



# TERMS & CONDITIONS OF BUSINESS

## 1. INTERPRETATION

- 1.1 In these Terms:  
**Business Hours:** means the period from 7am – 4pm on any day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;  
**Business Day:** means any day including Saturdays, Sundays, Christmas Day, Good Friday and statutory, public and bank holidays in England and Wales;  
**Buyer:** the person who purchases the Goods from the Seller;  
**Contract:** the contract for the sale and purchase of the Goods in accordance with the Terms;  
**Force Majeure Event:** any circumstance beyond the reasonable control of the parties, including acts of God, fire, explosion, pollution, adverse weather conditions (such as drought, storm, flood, tempest, high wind conditions), infestation, disease, mildew, earthquake, terrorism, riot, vandalism, civil commotion, war, strikes, work stoppages, slow-downs or other industrial disputes, (involving employees of the Seller or of a third party), accidents, acts of government, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority, lack of power or breakdown in machinery, damage to property, delays by suppliers or carriers and materials, parts or fuel shortages;  
**Goods:** the goods (including any instalment of the goods) which the Seller is to supply in accordance with these Terms;  
**Order:** the Buyer's order for the Goods, as submitted over the telephone or any form of electronic communication to the Seller or as set out in either the Buyer's purchase order form or the Buyer's acceptance of the Seller's quotation, as the case may be;  
**Order Confirmation:** the Seller's written acceptance of the Order.  
**Premises:** the Seller's premises at North Fosse Farm, Fosse Way, Radford Semele, Leamington Spa, Warwickshire CV33 9BQ;  
**Seller:** Virtue Creations Ltd, a private limited company incorporated in England and Wales with company number 13404970;  
**Terms:** these standard terms of sale and (unless the context otherwise requires) any special terms agreed between the Buyer and the Seller.
- 1.2 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.3 A reference to writing or written includes email and other forms of electronic communication.

## 2. BASIS OF THE SALE

- 2.1 The Seller shall sell and the Buyer shall purchase the Goods subject to these Terms which shall govern the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Buyer to purchase the Goods in accordance with these Terms. The Order shall only be deemed to be accepted when the Seller issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 2.3 A quotation for Goods given by the Seller shall not constitute an offer. A quotation shall only be valid for the remainder of the date it is communicated to the Buyer.
- 2.4 No variation to these Terms shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller.
- 2.5 The Seller's employees, agents or sub-contractors are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed, but nothing in these Terms affects the liability of either party for fraudulent misrepresentation.
- 2.6 Any recommendation by the Seller or its employees' agents or sub-contractors to the Buyer or its employees, agents or sub-contractors as to the storage or storage conditions of the Goods which is not confirmed in writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such recommendation which is not so confirmed.
- 2.7 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

## 3. ORDERS AND SPECIFICATIONS

- 3.1 No Order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until the Seller's authorised representative issues an Order Confirmation.
- 3.2 The Buyer may submit an Order as and when required specifying a delivery date not less than 5 Business Days from the date of the Order unless otherwise agreed between the parties during the ordering process. The Buyer is not entitled to cancel an Order once it has been submitted to the Seller except in accordance with clause 3.6.
- 3.3 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any Order submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.
- 3.4 The quantity, quality and description of the Goods and any specification for them shall be as set out in the Seller's quotation (if accepted by the Buyer) or, if no quotation is issued, the Order Confirmation. The Seller reserves the right to amend the Order if required by any applicable statutory or regulatory requirements.
- 3.5 In the event that a forecast has been agreed between the parties, if a Contract exceeds the forecast for that type of Goods, the Seller shall use its reasonable endeavours to supply the Goods in accordance with the Contract but if it is unable to do so, the Seller's only obligation is to inform the Buyer as soon as reasonably possible. The Buyer may, at its option, agree an alternative delivery date for the excess or cancel the Contract to the extent of the excess.
- 3.6 No Contract may be cancelled by the Buyer except with the agreement in writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

