



fenn  
GRAPHICS

# Terms & Conditions

## 1 Definitions

**"Company"** shall mean **Aura Graphics Limited and any of its divisions or subsidiaries including Fenn Graphics and Aura Services** (registered in England under number **02984457**) and having its registered address at **Freemantle Road, Lowestoft, Suffolk, NR33 0EA**;

**"Conditions"** means the Standard Terms and Conditions of Sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Parties, as varied from time to time in accordance with clause 2.6;

**"Contract"** shall mean the contract for the sale and purchase of Goods and/or the supply of Services between the Company and the Customer incorporating these Conditions;

**"Customer"** shall mean the person, firm or company who purchases the Goods and/or the Services from the Company under the Contract;

**"Goods"** shall mean the goods referred to in an order placed by the Customer and materials supplied by the Company under the Contract;

**"Insolvency Event"** has the meaning given to it in clause 10.2;

**"Parties"** means the Company and the Customer under the Contract;

**"Services"** shall mean the design and printing of graphics and other advertising materials together with, where specified, application and installation of the Goods, provided by the Company under the Contract;

**"Warranty"** means the warranty given in clause 8.1; and

**"writing"** includes fax and electronic mail.

## 2 Basis of Sale

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 Each order or acceptance of a quotation for Goods and/or Services by the Customer from the Company shall be deemed to be an offer by the Customer to buy Goods and/or Services subject to these Conditions.
- 2.3 No order placed by the Customer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods to the Customer.
- 2.4 The Customer shall ensure that the terms of its order and any applicable specification are complete and accurate.
- 2.5 Any quotation is given on the basis that no Contract shall come into existence until the Company despatches an acknowledgement of order to the Customer or the Company delivers the Goods and/or provides the Services. Any quotation is valid for a period of 60 days only from its date, provided that the Company has not previously withdrawn it.
- 2.6 The Company may vary these Conditions from time to time by giving written notice to the Customer. Otherwise, no variation to these Conditions shall be binding unless agreed in writing by an authorised representative of the Customer and the Company.
- 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 Company shall be subject to correction without any liability on the part of the Company.
- 2.8 Subject to clause 10, no order which has been accepted by the Company may be cancelled by the Customer except with the written agreement of the Company and on terms that the Customer shall

indemnify the Company in full against all loss (including, but not limited to, loss of profit), cost (including, but not limited to, the cost of all labour and materials used), damages and expenses incurred by the Company as a result of the cancellation.

- 2.9 The Company reserves the right to make any changes in the specification of the Goods and / or Services which are required to conform with any applicable safety or other statutory requirements.
- 2.10 The Company reserves the right to serve notice to the Customer at any time before delivery of the Goods and/or provision of the Services increasing the price of the Goods or Services payable under the Contract to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company including (but without limitation):
- 2.10.1 foreign exchange fluctuation or currency regulation;
  - 2.10.2 increase in duties or taxes payable by the Company; and/or
  - 2.10.3 any delay caused by any instructions of the Customer or failure by the Customer to give adequate information or instructions.

Insofar as it is reasonably able to do so the Company will endeavour to give reasonable prior notice to the Customer of any such increase.

### 3 Proofs

- 3.1 All artwork, text, style and graphics produced by the Company on behalf of the Customer shall be submitted to the Customer for approval. The Company shall accept no liability for errors not corrected by the Customer. Any amendments to be made after the Customer has approved the artwork shall be subject to additional cost.
- 3.2 Where artwork, text, style or graphics have been supplied to the Company by the Customer or by a third party on the Customer's behalf, the Customer shall indemnify and keep indemnified the Company against all costs and claims arising out of libellous matter or any infringement of copyright, trademark, patent, design or any other proprietary right contained in such artwork text, style or graphic.
- 3.3 Where an order is placed using material on a computer readable disk or other media for digital printing the Customer shall supply a colour layout of the desired end print and in the absence of a visual proof the Company accepts no responsibility for any material variation in the interpretation of the Customer's requirements. Time expended in alterations required to be made by the Company due to incorrect information supplied by the Customer shall be subject to additional charge.
- 3.4 Unless specified by the Customer the Company in its absolute discretion shall print all works for digital printing in a resolution most appropriate for any particular application.
- 3.5 All materials used in the production of work of any nature shall unless it is supplied by the Customer belong to the Company.
- 3.6 The Company shall use reasonable endeavours to obtain best results on materials supplied or specified by the Customer. Such materials may be rejected by the Company if they are deemed, in the Company's opinion, to be unsuitable. In such event the Company may charge any additional costs incurred.

