

FIREBRAND PROMOTIONS LIMITED CONDITIONS OF SALE

**1 Interpretation**

- 1.1 In these Conditions:  
 "BUYER" means the person whose order for the Goods is accepted by the Seller  
 "CONDITIONS" means the standard terms and conditions of sale set out herein and (unless the context otherwise requires) includes special terms and conditions agreed in writing between the Buyer and the Seller  
 "CONTRACT" means the contract for the purchase and sale of the Goods  
 "GOODS" means the goods (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with these Conditions  
 "SELLER" means Firebrand Promotions Limited (registered in England under number 4529398)  
 "ORIGINATION WORK" means artwork, tools, dies, screens and other devices for making, customising or personalising the Goods  
 "WRITING" includes telex, cable, facsimile transmission, e-mail and comparable means of communication.  
 1.2 The headings in these Conditions are for convenience only and shall not affect their interpretation.

**2 Basis of the sale**

- 2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written order of the Buyer accepted by the Seller, subject to these Conditions which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such order is made or purported to be made by the Buyer.  
 2.2 Subject to clause 10.6 no variation to these Conditions shall be binding unless agreed in Writing between the Buyer and the Seller.  
 2.3 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in Writing. The Buyer acknowledges that it does not rely on any such representations which are not so confirmed.  
 2.4 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use 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 advice or recommendation which is not so confirmed.  
 2.5 All information contained in sales literature, catalogues, brochures and advertising matter is for illustrative purposes only and does not form part of the Contract.  
 2.6 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.  
 2.7 Any samples supplied to the Buyer by the Seller are supplied strictly on the basis that property in the samples remains with the Seller. If the Buyer does not return the samples in perfect condition within 30 days of receiving them from the Seller then the Buyer shall be liable to pay the Seller for the samples at the price detailed on the Samples On Approval form sent with the samples. The Buyer will accept all risk for samples until they have been received back by the Buyer.

**3 Orders and specifications**

- 3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller by email, fax or post.  
 3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) 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.  
 3.3 The quantity, quality and description of and any specification for the Goods shall be those set out in the Buyer's order (if accepted by the Seller), save that in respect of printed matter only the Seller reserves the right to supply at the same price up to 10% more or less than the quantity ordered and the terms of the Contract and these Conditions shall be unaffected.  
 3.4 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller 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 Seller's use of the Buyer's specification.  
 3.5 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or E.C. requirements or, where the Goods are to be supplied to the Buyer's specification, which do not materially affect their quality or performance.  
 3.6 No order which has been accepted by the Seller 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 Subject to 4.2 the price of the Goods shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of acceptance of the order. All prices quoted are valid for 30 days only or until earlier acceptance by the Seller of an order by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.  
 4.2 The Seller reserves the right, by giving 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, materials or other costs of manufacture), 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 information or instructions.  
 4.3 Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in Writing between the Buyer and the Seller, all prices are given by the Seller exclusive of Origination Work, packaging, carriage, insurance and the cost of the application of an advertisement, all of which shall be the subject of additional charges by the Seller.  
 4.4 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.

**5 Terms of payment**

- 5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after the Seller's acceptance of the Buyer's order, notwithstanding that the Goods may not have been delivered at the date of the invoice.  
 5.2 The Buyer shall pay the price of the Goods (less any discount to which the Buyer is entitled, but without any other deduction) within 30 days of the date of the Seller's invoice, and the Seller shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. 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 fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:  
 5.3.1 cancel the contract or suspend any further deliveries to the Buyer;  
 5.3.2 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  
 5.3.3 charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 2% per cent per annum above National Westminster Bank Plc 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).

