Company shall not be liable for the Goods' failure to comply with the warranty set out in paragraph 10.a if:
 - i. the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
 - ii. the defect arises as a result of the Company following any drawing, design or Specification supplied by the Buyer;
 - iii. the Buyer alters or repairs such Goods without the written consent of the Company;
 - iv. the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
 - v. the Goods differ from their description or the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- d. Except as provided in this paragraph, the Company shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in paragraph 10.a.
- e. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- f. Save as aforesaid and save as regards any specific warranty (or guarantee) regarding the Goods given in writing by the Company, all other guarantees, warranties and indemnities, whether expressed or implied by statute, common law or otherwise (whether known or made known to the Company or not) are hereby excluded to the extent that they can be excluded under law.
- g. In the event of onward retail sale of the Goods by the Buyer, all warranty responsibilities will be passed unconditionally and irrevocably from the Company to the Buyer.

11. TERMINATION

- a. The Buyer may terminate or suspend the Contract with the Company only with the Company's prior written consent, which consent shall be conditional upon the Buyer making payment to the Company of any reimbursement (as notified in writing to the Buyer) which the Company may require to compensate it for such cancellation.
- b. If the Buyer should default in its obligations under these Terms and Conditions or commit any breach of these Terms and Conditions, or of any other of its obligations to the Company in

connection with the purchase of the Goods, in any way whatsoever, the Company may forthwith without notice to the Buyer:

- i. cancel, suspend or terminate the Contract or any unfulfilled part thereof;
 - ii. suspend any Goods in transit and decline to make further deliveries of the Goods except upon receipt of advance payment;
 - iii. seek access to the Buyer's premises for the protection, removal, realisation and disposal of any Goods at any time and from time to time in which title to the Goods shall not have passed from the Company to the Buyer.
- c. If the Company terminates the Contract in accordance with this paragraph 11, then, without prejudice to any other rights the Company may have, it shall be entitled to retain any advance payment made by the Buyer to the Company.

12. RETENTION OF TITLE

- a. Risk in the Goods supplied to the Buyer under the Contract shall pass on completion of unloading of the Goods at the Location.
- b. Title to Goods shall not pass to the Buyer until the earlier of:
 - i. the Company receiving payment in full (in cash or cleared funds) for all the Goods; and
 - ii. the Buyer reselling the Goods to its customer in the course of its business (in which case title to those specific Goods passes to the Buyer immediately before that sale).
- c. Subject to paragraph 12.d, the Buyer may resell the Goods in the ordinary course of its business.
- d. At any time before title in the Goods passes to the Buyer the Company may by notice in writing, terminate the Buyer's right under paragraph 12.b.ii to resell the Goods in the ordinary course of its business.
- e. The Buyer acknowledges that it holds Goods in its possession as bailee for the Company until such time as title passes in accordance with paragraph 12.b.
- f. The Company will therefore remain the owner of the Goods and legal ownership will not pass to the Buyer until the Buyer has paid all amounts owing to the Company for all the Goods which the Company has supplied to the Buyer.
- g. Until such time as the ownership of the Goods passes to the Buyer:
 - i. the Buyer must store or display the Goods at any premises separately from other goods and property, stored in such a way that all the Goods remain readily identifiable as the Company's Goods;
 - ii. the Buyer must keep the Company's Goods insured on the Company's behalf for their full price against all risks from the date of delivery to the Location and hold any proceeds received in respect of the insured Goods on trust for the Company;
 - iii. the Company reserves the right to inspect the Buyer's premises to check if separate storage and display provisions are being complied with;
 - iv. the Buyer must keep the Goods in satisfactory condition and in accordance with any instructions from the Company from time to time; and
 - v. give the Company such information as the Company may reasonably require from time to time relating to:
 1. the Goods; and
 2. the ongoing financial position of the Buyer.
- h. The Buyer grants to the Company an irrevocable license to enter upon the premises occupied or used by the Buyer where the Goods are stored or located. The Buyer warrants that it is able to grant such a license and where any third party's consent is required, such third party has provided consent to grant a license.
- i. Notwithstanding terms of payment specified in these Terms and Conditions or elsewhere, payment for all Goods supplied to the Buyer shall immediately become due if the Buyer fails to pay for the Goods by the due date for payment (or fails to pay any instalment as agreed with the