### 4 Prices

- 4.1 All prices are quoted exclusive of Value Added Tax which shall be payable in accordance with current legislation.
- 4.2 All prices exclude delivery, insurance and application, which are subject to the additional charges.
- 4.3 Unless otherwise agreed in writing, packaging is not charged for except that a charge will be made by the Company if returnable packaging is not received undamaged at the Company's works at 1 Old Tramway, Fenton, Stoke-on-Trent, ST4 3PX within 5 days of the date of delivery of the Goods.

### 5 Terms of Payment

- 5.1 The Company shall be entitled to invoice the Customer for the price of the Goods/and or Services on or at any time after delivery of the Goods or provision of the Services, or after the Company has notified the Customer that the Goods are ready for collection.
- 5.2 The Customer shall pay the amounts due at the time(s) stated in the Contract or, if no time is stated, within 30 days from the date of the Company's invoice for the Goods and/or Services.
- 5.3 Time for payment shall be of the essence.

- 5.4 All payment payable to the Company under the Contract shall become due immediately on its termination despite any other provisions.
- 5.5 If the Customer fails to make any payment due to the Company under the Contract by the due date for payment, then without limiting any other remedies the Company may have under the Contract, the Company may claim interest at its discretion under the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.6 The Customer shall be responsible on a full indemnity basis for all costs and fees incurred by the Company in enforcing payment of any overdue account.
- 5.7 The Company reserves the right to suspend performance of any of its obligations under any Contract while a Customer's account remains overdue for payment.

## 6 Delivery

- 6.1 Subject to clause 6.3, delivery shall be made by the Company to an address supplied by the Customer on an official purchase order document, unless otherwise expressly agreed in writing.
- 6.2 If no delivery address is supplied in accordance with clause 6.1, the point of delivery shall be **1 Old Tramway, Fenton, Stoke-on-Trent, ST4 3PX**.
- 6.3 Any dates quoted for delivery of the Goods or performance of the Services are approximate only and the Company shall not be liable for any delay howsoever caused. Time for delivery of the Goods and or performance of the Services shall not be of the essence unless previously agreed by the Company in writing.
- 6.4 Where the Goods are to be delivered in instalments each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these terms or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract, as a whole, to be terminated.
- 6.5 If for any reason the Customer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:
- 6.5.1 risk in the Goods shall pass to the Customer (including for loss or damage caused by the Company's negligence);
- 6.5.2 the Goods shall be deemed to have been delivered;
- 6.5.3 the Company may store the Goods until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance); and
- 6.5.4 the Company may sell the Goods at the best price readily available and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the Contract or charge the Customer for any shortfall below the price under the Contract.

## 7 Passing of Risk and Property

- 7.1 The Goods are at the risk of the Customer from the time of delivery.
- 7.2 Ownership of the Goods shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
- 7.2.1 the Goods; and
- 7.2.2 all other sums which are or which become due to the Company from the Customer on any account.
- 7.3 Until ownership of the Goods has passed to the Customer, the Customer shall:
- 7.3.1 hold the Goods on a fiduciary basis as the Company's bailee;
- 7.3.2 store the Goods (at no cost to the Company) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Company's property;
- 7.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- 7.3.4 maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Customer shall produce the policy of insurance to the Company.

- 7.4 The Customer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.
- 7.5 Where:
- 7.5.1 payment for the Goods has not been made by the due date; or
  - 7.5.2 the Customer commits a material breach of the Contract and the Customer does not remedy the breach within 14 days of receiving written notice from the Company requiring it to do so; or
  - 7.5.3 the Customer is, or in the reasonable opinion of the Company is about to be, subject to an Insolvency Event;

the Company shall (without prejudice to any other remedy) be entitled to take possession of the Goods.

