

## **TERMS & CONDITIONS OF SALE**

### **1. Formation of Contracts**

- a) All contracts of sale made by Fine Cut Graphic Imaging Ltd ("the company") and any person to whom the company agrees to supply goods and/or services ("the purchaser") shall be deemed to incorporate these terms and conditions. No variation of or addition to these terms and conditions shall form part of any contract unless specifically accepted by the company in writing and signed by a director. These terms and conditions supersede all prior discussions, representations, understandings and agreements whether oral or in writing between the parties with respect to the subject matter.
- b) These terms and conditions shall override and take the place of any other terms and conditions in any document or other communication used by the Purchaser in concluding the contact with the company.
- c) No quotation shall constitute an offer and all quotations must be regarded as withdrawn after 30 days (unless agreed in writing otherwise).
- d) All contracts shall be governed by and construed in accordance with the law of England and the purchaser shall submit to the jurisdiction of the English Courts. In the event that the Purchaser is situated outside the United Kingdom it will appoint and maintain agents for service within the jurisdiction and notify the company in writing of such agents.

### **2. Prices**

Unless otherwise expressly stated in writing by the company orders are accepted on the basis that:

- a) Prices will be ex-works unpacked unless otherwise stated.
- b) The company is entitled without prior notice to adjust the price to correct errors and omissions in the contract and to take account of any alteration before the date of delivery in the cost to the company of labour, materials sub-contracted services or transport which directly affects the cost to the company of manufacturing or supplying the goods.
- c) The prices charged are those ruling at date of despatch.
- d) The company is entitled to increase the contract price where extra expense is incurred by reason of the delay of the purchaser in giving necessary instructions to the company, or the provisions of inaccurate or insufficient information or as a result of any additional work required which becomes apparent to the company after the commencement of the contract, or where work on the goods is suspended in accordance with the purchaser's instructions.
- e) The company reserves the right to vary any price at any time to take into account any fluctuation in foreign exchange rates, or any change in government or supranational regulation or legislation, either in the United Kingdom or elsewhere, which directly affects the cost to the company of supplying the goods.

### **3. Payment**

- a) In circumstances where the company has expressly agreed to grant credit facilities to a purchaser (unless otherwise expressly stated) prices are due and payable thirty days after the date of invoice.
- b) In circumstances where the company has not expressly agreed to grant credit facilities to a purchaser prices are due and payable either prior to delivery or prior to commencement of work.
- c) If the purchaser shall fail to make payment in full in accordance with sub-paragraphs a) or b) of this clause then (without prejudice to any other rights of the company):
  - i) the company shall be entitled to suspend all or any other deliveries to be made under that or any other contract with the purchaser. In such event the purchaser shall not in any respect be released from its obligation to the company under that or any such other contract; or
  - ii) instead of suspension in accordance with paragraph i) above the company shall be entitled to terminate the relevant contract or any other contract with the purchaser in accordance with Clause 12 below and to claim damages from the Purchaser for breach.
- d) unless otherwise expressly stated, amounts due are payable in United Kingdom pounds Sterling in immediately available funds without set-off or counter-claim. Payment by cheque or other negotiable instrument is ineffective until it is honoured and the company's bank account is credited with the amount due.
- e) in addition to any rights of set-off and any similar express or implied rights, the company may at any time, as a continuous right without notice:
  - i) set-off against the purchaser's obligations hereunder any monies which may be or become due and payable by the company to the purchaser; and/or
  - ii) retain or appropriate for itself in or towards satisfaction of the purchaser's obligations any money held by the company on behalf of the purchaser.

