

Terms & Conditions

1. INTERPRETATION & APPLICATION OF TERMS

In these Conditions references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced. In these Conditions references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires. "the Buyer" is the person(s), firm or company who purchases the Goods or Services from the Company. "Company" is Sugarcane Creative; "Contract" is any contract between the Company and the Buyer for the sale and purchase of the Goods and/or Services, incorporating these Conditions; The Contract will be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document). These Conditions apply to all the Company's sales and any variation to these Conditions and any representations about the Goods or Services shall have no effect reduced to writing and expressed as forming part of these conditions. Nothing in this Condition will exclude or limit the Company's liability for fraudulent misrepresentation. Each order for Goods or Services shall be deemed to be an offer by the Buyer to purchase Goods or Services subject to these Conditions. The Buyer must ensure that the terms of its order and any applicable specification are complete and accurate. Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it. For the avoidance of doubt and not by way of limitation Goods shall include any tangible product (including designs and any drafts or preliminary sketches of the same).

2. DESCRIPTION OF GOODS AND SERVICES & ASSIGNMENT

The description of the Goods or Services shall be as set out in the Company's quotation. All advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods or Services described in them, they do not form part of this Contract. The Company may amend any specification for Services in order to comply with its legal obligations or as part of its improvement program. Unless agreed otherwise, the Goods and Services shall not include the assignment of any intellectual property rights. Upon payment of the price, the Company grants the Buyer a non-exclusive licence to reproduce the Copyright Material in relation to the purpose set out in the Company's quotation or other technical specification only. The Buyer warrants that it has the authority and capability to enter into this agreement, and for the reproduction of any materials supplied to the Company for use in relation to the Goods and/or Services.

3. DELIVERY

Any dates specified by the Company for delivery of the Goods or Services are intended to be an estimate and time for delivery shall not be of the essence or made so. If no dates are specified, delivery will be within a reasonable time. The provision of goods and/or services are dependant on the buyer not delaying the progress of the order in any way (which delays including by way of example only not returning proofs by the time specified or failing to make payment by the time such payment is due) (a "Buyer's Delay"). In the event of a Buyer's Delay the Company shall not be bound to deliver within any guaranteed period and may charge an additional fee.

4. CONFIDENTIALITY & MARKETING

The parties hereto shall keep confidential information acquired pursuant to this agreement confidential except for information which they are entitled or bound to disclose by law or to their professional advisers where reasonably necessary. The Buyer's details may be retained by the Company for marketing purposes, unless the Buyer states otherwise. The Buyer hereby grants the Company the right to indicate that designs created by the Company were so created, and where appropriate to include a graphic and hyperlink to the Company's website. The Buyer hereby grants the Company the right to refer to the Buyer and/or the Goods and/or Services provided in promotional material.

5. RISK TITLE

The Goods are at the risk of the Buyer from the time of delivery. 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 and/or services supplied. The Buyer's right to possession and/or use of any Goods supplied shall terminate immediately if: the Buyer 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 body corporate) convenes a meeting of creditors (formal or informal), or enters into liquidation (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 over its undertaking or any part thereof, 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 the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe/perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade. The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company. The Buyer grants the Company and its agents an irrevocable licence at any time to enter any premises where the Goods are or may be kept in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

6. PRICE, DESIGN CHARGES & ALTERATIONS

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 price list or quotation published on the date of delivery or deemed delivery. The price shall be exclusive of any value added tax and all costs or charges in relation to loading, unloading, carriage and insurance all of which amounts the Buyer will pay in addition when it is due to pay for the Goods and/or Services. Any Services supplied by the Company to the Buyer in addition to the agreed Services are subject to the Company's standard hourly rates. At the time of the Buyer's signed acceptance of this estimate or quotation, indicating acceptance of the Terms & Conditions, a non-refundable deposit of 50% of the quoted fee will become immediately due. Work on the project



will not commence until Sugarcane Creative has received this amount. Charges for any additional services over and above the estimated design, such as print and photography will become fully payable (100% of the quoted amount) at the time of estimate or quotation acceptance or immediately before the services are required. The Buyer will be provided with an Approval Form and Invoice prior to final publication. At this time the remainder of the amount due will become payable and the buyer will also be required to sign and return the Approval Form to Sugarcane Creative. Where any additional work of whatever nature is necessary as a result of copy supplied by a Buyer not being clear and/or legible, the Company shall be entitled to make additional charges on a time and materials basis to cover such additional work. The Buyer agrees that changes required over and above the estimated work or required to be carried out after acceptance of the draft design will be liable to a separate charge at the Companies standard hourly rate. The Buyer also agrees that the Company holds no responsibility for any amendments made by any third party, before or after a design is published.

7. PAYMENTS

Payment of the price for the Goods is due within 14 days of the date of the Company's invoice for the Goods and/or Services unless extended to 30 days in writing. Time for payment shall be of the essence. All payments payable to the Company under the Contract shall become due immediately upon termination of this Contract notwithstanding any other provision. The Buyer shall make all payments due under the Contract 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. If the Buyer fails to pay the Company any sum due pursuant to the Contract the Buyer will be liable to pay interest to the Company on such sum from the due date for payment at 10% of the outstanding amount for each calendar month payment is outstanding until payment is made, whether before or after any judgement. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998

8. QUALITY

Where a 3rd party produces the Goods or provides the services, the Company will endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Company but this shall be the full extent of any warranty or guarantee given. The Company warrants that (subject to the other provisions of these Conditions) upon delivery the Goods and Services produced by it, they will: be of satisfactory quality within the meaning of the Sale of Goods Act 1994; be reasonably fit for any particular purpose set out in the Company's quotation.