## 8 Warranty

- 8.1 The Company warrants to the Customer that at the time of delivery the Goods and Services:
- 8.1.1 will be of satisfactory quality; and
  - 8.1.2 will correspond with any specification agreed with the Company to the extent that current printing and digital techniques permit.
- 8.2 Subject as expressly provided in this Contract 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 and other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 8.3 The Company shall be under no liability under the Warranty (or any other warranty, condition or guarantee), if the total price for the Goods and or Services has not been paid by the due date for payment.
- 8.4 The Warranty does not extend to artwork, text style or graphics or materials supplied to the Company by the Customer or by a third party on the Customer's behalf.
- 8.5 The Company shall not be liable for a breach of the Warranty unless the Customer gives written notice of the alleged breach of Warranty to the Company within 14 days of when the Customer discovers or ought to have discovered the defect.

## 9 Liabilities

- 9.1 This clause sets out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- 9.1.1 any breach of these Conditions;
  - 9.1.2 any use made or resale by the Customer of any of the Goods, or of any product incorporating any of the Goods; and
  - 9.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 9.2 Nothing in these Conditions excludes or limits the liability of the Company:
- 9.2.1 for death or personal injury caused by the Company's negligence; or
  - 9.2.2 under section 2(3), Consumer Protection Act 1987; or
  - 9.2.3 for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
  - 9.2.4 for fraud or fraudulent misrepresentation.
- 9.3 Subject to conditions 8.2 and condition 9.2 and 9.4:
- 9.3.1 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to 150% of such sum as has been paid to the Company under the Contract; and
  - 9.3.2 the Company shall not be liable to the Customer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for indirect or consequential loss whatsoever (howsoever caused) which arise out of or in connection with the Contract.

- 9.4 Where a valid claim in respect of the Goods or Services which is based on a defect in the quality or condition of the Goods or Services (including without limitation a breach of the Warranty) is notified to the Company, the Company may repair or replace the Goods (or the part in question) or re-provide the Services free of charge in which case the Company shall have no further liability to the Customer.

## 10 Breach and Insolvency

- 10.1 Each party shall have the right to terminate the Contract if the other party is in material breach of Contract and does not rectify such breach within 14 days after receiving written notice from the injured party requiring it to do so. Termination shall not affect any other rights of the injured party.
- 10.2 If the Customer commits an act of bankruptcy or goes or is put into liquidation (other than solely for amalgamation or reconstruction) or if a receiver or administrator is appointed over any part of the Customer's assets or if the Customer suffers the seizure of any property for non-payment of any debt, or the Customer suspends or delays work for a period of 14 days (an "**Insolvency Event**") then the Customer shall immediately notify the Company and, without prejudice to any other right or remedy available to the Company, the Company may immediately terminate the Contract without notice and payments for Goods or Services already rendered or supplied shall immediately become due.

## 11 Force Majeure

- 11.1 The Company reserves the right to defer the date of delivery or provision of the Services or to cancel the Contract or reduce the volume of the Goods ordered by the Customer (without liability to the Customer) 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 (a "**Force Majeure Event**").

## 12 Notice

- 12.1 A notice required or permitted to be given by either party under this contract shall be in writing addressed to the other party at its registered office or principle place of business or such other address as may have been notified to the other party.

## 13 Waiver

- 13.1 No delay by the Company shall be considered a waiver of any breach.
- 13.2 No waiver by the Company of any breach of this Contract by the Customer shall be considered a waiver of any subsequent breach of this Contract.

## 14 Entire Agreement

- 14.1 The Parties agree that these terms and conditions (together with any other written terms and conditions expressly referred to and incorporated into the Contract) represent the entire agreement between the Parties relating to the sale and purchase of the Goods and or supply of Services and that no other statements or representations made by or on behalf of either party have been relied upon by the other in agreeing to enter into the Contract.

## 15 Severance

- 15.1 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

## 16 Law

- 16.1 This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law, and the Parties submit to the exclusive jurisdiction of the English courts.