### **4. Despatch and Delivery**

- a) Whilst the company will use all reasonable endeavours to keep any estimated despatch or delivery date it accepts no liability whatsoever for any loss or damage resulting from delay howsoever the same shall have been caused. If no time for delivery is specified in the contract, the purchaser shall be bound to accept the goods when they are ready for delivery by the company.
- b) The risk in the goods sold shall pass to the Purchaser upon delivery to the Purchaser or to such person as it may direct and the Purchaser shall insure such goods from such time.
- c) If the goods are not delivered or upon delivery are found to be damaged the Company shall not in any event be liable unless:
  - i) In the case of non-delivery both the Company and the carriers receive written notice within 7 days of the date of the invoice;
  - ii) In the case of short or damaged delivery both the Company and the carriers are sent a written complaint within 48 hours of the receipt of the goods. Provided the Purchaser proves that it was not reasonably possible for the Purchaser to advise the Company and the Carrier, or make a claim in writing within the time limit applicable and such advice or claim is made or given within a reasonable time, the Company shall not have the benefit of the exclusion of liability afforded by this clause.
- d) Where the contract involves more than one delivery, if default is made in payment on the due date in respect of any one delivery, the Company shall at its option and without prejudice to any rights the Company may have hereunder or otherwise, be entitled to treat the contract as repudiated and to claim damages accordingly. Each delivery will constitute a separate contract and any failure or defect in any one delivery will not vitiate the contract as to the remaining deliveries.

### **5. Specifications**

- a) Where the Company has agreed to work to the Purchaser's drawings or specifications the Company will not guarantee performance of the goods or any defect arising from any such drawing, design or specification.
- b) The Company will accept no liability for the loss or damage to patterns or other articles or documents being the property of the Purchaser caused by or arising from fire or other cause beyond the Company's control.

### **6. Intellectual Property**

- a) The Purchaser warrants that any instructions given or designs furnished shall not be such as will cause the Company to infringe or allegedly infringe any patent, trademark, service mark, registered design, copyright or other intellectual property right, or become liable to any action or claim for passing off.
- b) The Purchaser shall indemnify the Company against all losses, liabilities, costs, claims, actions, or demands, which the Company may incur or which may be made against it as a result of or in connection with the infringement of any such rights arising in any way from the manufacture or sale by the Company of goods made to the Purchaser's own specification drawings or instructions.
- c) All drawings prepared, and any jigs or tools made for the purposes of any contract by the company shall remain the property of the Company and shall be returned to it by the Purchaser on demand. All such drawings, jigs and tools shall be treated as confidential and shall not be copied or reproduced or disclosed to any third party without prior written consent of the Company; neither will the Purchaser use or divulge any of the Company's trade secrets, techniques, processes and methods of carrying on business.

### **7. Cancellation**

No cancellation will be accepted where goods are to be supplied to meet the special requirements of the Purchaser. The Purchaser shall indemnify the Company in full against loss (including loss of profit), costs, charges and expenses incurred by the Company as a result of cancellation by the Purchaser.

### **8. Export**

Where the goods supplied are supplied for export from the United Kingdom it is the duty of the Purchaser to inspect the goods at the Company's works before shipment. No liability is accepted by the Company for damage in transit, and the Purchaser shall insure the goods from point of delivery to the carrier.

### **9. Exhibition**

Save within the prior consent of the Company in writing the Purchaser shall not exhibit the goods or allow them to be exhibited either directly or indirectly at any exhibition in the United Kingdom of Great Britain and Northern Ireland or in Eire.