**6 Delivery**

- 6.1 Delivery of the Goods shall be made by carrier or other method as the Seller sees fit to an address nominated by the Buyer.  
 6.2 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of 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 upon giving reasonable notice to the Buyer.  
 6.3 Subject to section 7 below, deficiencies in quantity or damage in transit must be reported to the Seller within 2 days of delivery (and, in the case of damage in transit, to the carrier on delivery) and all packing must be returned to the Seller for inspection failing which the Seller shall have no liability to the Buyer for such deficiency or damage.  
 6.4 The Seller shall have the right to attend at the Buyer's premises to inspect any Goods in respect of a report made by the Buyer under clause 6.3 above and the Buyer shall retain such Goods until the Seller has inspected the Goods or has notified the Buyer in Writing that it does not wish to inspect the Goods.  
 6.5 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 Conditions 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 any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to a full refund to the Buyer of any sums paid by the Buyer to the Seller for the Goods or instalment not delivered by the Seller.  
 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 prejudice to any other right or remedy available to the Seller, the

Seller may:

- 6.7.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or  
 6.7.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage, insurance and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

**7 Risk and property**

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.  
 7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property 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 property 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 shall be entitled to repossess or use the Goods in the ordinary course of its business, in which case the proceeds of sale shall be the property of the Seller and the Buyer shall hold the same in trust for the Seller absolutely.  
 7.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any other premises where the Goods are stored and repossess the Goods.  
 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 prejudice to any other right or remedy of the Seller) forthwith become due and payable.

**8 Warranties and liability**

- 8.1 Subject to the conditions below the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship at the date of delivery.  
 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 in the Goods arising from any drawing, design or specification supplied by the Buyer;  
 8.2.2 The Seller shall be under no liability in respect of any defect arising from fair wear and tear, willful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval;  
 8.2.3 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;  
 8.3 Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.  
 8.4 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these Conditions.  
 8.5 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If the Buyer does not notify the Seller accordingly, the Seller shall have no liability for such defect or failure. Any such claim shall not entitle the Buyer to withhold payment for the Goods and the Buyer shall have no right of set-off against payments due from the Buyer to the Seller.  
 8.6 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to replace the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), but the Seller shall have no further liability to the Buyer.  
 8.7 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, and the entire liability of the Seller under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Conditions.  
 8.8 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 any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control: Act of God, explosion, flood, tempest, fire or accident; war or threat of war, sabotage, insurrection, civil disturbance or requisition; acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority; import or export regulations or embargoes; strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party); difficulties in obtaining raw materials, labour, fuel, parts or machinery; power failure or breakdown.

**9 Indemnity**

- 9.1 If any claim is made against the Buyer that the Goods infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, then unless the claim arises from the use of any drawing, design or specification supplied by the Buyer, the Seller shall indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim, or paid or agreed to be paid by the Buyer in settlement of the claim, provided that:  
 9.1.1 the Seller is given full control of any proceedings or negotiations in connection with any such claim;  
 9.1.2 the Seller shall give the Seller all reasonable assistance for the purposes of any such proceedings or negotiations;  
 9.1.3 except pursuant to a final award, the Buyer shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Seller (which shall not be unreasonably withheld);  
 9.1.4 the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do);  
 9.1.5 the Seller shall be entitled to the benefit of, and the Buyer shall accordingly account to the Seller for, all damages and costs (if any) awarded in favour of the Buyer which are payable by, or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by, any other party in respect of any such claim; and  
 9.1.6 without prejudice to any duty of the Buyer at common law, the Seller shall be entitled to require the Buyer to take such steps as the Seller may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Seller is liable to indemnify the Buyer under this clause.

**10 General**

- 10.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.  
 10.2 No failure or delay by either party in exercising any of its rights hereunder shall operate as a waiver of such rights nor shall any single or partial exercise preclude any further exercise of such rights.  
 10.3 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.  
 10.4 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.  
 10.5 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.  
 10.6 In the event that these Conditions are inconsistent with the quote given by the Seller to the Buyer then the quote shall take precedence.  
 10.7 The Contract shall be governed by the laws of England, and the Buyer agrees to submit to the exclusive jurisdiction of the English courts.  
 11 Export terms  
 11.1 Where Goods are supplied for export, the provisions of this clause 11 shall (subject to any special terms agreed in writing between the Buyer and Seller) apply notwithstanding any other provision of these Conditions.  
 11.2 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them.  
 11.3 The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Seller's premises before shipment. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.  
 11.4 No production work will commence in respect of export orders until the Seller has been paid in full in cleared funds or has been presented with an irrevocable letter of credit for the full price.