## 4. PRICE OF THE GOODS

- 4.1 The price of the Goods in respect of each Order shall be the Seller's quoted price or, where no price is quoted, the price set out in the Seller's price list in force as at the date of delivery for each particular Buyer. All prices quoted are valid on the day of the Order and are exclusive of any applicable value added tax for which Buyer shall be liable.
- 4.2 The Seller reserves the right, by giving written notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, fuel, surcharges, tariffs, levies, materials or other costs of production), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate instructions.
- 4.3 Except as otherwise stated in the Seller's quotation or in any price list of the Seller, and unless otherwise agreed between the Buyer and the Seller, all prices:  
4.3.1 exclude amounts in respect of value added tax (VAT), which the Buyer shall additionally be liable to pay to the Seller at the prevailing rate; and  
4.3.2 are Ex Works (Premises)
- 4.4 Where the Seller agrees to deliver the Goods otherwise than at the Premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance.

## 5. TERMS OF PAYMENT

- 5.1 Subject to any special terms agreed in writing between the Buyer and the Seller, the Seller may invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price of the Goods at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.
- 5.2 The Buyer shall pay the price of the Goods (less any applicable discounts but without any other deduction) within 30 calendar days of the date of the Seller's invoice, and the Seller may recover the price, notwithstanding that delivery may not have taken place. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 5.3 If the Buyer wishes to raise a dispute in respect of any invoice for any reason whatsoever, the Buyer shall notify the Seller in writing of the nature and detail of the dispute within five Business Days following receipt of the invoice the subject of the dispute. For the avoidance of doubt, an invoice will be deemed to have been received two Business Days following the date of the invoice. Following the expiry of five Business Days after deemed receipt of the invoice as set out in this clause 5.3, the Buyer shall be deemed to have accepted the invoice and payment shall be due in accordance with clause 5.2.