#### 10. General Liabilities

- a) Any machinery goods or material included in any contract which are not manufactured by the Company are sold with the benefit of such warranties if any as the manufacturer gives to the company and which the company can enforce without incurring legal expenses; the company does not in any way guarantee any such machinery goods or materials.
- b) The company hereby warrants that all goods supplied which are manufactured by the company are free from defects in material and workmanship for a period of nine months, but unless otherwise expressly stated in writing the company's liability under this warranty shall be limited to making good without charge by repair or (at the discretion of the company) replacement any defects which in the opinion of the company are defects of material or workmanship, provided always that where a claim is made under this warranty in respect of goods supplied for export the purchaser shall make arrangements and pay all costs and expenses associated with delivering the goods to the company for repair or replacement and subsequent return delivery to the purchaser.
- c) The warranty contained in paragraph (b) of this condition is given in lieu of and shall be deemed to exclude all other warranties and conditions whether expressed or implied and whether arising by common law statute or otherwise save for those implied by Section 12 of the Sale of Goods Act 1979, by the Consumer Protection Act 1987, and any liability for death or personal injury resulting from negligence (as defined in the Unfair Contract Terms Act 1977). The purchaser acknowledges that this is reasonable and reflected in the price and shall accept risk and/or insure accordingly.
- d) The company shall not be liable for any loss injury or damage of any nature whatsoever whether direct or consequential arising out of or in connection with any goods and/or service supplied.
- e) The purchaser shall not rely upon any representation concerning any goods supplied unless the same shall have been made by the company in writing.
- f) In any case where any trade description or other indication or representation is applied to any goods at the purchaser's request the purchaser warrants that the same is true and accurate in all respects and that the supply or offer of supply of any such goods or material by any person will not give rise to an offence by the company under the Trade Descriptions Act 1968.
- g) Notwithstanding Clause 10 (b), or anything stated in any estimate, order or acceptance, the company's maximum aggregate liability in respect of the supply and/or the installation and/or provision of the goods and/or services shall be limited to the original VAT exclusive price of such goods and/or services.
- h) The company shall be under no liability for any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the company's instructions (whether oral or in writing), misuse, or alteration or repair of the goods without the company's approval.
- i) The company shall be under no liability under the warranty in Clause 10 (b) unless it has received written particulars of the nature of claim from the purchaser within 90 days of the date of delivery of the goods which are the subject of the claim.
- j) The company shall exercise all reasonable care when carrying out work to materials supplied by the purchaser but the company shall not be liable to the purchaser for materials supplied by the purchaser and all work carried out to such materials by the company shall be at the purchaser's own risk.

#### 11. Force Majeure

The company shall without prejudice to its right in respect of any breach of contract by the purchaser be entitled to cancel or rescind any contract without liability for loss or damage resulting therefrom if the performance of its obligations under the contract is in any way adversely affected by any war, strike, lock-out, trade dispute, flood, accident to plant or machinery, governmental control, shortage of any material or labour, failure of sub-contractors or any cause whatsoever beyond the company's control.

#### 12. Default

- a) The company may - without prejudice to any other rights it may have - by notice in writing to the purchaser terminate any contract forthwith if:
- i) The purchaser shall commit any breach of any of the terms (including without limitations terms concerning the time for payment of the purchase price) of that or any other contract with the company and on its part to be observed or performed PROVIDED if such breach is remediable that the company has previously given to the purchaser notice thereto and the same has not been remedied within seven days thereafter;
- ii) the purchaser compounds with or negotiates for any composition with its creditors generally or permits any judgement against it to remain unsatisfied for seven days;
- iii) being an individual the purchaser shall die or having a receiving order made against him, or commit any act of bankruptcy; or
- iv) being a company the purchaser shall call any meeting of its creditors, have a receiver of all or any of its assets appointed, or enter into liquidation.
- b) In the event that the company terminates any contract under Clause 12 (a):
- i) The whole of the balance of the price then outstanding on the goods (and under any related contract between the company and the purchaser) shall become due and payable forthwith;
- ii) The company reserves the right to repossess any goods in respect of which payment is overdue and thereafter resell the same, and for this purpose the purchaser hereby grants an irrevocable right and licence to the company or its servants and agents to enter upon its premises with or without vehicles during normal business hours; such right to continue notwithstanding the termination of the contract for any reason;
- iii) The purchaser shall indemnify the company on demand against any reasonable loss, expense, cost (including legal costs) incurred by the company in the recovery of the goods or payment for the company's goods and/or services supplied hereunder.
- c) The company reserves the right to charge interest on overdue amounts at the rate of 2 per cent per month (linked to bank rate) or part of a month until payment in full (including amount recoverable under Clause 12 (b) has been received and may, inter alia, on any termination in accordance with this Clause 12 repossess any goods to which Clause 13 may apply.