Company, in which case the whole outstanding balance for the Goods shall immediately become due and payable), or if the Buyer has been declared bankrupt, or enters into an arrangement with its creditors, or goes into voluntary or compulsory liquidation, or has an administrative receiver appointed, or if it is otherwise declared insolvent or prohibited from trading, the Buyer shall immediately notify the Company thereof and in such circumstances:

- i. the Buyer shall not attempt to sell any of the Goods or part with possession of any of the Goods supplied by the Company to any third party;
 - ii. the Company shall have the right to withhold delivery of any undelivered Goods and to stop any Goods in transit.
- j. If payment for any Goods supplied by the Company and delivered to the Buyer is overdue, the Company may without prejudice to any of its other rights, enter upon the Buyer's premises to recover and/or re-sell the Goods such goods that have been recovered or such part of them as the Company, in its absolute discretion may designate as necessary and recover the amount of payment owing by the Buyer, together with the Company's reasonable costs incurred in giving effect to its rights hereunder, and for these purposes the Buyer hereby irrevocably authorises the Company to enter and take all necessary and reasonable steps to recover such Goods.
- k. The Goods shall at all times be subject to the direction and control of the Company, and the Buyer shall immediately return any Goods (that have not been paid for or sold by the Buyer in the course of its business) on demand by the Company.

13. INTELLECTUAL PROPERTY

- a. Any intellectual property (including patentable inventions, registrable trademarks and/or designs, copyright works and confidential information) capable of protection under UK or other relevant laws, that is created, developed or discovered by the Company, subject to the provisions of the law governing the intellectual property concerned, shall belong to and be the absolute property of the Company.
- b. Any use of the Company's trademarks or other intellectual property rights requires the prior written approval of the Company.

14. FORCE MAJEURE AND LIMITATION OF LIABILITY

- a. The Company will not be held liable to perform the Contract if an event occurs which is outside the Company's control, including without limitation; an act of God, war, strikes, embargoes, Government refusal to grant licences and abnormal weather conditions (a **Force Majeure Event**).
- b. Save in respect of death or personal injury caused by the Company's negligence, the Company shall in no circumstances be liable in contract, tort or otherwise, for any indirect, special, consequential or incidental loss or damage (including, without limitation, loss of production, loss of profit, loss of contracts or claims) of the Buyer or any third parties resulting from any breach of these Terms and Conditions or from negligence, to the extent that such losses can be excluded under law even if the Company has previously been advised of the possibility of such loss or damage occurring.
- c. The Company shall not be liable for any claim in respect of any damage which has been sustained to the Goods in transit unless the Company has been notified by the Buyer in writing before the date three (3) days after the delivery date of the Goods to the Buyer.
- d. The Company will not be held liable for defects in the Goods if the Buyer does not notify such defects to the Company in writing within a 'reasonable' period of time following the date of delivery of the Goods by the Buyer. The Company considers 'reasonable' to be a period of time, that in its own opinion is appropriate, fair and sensible in the circumstances.
- e. Subject to the provisions of this paragraph 14, the Company's total liability to the Buyer shall not exceed the price paid for the Goods. References to liability in this paragraph 14.e include every kind of liability arising under or in connection with these Terms and Conditions including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

- f. Subject to paragraph 14.e, the Company shall not be liable to the Buyer for any:
 - i. loss of profit;
 - ii. loss of use;
 - iii. loss of goodwill;
 - iv. loss of business;
 - v. loss of business opportunity;
 - vi. special, indirect or consequential damage,
in each case suffered by the Buyer that arises under or in connection with the Contract.
- g. Nothing in these Terms & Conditions limits any liability which cannot legally be limited.
- h. This paragraph 14 shall survive termination of the Contract.

15. ASSIGNMENT AND OTHER DEALINGS

- a. The Company may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- b. The Buyer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Company.

16. THIRD PARTY RIGHTS

Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

17. GENERAL AND PROPER LAW

- a. These Terms and Conditions represent the entire agreement between the parties for the purchase of the Goods and supersede all previous terms and conditions between the parties for the purchase of the Goods and may only be amended by agreement in writing between the parties.
- b. These Terms and Conditions and the Contract shall be governed by and construed in accordance with English Law and the parties irrevocably submit to the non-exclusive jurisdiction of the English Courts.