- 5.4 If the Buyer fails to pay the price by the due date of the invoice then, without limiting any other right or remedy available to the Seller, the Seller may:
- 5.4.1 cancel the Contract or suspend any further deliveries to the Buyer;
  - 5.4.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and
  - 5.4.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 4 per cent per annum above Bank of England base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest). The Seller reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998 in lieu of interest at the rate specified in this clause 5.4.3.
6. **DELIVERY**
- 6.1 Delivery of the Goods shall be completed by the Seller making the Goods available for the Buyer to collect from the Premises during Business Hours (unless otherwise agreed between the parties) or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place during Business Hours (unless otherwise agreed between the parties).
  - 6.2 The Buyer acknowledges and agrees that it is customary practice that the Seller has been and shall remain entitled to raise, and the Buyer has accepted and paid, and shall continue to accept and pay, all invoices in respect of all Goods delivered notwithstanding that the Buyer may not have signed a delivery note in respect of any Goods the subject of the invoice.
  - 6.3 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in the delivery of, or failure to deliver or collect, the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Seller in writing. The Goods may be delivered by the Seller in advance of the quoted delivery date.
  - 6.4 The Seller reserves the right to deliver more or less than the quantity of Goods ordered and the quantity so delivered shall be deemed to be the quantity ordered and the Seller shall invoice the Buyer for the quantity of Goods so delivered.
  - 6.5 The Seller may deliver the Goods by instalments. Where the Goods are to be delivered in instalments, each delivery shall constitute a separate Contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Terms or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
  - 6.6 If the Seller fails to deliver the Goods (or any instalment) for any reason other than due to the Seller's negligence, the Seller shall incur no liability to the Buyer in respect of such failure whatsoever and the order (or part of the order in question) shall be deemed to be cancelled.
  - 6.7 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without limiting any other right or remedy available to the Seller, the Seller may sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) charge the Buyer for any shortfall below the price under the Contract, together with any additional labour and other related costs incurred in securing a sale or other disposal of the Goods to a third party.
  - 6.8 The parties hereby acknowledge and agree that customarily the Seller has delivered Goods to the Buyer without obtaining a signature by the Buyer on the delivery note. It is further acknowledged and agreed that notwithstanding the absence of a signed delivery note, the Seller has submitted and the Buyer has paid, all invoices in respect of such Goods so delivered. Accordingly, it is agreed that where a trading relationship exists between the parties of three months or more, the Seller shall be entitled to present invoices in respect of Goods delivered and (on the basis of the past performance of the Buyer in paying all invoices without signed delivery notes in respect of the Goods the subject of the invoice) such invoices shall, in the absence of any delivery note signed by the Buyer be deemed, for the purposes of any dispute, to be proof of delivery of such Goods.
7. **RISK AND TITLE**
- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:
    - 7.1.1 in the case of Goods to be delivered at the Premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or
    - 7.1.2 in the case of Goods to be delivered otherwise than at the Premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has attempted delivery of the Goods.
  - 7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms, the title in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.
  - 7.3 Until such time as the title in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property, but the Buyer may resell or use the Goods in the ordinary course of its business.
  - 7.4 Until such time as the title in the Goods passes to the Buyer (and provided the Goods are still in existence, in saleable condition and have not been resold), the Seller may at any time require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, enter on any premises of the Buyer or any third party where the Goods are stored and repossess the Goods. In the event that the Seller deems in its sole opinion that the Goods are not in saleable condition, the Seller shall be entitled to pursue the Buyer for payment in full of the Goods and to withhold all pending Orders until such time as such payment shall have been paid in full and in cash or cleared funds.
  - 7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without limiting any other right or remedy of the Seller) forthwith become due and payable.
  - 7.6 If, before title to the Goods passes to the Buyer, the Buyer becomes insolvent or any of the events set out in clauses 11.1 – 11.4 (inclusive) occur, then, without limiting any other right or remedy the Seller may have:
    - 7.6.1 the Buyer's right to resell or use the Goods in its ordinary course of business ceases immediately; and
    - 7.6.2 the Seller may require the Buyer to deliver up the Goods to the Seller immediately and, if the Buyer fails to do so, the Seller may enter on any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
  - 7.7 If, once title in the Goods has passed to the Buyer, the Buyer no longer wishes to resell or use the Goods in its ordinary course of business, the Buyer shall promptly notify the Seller and, if the Seller wishes to do so, the Buyer shall permit the Seller to enter onto its premises to repossess the Goods. If the Seller does exercise its option to repossess the Goods under this clause 7.7, then title in the Goods shall pass back to the Seller at the point when the Seller takes back physical possession of the Goods.
8. **WARRANTIES AND LIABILITY**
- 8.1 Subject to the following provisions the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from material defects as far as reasonably practicable.
  - 8.2 The above warranty is given by the Seller subject to the following conditions:
    - 8.2.1 the Seller shall be under no liability in respect of any defect arising from wilful damage or negligence of the Seller or third party carrier, or arising from abnormal or incorrect storage conditions occasioned by the Seller or a third party carrier (including, without limitation, as to air temperature, air flow, humidity) or failure by the Buyer to follow the Seller's instructions (whether oral or in writing);
    - 8.2.2 the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;
    - 8.2.3 the above warranty does not extend to Goods not produced by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the third party producer to the Seller;
    - 8.2.4 the Buyer makes any further use of the Goods after giving notice in accordance with clause 8.4.
  - 8.3 Subject as expressly provided in these Terms, all warranties, conditions or other terms or representations expressed or implied by statute, common law or otherwise in relation to the supply or failure to supply the Goods are excluded to the fullest extent permitted by law.
  - 8.4 The Buyer shall notify the Seller of any claim based on any defect in the quality or condition of the Goods or their failure to correspond with specification (whether or not delivery is refused by the Buyer) within 24 hours from the date of delivery. If the Buyer accepts the Goods but fails to notify accordingly, the Buyer shall not be entitled to reject the Goods, the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
  - 8.5 Where a valid claim in respect of any of the Goods which is based on a defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Terms, the Seller may either replace the Goods (or the part in question) free of charge or, at the Seller's sole discretion, offer to the Buyer a credit note to the value of the Goods which are the subject of the defect in quality or condition, in which case the Seller shall have no further liability to the Buyer.
  - 8.6 Subject to the provisions in clause 8.8 below, the Seller is not liable to the Buyer regardless of the form of action whether in contract, strict liability, tort (including negligence or breach of statutory duty) for:
    - 8.6.1 loss or damage incurred by the Buyer as a result of third party claims, or third party losses;
    - 8.6.2 loss of actual or anticipated profit or revenue;
    - 8.6.3 loss of business opportunity;
    - 8.6.4 loss of anticipated savings;
    - 8.6.5 loss of goodwill or injury to reputation;
    - 8.6.6 any indirect, special or consequential loss or damage howsoever caused.
  - 8.7 Subject to the provisions in clause 8.8 below, the total liability of the Seller in respect of all other losses arising under or in connection with the Contract, whether for negligence, breach of contract, misrepresentation or otherwise, is limited to the net amount invoiced to the Buyer for the Goods which give rise to such liability.