#### 13. Title of Goods

The purchaser expressly agrees that until the company has been paid in full for all goods supplied by the company to the purchaser (whether under a single contract or invoice or a series of contracts or invoices):

- a) The goods remain the property of the company although the risk therein passes to the purchaser at the time when delivery is made;
- b) The company may at any time recover from the purchaser those goods in its possession and for that purpose the company's servants and agents may enter upon any land or building upon which the goods are situated;
- c) If the purchaser incorporates the goods into other products, with the addition of his products or those of others, or uses such goods as materials for other products, with or without such addition, and the goods can nevertheless be readily identified and separated, the property in the goods shall remain with the company and for that purpose the company's servants and agents may enter upon any land or building upon which the goods are situated and recover possession of the goods;
- d) The purchaser has the right to dispose of the goods in the course of its business unless or until:
- i) otherwise notified in writing by the company at any time;
- ii) an encumbrance takes possession or a receiver is appointed over any of the property or assets of the purchaser;
- iii) the purchaser makes any voluntary arrangement with its creditors or becomes subject to an administration order;
- iv) the purchaser goes into liquidation (except for the purposes of amalgamation, reconstruction or other reorganisation);
- v) the purchaser ceases or threatens to cease business.
- e) In the event of any disposal of the goods under sub-clause 13 (d) the purchaser has the fiduciary duty to the company to account to the company for the proceeds but may retain therefrom any excess of such proceeds over the amount outstanding and due to the company and the company has the additional right to recover the price payable by the purchaser's customer to the extent unpaid and the company will account to the purchaser for any excess over the amount outstanding and due to the company less any expenses incurred by effecting recovery.
- f) The company shall be entitled to trace the proceeds of the sale and any insurance proceeds received in respect of the goods owned by the company. Such proceeds shall be paid into a separate bank account and shall be held by the purchaser on trust for the company.
- g) The purchaser shall not be entitled to pledge or in any way charge by way of security for indebtedness any goods which may be the property of the company, but if the purchaser does so, all the money owed by the purchaser to the company shall (without prejudice to any right or remedy of the company) forthwith become due and payable.
- h) Each of the sub-clauses contained in this Clause 13 shall be construed as independent of every other sub-clause to the effect that if any sub-clause of this Clause 13 or the application of any sub-clause to any person, firm or company or to any circumstances shall be determined to be invalid and unenforceable such determination shall not affect any other sub-clause of this Clause 13 or the application of such sub-clauses to any person, firm, company or circumstances all of which provisions shall remain in full force and effect.

#### 14. Value Added Tax

Where chargeable, Value Added Tax will be charged at the rate applicable at the date of despatch.

#### 15. General

- a) If any provision in these conditions of sale (or part thereof) should be found to be invalid, ineffective or unenforceable, the invalidity, ineffectiveness or unenforceability shall remain in full force and effect.
- b) It is the purchaser's responsibility to assure and satisfy himself that the goods and the use to which the goods are applied comply with all relevant legislation, regulations or other formalities. The purchaser shall procure at his own expense any import licence required for the import of goods into the country to which the goods are to be despatched from the UK. Where an order is placed from an address in the UK, the purchaser shall be responsible for procurement at his own expense of any export licence required on the export of the goods from the UK.
- c) No relaxation, forbearance or delay by the company in enforcing any of the terms or conditions herein shall prejudice, affect or restrict the right of the company hereunder, nor shall any waiver by the company of any breach operate as a waiver of any subsequent or continuing breach.
- d) For so long as any account remains unpaid the company shall have an absolute right of lien upon any goods of the purchaser that may be in the company's possession or under its control and the company may enforce such lien at any time. If the lien is not satisfied within a reasonable time the company may at its absolute discretion sell such goods or part thereof as agent for the purchaser and apply the proceeds towards the monies due and the expenses of the retention, insurance and sale of such goods and shall upon accounting to the purchaser for any balance remaining be discharged from all liability whatever in respect of such goods.
- e) The company shall be entitled to sub-contract the whole or part of the performance of any contract without prior notice to the purchaser. All contracts are personal to the purchaser and may not be assigned without prior written consent of the company.