9. BUYERS USE OF SERVICES

The Company will not be liable under any circumstances for the content of information transmitted by the Buyer or stored or used in connection with the Services including e-mails, domain names, web content or otherwise ("Materials"). The Company may inspect any such Materials and may if in its sole judgment, the Material is or may be considered to be pornographic, defamatory, misleading, deceptive or otherwise infringes any third party rights or is in breach of any laws, regulations, conventions, licences or policies, or remove that Material and/or suspend the Services. The Buyer indemnifies the Company, its officers, servants and agents against any costs or expenses (including legal costs) arising out of any claims, actions, proceedings or demands (or threats of the same) that may be brought or made and that arise directly or indirectly out of any unlawful or negligent act or omission or an infringement of any third party rights.

10. LIMITATION OF LIABILITY

Subject to condition 9 and 10 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 any matter howsoever arising and whether in tort contract or statute shall be limited to the price of the Goods and/or Services supplied pursuant to this contract. All warranties, conditions and other terms implied by statute or common law, to the fullest extent permitted by law, excluded. Nothing in these Conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence or fraudulent misrepresentation. The Company does not accept any liability for loss or damage to any of the Buyer's property caused by the Company, and recommends that the Buyer creates copies of all data and obtains insurance for all other losses. The Company shall not be liable to the Buyer for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

11. FORCE MAJEURE

The Company reserves the right to defer the date of delivery or payment or to cancel the Contract (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials provided that, if the event in question continues for a continuous period in excess of 30 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

12. TERMINATION OF SERVICES

Either party may at any time by giving notice in writing summarily terminate this Contract without compensation to the other party if the other party shall become bankrupt, or if a body corporate pass a resolution or the court shall make an order that one party be wound up, otherwise than by way of amalgamation or reconstruction, or if a receiver or manager or administrator on behalf of a creditor shall be appointed, or if circumstances shall arise which entitles the court to make a winding up order. Either party shall have the right to terminate this Contract without reason upon giving 14 days written notice to the other party and termination shall occur at the expiry of the notice period. Termination or expiry of this Contract for whatever reason shall not prejudice or affect any right of action or remedy accrued. The Company reserves the right to terminate this Contract without notice if any charges are outstanding for more than 14 calendar days; or if the Buyer is in breach of any other of its obligations as set out in this Contract. On termination or expiry of this Contract for whatever reason: the non-exclusive licence pursuant to Clause 3 shall be revoked with immediate effect and the Buyer shall pay immediately all charges outstanding under this Contract

13. GENERAL

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. If any provision of the Contract is found by any court, tribunal or body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable such provision (or part thereof) shall be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect. Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract. Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Seller will not be



deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract. The parties to this Contract do not intend that any term of this Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it. The Contract shall in all respects be construed and governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

14. COPYRIGHT & TRADEMARKS

Unless agreed in writing, the copyright of all artwork, illustrations and anything else whatsoever prepared, developed or created by the Company shall belong to the Company. By supplying text, images and other data to the Company for inclusion in the Buyer's design, website or other medium, the Buyer warrants that it holds the appropriate copyright and/or trademark permissions, right or title. The ownership of such materials will remain with the Buyer, or rightful copyright or trademark owner. Any artwork, images, or text supplied and/or designed by the Company on behalf of the Buyer (the 'Copyright Material'), will remain the property of the Company and/or its suppliers. The Buyer may permission to use Copyright Material in forms other than for which it was originally supplied, and the Company may, at its discretion, grant this. Such permission must be obtained in writing before it will allow any of the Copyright Material to be used. By supplying images, text, or any other data to the Company, the Buyer grants the Company permission to use this material freely in the development of the design. Should either party supply an image, text, audio clip or any other file for use in a website, multimedia presentation, print item, exhibition, advertisement or any other medium believing it to be copyright and royalty free, which subsequently emerges to have restrictions or limitations on its use, the Buyer agrees to allow the Company to remove and/or replace the file. The Buyer agrees to fully indemnify and hold the Company free from harm for any and all claims resulting from the Buyer not having obtained all the required copyright, and/or any other necessary permissions. The headings in this contract are for guidance only and should not be used as an aid to interpretation.

15. PRINTING

The Company shall endeavour to deliver the correct quantity ordered of goods ordered. The Company shall use all reasonable efforts to match colour, texture and dimension to supplied and created material but some variation is inherent in the print process and it is understood and accepted as reasonable that minor variations are immaterial and that the Company shall have no liability in respect of such variations. Unless stated by the buyer, the Company will decide, at its sole discretion, which print finish to use. Metal and other materials owned by and used by it in the production of plates, film-setting, negatives, positives and the like shall remain the exclusive property of the Company. Such items when supplied by the Buyer shall remain the Buyer's property. Lithographic, together work or other materials supplied by the Buyer may be effaced or destroyed immediately after the order is executed unless written arrangements are made to the contrary. In the latter event, the Company shall be entitled to make additional charges.

16. PERIODICAL PUBLICATIONS

Save in respect of a material breach and/or in the event that a claim arises under any indemnity set out above a contract for the printing of a periodical publication may not be terminated by either party unless 13 weeks notice in writing is given in the case of periodicals produced monthly or more frequently or 26 weeks notice in writing is given in the case of other periodicals. Notice may be given at any time but wherever possible should be given after completion of work on any one issue. Without prejudice to the foregoing, the Company may terminate any such contract forthwith should any sum due there under remain unpaid for a period of 7 or more days from its due date.