- 8.8 Nothing in this Agreement shall operate to exclude or restrict the Seller's liability for:
- 8.8.1 death or personal injury resulting from negligence;
  - 8.8.2 breach of the obligations arising from section 12 of the Sale of Goods Act 1979; or
  - 8.8.3 fraud or fraudulent misrepresentation.
9. **TERMINATION**
- 9.1 If:
- 9.1.1 the Buyer fails to pay any invoice when it falls due and continues in such failure for more than 21 days after receiving written notice (served after the invoice has fallen due) then the Seller may exercise its right to terminate if payment is not made;
  - 9.1.2 there is a breach of either party's ("**Breaching Party**") obligations under this Agreement and:
    - (a) the other party ("**Terminating Party**") gives notice to the Breaching Party setting out details of:
      - (i) the breach;
      - (ii) the steps required to remedy the breach; and
      - (iii) a period of 30 days in which the breach is required to be remedied;
    - (b) the Breaching Party fails to remedy the breach in accordance with such notice to the Terminating Party's reasonable satisfaction; and
    - (c) the breach complained of was not at the time such notice was given of such seriousness as to fall within clause 9.1.4; or
  - 9.1.3 the Buyer becomes insolvent; or
  - 9.1.4 there is either a single breach of the Breaching Party's obligations under these Terms which is individually of such seriousness as to allow the Terminating Party to treat the Contract as repudiated and discharged by breach or more than one breach of such obligations which are cumulatively of such seriousness,
- then the Terminating Party may terminate the Contract forthwith by giving notice to the Breaching Party as the case may be.
10. **SET OFF**
- Where the Buyer has incurred liability to the Seller or the Seller's Sister Companies, whether under these Terms or otherwise, the Seller may set off the amount of such liability against any sum that would otherwise be due to the Buyer under these Terms.
11. **INSOLVENCY OF BUYER**
- If:
- 11.1 the Buyer makes a voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction), or
  - 11.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer or
  - 11.3 the Buyer ceases, or threatens to cease, to carry on business, or
  - 11.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly,
- then, without limiting any other right or remedy available to the Seller, the Seller may cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
12. **GENERAL**
- 12.1 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to a Force Majeure Event.
  - 12.2 All notices under these Terms shall be in writing addressed to the other party at its principal place of business or such other address as that party may have specified to the other party in writing in accordance with this clause and shall be delivered personally, sent by pre-paid first-class post, recorded delivery or e-mail. Notices shall be deemed to have been received: if delivered personally, when left at the address referred to above; if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; or, if sent by e-mail, one Business Day after transmission. This clause 12.2 shall not apply to the service of any proceedings or other documents in any legal action.
  - 12.3 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
  - 12.4 The parties to the 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.
  - 12.5 Failure or delay by the Seller 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.
  - 12.6 The Contract shall be governed by the laws of England, and the Buyer agrees to submit to the exclusive jurisdiction of the English courts.

1<sup>st</sup> June 2021